

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM No.3359-C of 2023 and
CM No.3360-C of 2023 in/and
RSA No.2532 of 2012 (O&M)
Date of Decision : 18.04.2023

Sham Lal

...Appellant

Versus

The Secretary, Department of Home, Government of Punjab and
another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Lath, Advocate for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab
for the respondents.

Harsimran Singh Sethi J. (Oral)

CM No.3359-C of 2023

The present application has been filed for placing on record the
synopsis of the case.

Application is allowed.

Synopsis are taken on record.

CM No.3360-C of 2023

The present application has been filed for early hearing of the
main case keeping in view the fact that the same has already been listed
before Regular Board of this Court and the appellant, who is 78 years old is
still waiting for the release of his pensionary benefits.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab, who is present in the Court accepts notice and raises no objection for the grant of the prayer as made in the present application.

Keeping in view the joint request of learned counsel for the parties, application is allowed. The main case is taken up for hearing today.

RSA No.2532 of 2012

In the present Regular Second Appeal, the judgment of the Lower Appellate Court dated 20.12.2011 passed in appeal is under challenge by which, the judgment and decree of the trial Court dated 17.01.2011 has been set aside and the suit filed by the appellant-plaintiff seeking the interest on the delayed release of gratuity has been dismissed.

Certain facts need to be mentioned herein for the correct appreciation of the issue in hand.

The appellant-plaintiff retired on attaining the age of superannuation on 31.03.1998. At the time of retirement, the amount of gratuity admissible to respondent-plaintiff was withheld on the ground that there was FIR No.83 dated 07.09.1989 pending against appellant-plaintiff due to which, the department retained the amount of gratuity admissible to the respondent-plaintiff. Vide judgment dated 14.01.2006, the appellant-plaintiff was acquitted by the Competent Court of Law of the allegations alleged in the said FIR and after the said decision, the gratuity was released in favour of the respondent-plaintiff in two installments i.e. on 12.04.2006 and 17.04.2006.

As the gratuity was released to the appellant-plaintiff in the year 2006, the claim was raised by the appellant-plaintiff that he is entitled for the grant of interest on the delayed release of the benefit of gratuity as

he cannot be put to a situation of dis-advantage only due to allegations alleged in the FIR, which could not be proved against him. As the benefit of interest on delayed release of gratuity was not accepted by the department concerned, the appellant filed a Civil Suit claiming the said benefit.

Civil Court allowed the suit filed by the appellant-plaintiff vide judgment and decree dated 17.01.2011 and held that the appellant-plaintiff is entitled for release of the gratuity along with interest @12% per annum from 31.07.1998 till 12.04.2006.

Aggrieved against the said decision of the trial Court, appeal was filed by the respondent-department, which appeal has been accepted by the Lower Appellate Court vide judgment and decree dated 20.12.2011 holding that once there were criminal proceedings pending against the appellant-plaintiff, the department was well within its right to withhold the payment of gratuity and upon his acquittal, the said amount of gratuity was released within a period of two months, hence, the question of grant of interest does not arise as awarded by the trial Court and judgment and decree of the trial Court dated 17.01.2011 was set aside and the suit filed by the appellant-plaintiff was dismissed.

Hence, the present Regular Second Appeal.

Learned counsel for the appellant-plaintiff argues that though the respondents-defendants can justify the retaining of the gratuity amount keeping in view the pendency of the criminal proceedings but once he was acquitted of the allegations, he cannot be put to a dis-advantage position and the lower Appellate Court has failed to consider the issue in correct perspective. Hence, the judgment of the lower Appellate Court dated

20.12.2011 is liable to be set aside.

On the other hand, learned State counsel submits that once the department was within his jurisdiction to hold the gratuity keeping in view the criminal proceedings pending and the said gratuity amount was released immediately upon finalization of the said criminal proceedings, no interest was liable to be given, hence judgment and decree of the Lower Appellate Court is liable to be maintained.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded fact that on 31.03.1998 the appellant-plaintiff became entitled for release of the gratuity and the said amount was retained by the department due to the pendency of the criminal proceedings. In the criminal proceedings, the appellant-plaintiff was exonerated by the Competent Court of Law. Once the appellant-plaintiff was exonerated of the allegations alleged in the FIR, he cannot be put to a dis-advantage position so as to cause prejudice despite exonerated of the allegations. Hence, the claim of the appellant-plaintiff to seek interest on the delayed release of the gratuity amount after a period of approximately eight years of his entitlement, is valid and justified.

Further, the claim of the appellant-plaintiff is covered by the judgment of the Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana and others** in CWP No.15867 of 2001(O&M), dated 20.11.2013., according to which, in case any amount admissible to an employee has been retained by the department and used for its benefit, the employee will be entitled for the interest on the said amount. The relevant paras of the judgment is as under:

5. In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.

8. In the circumstances, I hold the petitioner entitled to interest @ 8% p.a. on the delayed payment of retiral benefits. The interest will become due w.e.f. 01.05.2000. Let the interest on the above components i.e. gratuity, arrears of pension and leave encashment be computed @ 8% p.a. from 01.05.2000 till the date of payment and the same be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 9% p.a. Petition stands disposed of in the above terms. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

In the present case, it is a conceded position that the amount for which the appellant-plaintiff was entitled for in the form of gratuity on 31.03.1998 was retained and used by the department. That being so, even as per the settled principle of law settled in **J.S. Cheemas's case (supra)**, the appellant-plaintiff is entitled for the grant of interest on the delayed release of gratuity, hence no fault can be found in the judgment of the trial Court dated 17.01.2011 allowing the suit filed by the appellant-plaintiff for the grant of interest.

The question which arise is as to how much interest an employee will be entitled for as per Section 34 CPC. The maximum interest admissible is @6% per annum in the present case. The interest on delayed

payment of gratuity has been awarded in favour of the appellant-plaintiff @

12% per annum by the trial Court. No valid justification has come as to on what basis the interest @12% has been granted while allowing the claim of the appellant-plaintiff.

Keeping in view the facts and circumstances especially section 34 of CPC, though the appellant-plaintiff will be entitled for interest starting from 31.07.1998 till 12.04.2006, but the said amount will be @6% per annum.

The present appeal is allowed in the above terms.

April 18, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No