

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)

RSA-2963-2014 (O&M)

Date of Decision : January 11, 2023

Financial Commissioner and Principal Secretary to Govt. of Haryana
and others

.. Appellants

Versus

Randhir Singh Yadav

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellants.

Mr. R.D. Yadav, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Before advertng to the grounds raised in the present Regular Second Appeal, certain facts needs to be enumerated which has led to the filing of the present Regular Second Appeal.

The respondent-plaintiff retired on 31.07.2008 and became entitled for the release of the pensionary benefits in respect of the service rendered by him with the Government of Haryana. The pensionary benefits were only released in favour of the respondent-plaintiff in the year 2009 and the respondent-plaintiff claimed interest on the delayed release of the pensionary benefits. As the benefit of interest was not extended to him, he

preferred a civil suit claiming interest on the delayed release of the

pensionary benefits and his suit was decreed by the trial Court on 18.04.2011 allowing him the interest on the delayed release of the pensionary benefits with 18% interest. The judgment of the trial Court was appealed by the respondent-State, which appeal has been dismissed by the lower Appellate Court on 31.05.2013 upholding the grant of interest @ 18% in favour of the respondent-plaintiff.

Present Regular Second Appeal has been filed by the State against the order of the trial Court dated 18.04.2011 by which, the interest on the delayed release of the pensionary benefits has been allowed @ 18% as well as the judgment of the lower Appellate Court dated 31.05.2013 by which the appeal filed by the State of Haryana has been dismissed and the judgment of the trial Court dated 18.04.2011 has been upheld.

Learned counsel for the appellants submits that the respondent-plaintiff himself, after he retired on 31.07.2008 wrote certain letters for the grant of benefit of particular number of years of service rendered by him, which application was under consideration due to which, there was a delay in the release of the pensionary benefits, hence, as there was no intentional delay on the part of the Department, the grant of interest by the Courts below on the release of pensionary benefits is contrary to the facts on record as well as the settled principle of law.

Learned counsel for the appellants further submits that the grant of 18% interest on the delayed payment is contrary to the Section 34 of the CPC according to which, the interest can only be granted by the Courts keeping in view the bank rate, hence, grant of interest @ 18% is not only contrary to the provisions of law but also to the judgment of the

Hon'ble Supreme Court of India in ***Civil Appeal No.7113 of 2014 titled as***

D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others, decided on 01.08.2014 wherein, only 9% interest was granted.

Learned counsel for the respondent-plaintiff controvert the plea of the appellants and submits that once there was no impediment in the release of the pensionary benefits, whatever the respondent-plaintiff was entitled for, the same should have been released to him within the specified period. Learned counsel for the respondent-plaintiff further submits that as there was delay, which is conceded but being termed as procedural one, the same cannot come to the rescue of the Department so as to avoid the payment of interest keeping in view the settled principle of law.

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

From the evidence, which has come on record, the delay in release of the pensionary benefits is conceded by the learned counsel for the appellant even during the arguments. Learned State counsel has not been able to rebut the fact that the payment for which the respondent-plaintiff was entitled for after his retirement on 31.07.2008, were not released in the favour of respondent-plaintiff immediately. That being so, it is a conceded fact that there is a delay in the release of pensionary benefits of the respondent-plaintiff.

Once, there is a delay in the release of the pensionary benefits, whether the interest is payable, the same is covered by 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***, according to which an employee is entitled for the release of the pensionary benefits within a period of two months of his/her retirement in case there is no impediment failing which,

employee needs to be compensated by way of grant of interest on the delayed release of benefits. The relevant paragraph of the said judgment is as under:-

“Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

Further, a Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. 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.”

In the present case, keeping in view the settled principle of law in ***A.S. Randhawa's case (supra)*** and ***J.S. Cheema's case (supra)***, the respondent-plaintiff was entitled for interest which has already been extended by the Courts below and no infirmity can be found on the said aspect in the order passed by the trial Court dated 18.04.2011 as well as the lower Appellate Court dated 31.05.2013.

The question as to whether 18% interest could have been granted by the trial Court on the delayed payments, which benefit has been upheld by the lower Appellate Court needs to be decided keeping in view the provisions of law as well as the settled principle of law on the said aspect.

Section 34 of the CPC which allows the grant of interest in case any money decree is passed, prescribe that only the bank rate interest, being given by the nationalize bank, could have been extended in favour of the claimant while passing money decree.

Nothing has been produced before this Court that the bank rate was 18% at the relevant time when the pensionary benefits of respondent-plaintiff were withheld.

Learned counsel for the respondent-plaintiff has not been able to show that the banks were lending money or were granting interest @ 18% at the said relevant time.

That being so, the grant of interest in favour of the respondent-plaintiff @ 18% is held to be bad as the same is not based upon any fact or and the same was given without considering Section 34 of the CPC.

Further, the Hon'ble Supreme Court of India in ***D.D. Tewari's case (supra)***, held that the interest @ 9% per annum should be awarded in case of the delayed release of the pensionary benefits.

Learned counsel for the respondent-plaintiff has not been able to rebut the settled principle of law as held by the Hon'ble Supreme Court of India in ***D.D. Tewari's case (supra)***.

That being so, the same needs to be made applicable in the present case also, hence, the judgment of the trial Court, which has been upheld by the lower Appellate Court is modified to the extent that the respondent-plaintiff is held entitled for interest for the duration as directed by the trial Court but the respondent-plaintiff will be entitled for interest @ 9% per annum on the amount due instead of 18% per annum as awarded by the Courts below.

The present Regular Second Appeal is disposed of in above terms.

CM-7055-C-2014

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

January 11, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No