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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-4247-2018

Date of decision : 06.02.2023

Sarabjit Kaur

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Padamkant Dwivedi, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, AAG, Punjab.

Mr. Naresh Kumar, Advocate for
respondents No.2 and 3.

Mr. Brijeshwan Singh Kanwar, Advocate
for respondents No.5 and 6.

PANKAJ JAIN, J. (Oral)

The relief claimed in the present writ petition is for release of retiral benefits and the arrears of salary on the basis of recommendation made by 4th Pay Commission in the year 2002 and as per the recommendations made by 5th Pay Commission for the period from 01.01.2006 till 21.08.2009 alongwith interest.

2. Petitioner claims to have been appointed with respondent-Board as Craft Teacher. She retired on attaining the age of superannuation on 31.10.2016. It has been claimed that after recommendation made by 4th Pay Commission were accepted in the year 2002, petitioner was paid arrears of 2/3rd of her salary and the balance 33% of her salary for the period September 2005 to October 2006 has not been paid till date. It has been

further contended that the petitioner worked continuously as per the duties

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assigned to her, she was not released 33% of salary for the period September 2005 to October 2006 and from November 2006 till July 2009 the petitioners was not paid 100% of their salary without any reason. The arrears of 33% salary for the period September 2005 to October 2006 was paid only in the month of October 2010 while the arrears of 100% salary for the period November 2006 till July 2009 was paid as late as in 2014. It is relevant to mention here that aforementioned 33% arrears of salary were paid in unrevised scales though the petitioner was entitled to receive the same as per revised scales for the period 01.01.2006 till October 2006. Similarly aforementioned 100% arrears of salary were paid in unrevised scales though the petitioner was entitled to receive the same as per revised scales as per recommendations made by the Fifth Pay Commission duly adopted by the respondent-Board. The petitioner is thus entitled to receive the arrears of salary as per revised pay scales for the aforementioned periods and is also entitled for interest thereupon.

3. The petitioner is stated to have served legal notice upon respondents No.2 and 3 calling upon them to pay retiral benefits, i.e. gratuity, leave encashment and 1/3rd arrears of pay commission, benefits of ACP Schemes and the arrears of revised salary in view of recommendation made by 5th Pay Commission w.e.f. 01.01.2006. However, the same has not been paid till date.

4. Counsel for the petitioner at the outset submits that the case of the petitioner is fully covered by judgment rendered by Coordinate Bench in ***CWP No.25296 of 2016, titled as Jeevan Asha vs. State of Punjab and others*** involving the same issue.

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5. Counsel representing respondents is not in a position to dispute the same.

6. This Court while considering the same issue held as under:-

“xx xx xx

A bare perusal of the above order would show that the State Government had already accepted the same claim of similarly situated employees while sanctioning an amount of retiral dues of the employees and also with regard to the arrears of 4th Pay Commission and 5th Pay Commission. The word used in the affidavit filed before this Court in above-mentioned writ petition is not limited to the petitioners therein, but to the employees and therefore, the State has already accepted the claim for the release of 1/3rd arrears on account of revision of the 4th Pay Commission and also the arrears on account of 5th Pay Commission, for which the petitioner and other similarly situated employees were entitled for.

Counsel for the respondents are unable to rebut that the petitioners herein are similarly situated as the petitioners in CWP No.2155 of 2016 and other connected cases, decided by a Co-ordinate Bench on 24.10.2017, therefore, the petitioners herein are also entitled for the release of 1/3rd arrears on account of 4th Pay Commission revision, which are yet to be paid to the petitioners. The respondents are directed to release the said benefit to the petitioners as done in the case of the other similarly situated employees, who had approached this Court.

Keeping in view the above, in respect of the grant of retiral benefits to the petitioners upon their retirement as well for the grant of arrears of revision of the 5th Pay Commission, till their retirement, a direction is issued to the respondent Board to release their benefits within a

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period of two months from the date of receipt of certified copy of this order unless already released. Respondent Board will be at liberty to claim the same from the government in accordance with law. As the government has already released the amount in the case of the similarly situated employees, request of the Board will be examined and decided in the same manner.

Further, the respondents shall also release the remaining 1/3rd arrears which were not paid to the petitioners on account of revision of the pay-scale as recommended by 4th Pay Commission, which has already been released to the similarly situated employees by the respondents. The same shall also be done in the aforesaid period of two months unless already released to them.

In respect of the pensionary benefits for which the petitioners were entitled for upon their retirement, the arguments of counsel for the petitioners is that as per the settled principle of law settled by the Full Bench of this Court, as release of their pensionary benefits have been delayed, the petitioners are entitled for the interest on the delayed release of the gratuity and leave encashment.

Counsel for respondents No.2 and 3 states that petitioners are not entitled for the interest as they have filed the writ petitions starting from the year 2016 and therefore, once the petitioners raised the grievance only in the year 2016 and benefit of leave encashment was released to them immediately thereafter, no interest is payable. The employees are entitled for release of their retiral benefits immediately upon their retirement or within a reasonable time thereafter. Petitioners retired in 2014 and the benefits of leave encashment was withheld till November, 2017 and that too without any valid

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justification, hence, it cannot be said that the petitioners will not be entitled for the interest. The payment of retiral benefits is the duty of the employer and that too without there being any asking for the same as the same is the right of an employee to get it immediately upon his/her retirement so as to have a dignified life after retirement. It was obligatory upon the respondents to release all the benefits when the petitioner retired in the year 2014. Further, the interest can only be declined if there was a valid justification to withhold the retiral benefits. In the absence of any valid justification, the grant of interest is a right as per the settled principle of law settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468.**

In the present writ petitions, no valid justification has been given as to why the interest has not been paid upon the gratuity and leave encashment. Even under the Payment of Gratuity Act, an employee is entitled for interest if the payment of the same is delayed without any valid justification.

Therefore, the petitioners are held entitled for the interest on the delayed payment of gratuity and leave encashment from the date they retired till the same was released to them @ 9% per annum. The respondents shall calculate the said interest amount within a period of three months from the date of receipt of this order and pay the same to the petitioners, within a period of next one month.”

7. Counsel for the respondents also does not dispute that the judgment dated 10.04.2019 passed in ***Jeevan Asha's case (supra)*** is not subject matter of challenge in Intra Court Appeal and has become final.

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8. In view of the aforesaid fact, present writ petition is disposed off in the same terms. Petitioner is held entitled of 1/3rd arrears on account of revision of 4th Pay Commission. She is also held entitled for arrears on account of 5th Pay Commission. Respondents are directed to release the said benefit to the petitioner within a period of 08 weeks from the date of receipt of copy of this order. Respondents are further directed to release retiral benefits to the petitioner within the time period as stipulated hereinabove alongwith interest @ 9% per annum.
9. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

06.02.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No