IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(280) **RSA-2163-2022 (O&M)**
Date of Decision : May 01, 2023

Rajender Kumar Sikka .. **Appellant**

Versus

State of Haryana and others .. **Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gunjan Mehta, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present Regular Second Appeal has been filed by the appellant claiming interest on the delayed release of the pensionary benefits. Both the Courts below have rejected the said prayer on the ground that there were criminal proceedings pending against the appellant-plaintiff due to which, the release of the pensionary benefits were withheld, hence, the appellant-plaintiff is not entitled for the grant of interest on the delayed release of benefits in the facts and circumstances of the present case.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was appointed as S.D.O on 01.03.1977 and thereafter was promoted as XEN w.e.f. 12.05.1999. With effect from 19.08.2008, the appellant-plaintiff was promoted as Superintending

Engineer and while working on the said post, he attained the age of superannuation and retired on 30.11.2011.

4. During the service career, the appellant-plaintiff was suspended on 09.08.2005 and he remained under suspension till his retirement. The said suspension from service was on account of FIR No.13 dated 09.08.2005 registered against the appellant under the Prevention of Corruption Act. Before the retirement, the appellant-plaintiff was acquitted in the said case by the competent Court of law vide judgment dated 16.05.2009 and even the appeal filed by the Department was dismissed. During his service career, an another FIR was also registered against the appellant by the Vigilance Bureau, Hisar on 18.01.2008. The said criminal proceedings were pending at the time when the appellant-plaintiff retired on 30.11.2011 but after the retirement, the appellant-plaintiff was acquitted by the competent Court of law on 14.05.2013.

5. Apart from the criminal proceedings, the details of which have been given in the preceeding paragraph, there were departmental proceedings also initiated against the appellant-plaintiff for which a charge-sheet was served upon him under Rule 7 on 24.09.2007, the said proceedings were also pending at the time of his retirement but the said charge-sheet was ultimately dropped after the retirement of the appellant on 29.05.2015. Keeping in view the above mentioned facts, though there were criminal as well as departmental proceedings pending against the appellant-plaintiff but in none of the cases, the allegations against him were proved and he was acquitted in all those proceedings.

6. After the acquittal from the criminal proceedings as well as in the departmental proceedings, the pensionary benefits of appellant-plaintiff which were withheld, were paid to him starting from the year 2018 onwards. The gratuity was paid to him on 23.05.2018 but only after deducting a sum of Rs.2,06,164/-. The arrears of pension were released to him on 03.05.2018. The commutation of pension was given to him on 20.04.2018. The leave encashment was paid to him on 21.06.2017. As the benefits were retained by the Department w.e.f. 01.12.2011 and were paid to the appellant-plaintiff after a period of 7 years, a claim was raised for the grant of interest on the said delayed release of pensionary benefits. As the same was not being extended, the appellant-plaintiff approached the trial Court for the grant of interest on the delayed release of the pensionary benefits, which claim was rejected by the trial Court keeping in view the evidence and facts which came on record, on the ground that as there were criminal and departmental proceedings pending against the appellant-plaintiff at the time of his retirement, the Department was well within its right to withhold the certain benefits hence no interest is payable. Even the appeal filed by the appellant-plaintiff before the Lower Appellate Court was dismissed. Hence, the present Regular Second Appeal.

7. Learned counsel for the appellant submits that keeping in view the facts which are already on record, though criminal and departmental proceedings were pending against the appellant-plaintiff at the time of retirement but in none of the proceedings, the allegations were proved against him and he was exonerated, hence, he cannot be put into a situation so as to be caused prejudice that despite being exonerated of the allegations, the benefit of interest is denied to him and the Courts below have not at all

appreciated the fact that the appellant-plaintiff was exonerated of all the allegations in the year 2015 itself but even thereafter the amount was retained by the respondents upto the year 2018 and that too without any valid justification, hence, the judgments and decrees of the Courts below are perverse and have been passed without appreciating the actual facts.

8. Learned counsel for the respondents submits that as criminal and disciplinary proceedings were pending against the appellant-plaintiff, the Department was well within its right to withhold certain benefits, which fact have rightly been taken into account by the Courts below while rejecting the plea for the grant of interest, hence, the present appeal is liable to be dismissed.

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

10. In the present case, it is a conceded position that at the time when the appellant-plaintiff retired, there were certain proceedings pending against him. The criminal proceedings qua FIR dated 18.01.2008 were pending against him and even departmental proceeding was pending for the final adjudication, hence, the Department was well within its right to withhold certain benefits such as gratuity and leave encashment but in the present case, even the pension was withheld which was beyond the jurisdiction of the respondents keeping in view the settled principle of law. As per the settled principle of law in ***LPA No.113 of 2012 titled as Punjab State Civil Supplies Corporation Limited vs. Pyare Lal, decided on 11.08.2014,*** the provisional pension cannot be withheld and the employee who is facing the proceedings, is entitled for release of 100% provisional pension. Even the commutation of pension as well as the arrears of salary

were also withheld, for which no valid justification has come on record. Further, it is a conceded position that upto the year 2015, all the proceedings had come to an end and appellant was exonerated in all the proceedings and there was no valid justification to retain the benefits which were withheld but still, more than three years were taken by the respondents to release the benefits whereas as per the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, the benefits are to be released within a period of two months in case there is no impediment.

11. Further, once the appellant-plaintiff was exonerated of allegations before the Court trying the criminal proceedings as well as before the Department in the departmental enquiry, the denial of interest would amount to cause prejudice to the appellant-plaintiff and that too without there being any fault on his part. The Department cannot be allowed to take the benefits of his own wrong in first alleging the allegations against an employee and then withholding the benefits on account of the said allegations and thereafter, denying the said employee interest despite being exonerated of the said allegations. Hence, the denying of interest will be putting premium upon the act of the Department so as to cause prejudice to the employee, which cannot be allowed.

12. Even otherwise, as per the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, any benefit admissible to an employee, retained and used by the Department, the employee will be entitled for interest. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

"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 lying 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."

13. Keeping in view the above, the Courts below have totally ignored the relevant facts of the present case as well as the settled principle of law while declining the benefit of the grant of interest on the delayed release of pensionary benefits to the appellant-plaintiff. Hence, the same cannot be sustained and are accordingly set aside.

14. The suit filed by the appellant-plaintiff is allowed to the extent that on the delayed release of the pensionary benefits, the appellant-plaintiff will be entitled for interest @ 6% per annum from the date the amount became due till its actually release.

15. Let the respondent-Department calculate the interest admissible to the appellant-plaintiff under this order and release the same within a period of three months from the receipt of copy of this order.

16. The present Regular Second Appeal is allowed in above terms.

CM-7419-C-2022

As the main appeal has been allowed, present application also stands disposed of.

May 01, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No