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

**223** **CWP-24158 of 2021**
**Date of Decision:27.01.2023**

Jaspal Singh and another

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

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Present: Mr. Ranjivan Singh, Advocate,
for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

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**<u>JASGURPREET SINGH PURI, J. (Oral)</u>**

The present writ has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *mandamus* directing the respondents to release the due pensionary/retiral benefits alongwith interest at the rate of 18% per annum from the date of its accrual till its realization to the petitioner by counting their daily wages service in view of the judgment passed by this Court on 23.01.2013 (Annexure P-7).

Mr. Ranjivan Singh, learned counsel for the petitioners submitted that it is a case where both the petitioners retired as drivers on 31.03.2020 from the respondent Government. He submitted that earlier the department was known as Irrigation Department whereas now the nomenclature of the same has been changed to Department of Water Resources, Government of Punjab and in the year 2010 they were shifted and absorbed in the Department of General Administration, Government of Punjab. He submitted that the petitioners alongwith many others co-petitioners had filed a writ petition before this Court bearing No.1432 of 2012 with a prayer that earlier they were appointed on work charge basis but their services were thereafter regularized by the department and therefore in view of the law laid down by this Court in **Harbans Lal versus The State of Punjab and others** CWP-2371 of 2010, decided on 31.08.2010) their services rendered during work charge period were entitled to be counted for pensionary benefits and this Court allowed the aforesaid petition and in this way the petitioners were entitled for counting of their service rendered as work charge employees for the purpose of pensionary benefits. He submitted that the effect of the same was that they were not to be governed by the EPF/CPF scheme but now they will be governed by the old pension scheme which was applicable even if they were regularized after 01.01.2004 in view of the aforesaid judgment. In pursuance of the aforesaid judgment, the Department of General Administration vide Annexure P-8 passed an order whereby a provisional approval was granted for counting the work charge services rendered by both the petitioners and other petitioners as well subject to decision to be rendered in SLP/review petition filed by the Irrigation Department. Learned counsel further submitted that the aforesaid judgment has rather attained finality and in this way the petitioners were entitled for getting their earlier service on work charge basis to be counted for pensionary benefits and in this way the aforesaid Annexure P-8 was passed on 08.08.2013 thereby provisional approval was granted.

Thereafter, both the petitioners retired on 31.03.2020 and it was obligatory upon the respondent State to have implemented their own orders which were passed vide Annexure P-8 in the year 2013 and to have calculated the pension of the petitioners alongwith all the pensionary benefits in view of the earlier judgment of this Court and consequent orders passed by the Department of General Administration way back in the year 2013 which was seven years ago. However, the respondent department failed to do the needful and kept on delaying the matter for grant of pension and pensionary benefits to the petitioners. However, so far as the leave encashment and GPF are concerned, they were paid to the petitioners after a period of about 2½ months for which the petitioners have not raised any dispute in the present writ petition. However, the respondent department neither fixed the pension nor the same was paid to the petitioners and in addition to that even DCRG was not paid and the petitioners had applied for commutation of pension and that was also not considered by the respondent department. He submitted that as an eyewash the respondent department passed an order dated 24.06.2022 (Annexure R-1 and R-2) which have been attached alongwith the short reply filed by the State with regard to both the petitioners in which it was stated that in view of the judgment passed by this Court in the year 2013, the service rendered on work charge basis in the Irrigation Department was sanctioned for calculation of pension and other benefits. Learned counsel submitted that once the benefit of grant of counting of earlier service for the purpose of pensionary benefits has already been finalized in the year 2013 whereby the department itself had issued an order Annexure P-8 in the year 2013, there was no need to have passed such an order once again and it was only for the purpose of cover up operation that such an order was passed.

He further submitted that he has specifically so pleaded in paragraph 24 of the petition that time and again the petitioners have expressed their readiness and willingness to refund the employer's share of the EPF alongwith interest but the respondent department has not even chosen to file reply to the present petition and has chosen to file only a short reply and in this way the averment made in paragraph 24 of the petition stands unanswered and therefore deemed to have been admitted. He submitted that even for the sake of arguments, the EPF pertaining to the employer's share was to be adjusted after being deposited by the petitioners and the same was only to the extent of Rs.1.6 lakhs whereas the total pensionary benefits of the petitioners to the tune of approximately Rs.25 lakhs is wrongfully retained by the respondent department on the aforesaid reason and therefore the action of the respondent department is totally arbitrary which has caused prejudice to the petitioners and their rights to property under Article 300-A of the Constitution of India have been jeopardized by the State. He submitted that during the pendency of the present petition, all the retiral benefits including DCRG and arrears of pension etc. have been paid to the petitioners in December 2022 and now the scope of the present petition is restricted only to the grant of interest on the aforesaid amounts.

Ms. Akshita Chauhan, learned DAG, Punjab has however submitted that there is no dispute that the petitioners were entitled for counting of service rendered on work charge basis for the purpose of pensionary benefits especially in accordance with the judgment passed by this Court which has attained finality. She submitted that the delay has been caused only because the orders Annexure R-1 and R-2 were passed in the month of June 2022 wherein the benefit of counting of aforesaid service was ordered. She submitted that all the benefits have now been granted to the petitioners and therefore the present petition is liable to be dismissed. She further submitted that at the time of retirement of the petitioners on 31.03.2020, they were required to deposit the employer's share of EPF which they failed to do so and it also contributed towards delay of payments. She further referred to Annexure P-10 which is an office order dated 19.08.2009 whereby it is so provided that unless the employees deposit the employer's share of EPF to the Government at the time of retirement, they will not be entitled for their regular pension.

I have heard the learned counsel for the parties.

The petitioners have stated to have retired on 31.03.2020. The petitioners alongwith other employees had earlier filed a writ petition before this Court whereby they were granted the benefit of service rendered by them during the period of work charge basis for the purpose of counting of pension in the year 2013 which according to learned counsels for the parties had attained finality. Thereafter, even Annexure P-8 dated 08.08.2013 was passed by the Department of General Administration whereby provisional approval was granted for counting of service rendered during the period of work charge basis. At the time of retirement, the petitioners were entitled for fixation of their pension and other pensionary benefits in view of the aforesaid counting of service rendered during the period of work charge basis for the purpose of pensionary benefits. An obligation was cast upon the concerned department to fix the pension in this regard. However, as per the learned counsels for the

State, the delay was caused because of the petitioners who did not deposit the employer's share of EPF and that was the reason for the delay in granting the pension and other pensionary benefits. So far as the leave encashment and GPF is concerned, the same was granted within time limit and there is no dispute raised by learned counsel for the petitioners in this regard. But so far as DCRG and pension itself are concerned, the same were granted with a delay of two years and eight months. A perusal of paragraph 24 of the writ petition would show that the petitioners have specifically stated that the petitioners time and again had expressed that they were ready and willing to refund the employer's share of EPF alongwith interest. However, the State Government has chosen not to file detailed reply in the present petition and has chosen to file only a short reply and therefore the averment made in paragraph 24 of the petition remains unanswered. Consequently, this Court draws an adverse inference against the State of Punjab in this regard. Be that as it may, the total amount as per the learned counsels for the parties pertaining to the employer's share of EPF which according to learned State counsel was to be refunded by the petitioners at the time of retirement was Rs.1.79 lacs for petitioner No.1 and Rs.1.6 lacs for petitioner No.2 but the State delayed the pension and the DCRG of the petitioners for two years and eight months by withholding about Rs.25 lacs. Such kind of delay is apparently due to the fault of the State Government. At the most, the State Government may have withheld the aforesaid amount of employer's share of EPF and disbursed the remaining amount but the entire amount was withheld because of the aforesaid reason. The reliance placed by learned Deputy Advocate General, Punjab on Annexure P-10 dated 19.08.2009 that the pension can be withheld for non-deposit of employer's share of EPF is liable to be ignored since it does not carry legal sanction being only an office order.

The right of the petitioners to get the pension and pensionary benefits is a Constitutional right under Article 300-A of the Constitution of India and a Constitutional right cannot be deprived of by passing of an office order in such like manner. Therefore, the justification given by learned Deputy Advocate General, Punjab on the basis of the aforesaid order and the fact that the petitioners failed to deposit their employer's share of EPF deserves to be rejected.

In view of the above, this Court is of the considered view that the petitioners are entitled for the grant of interest @ 6% on the delayed payment of DCRG and the arrears of pension/commutation of pensionary benefits with effect from the date of its accrual till the date of disbursement. The aforesaid payment shall be paid to the petitioners within a period of three months from today.

The present petition stands partly allowed to the above extent.

**(JASGURPREET SINGH PURI)**
**JUDGE**

**January 27, 2023**
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Whether speaking : Yes/No
Whether reportable : Yes/No