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

(107) **CM No.1945-C of 2023 in/and
RSA No.6201 of 2014 (O&M)
Date of Decision : 10.05.2023**

Darshan Singh

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.K. Bansal, Advocate for the appellant.

Mr. Gurpreet Singh, Additional Advocate General, Punjab.
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Harsimran Singh Sethi J. (Oral)

CM No.1945-C of 2023

Application is allowed.

Documents are taken on record.

On the joint request of learned counsel for the parties, the main case is taken up today for final hearing.

RSA No.6201 of 2014

1. The present Regular Second Appeal has been filed against the judgments and decrees of the Courts below dated 31.08.2012 and 29.09.2014 by which, the suit filed by the appellant-plaintiff challenging the recovery which was done from his pensionary benefits as well as the claim for the grant of interest on the delayed release of the pensionary benefits have been rejected.

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2023.05.25 12:19
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2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff, who was working as a Supervisor in the department of Irrigation, Government of Punjab attained the age of superannuation and retired on 30.04.2007. It is a conceded position that on the said date, there were no proceedings pending before the department or before any competent Court of Law against the appellant-plaintiff so as to give jurisdiction to the respondent-department to withhold the pensionary benefits admissible to the appellant-plaintiff.

4. While calculating the pensionary benefits admissible to the appellant-plaintiff, the respondent found that one increment, which was given to the appellant-plaintiff while he was in service was wrongly given to him, which benefit needed to be withdrawn and his pay was required to be refixed. On the said premise, all the pensionary benefits of the appellant-plaintiff were withheld. As the appellant-plaintiff had no source of income after his retirement and all his reitral dues were withheld, he gave in writing that the increment, which according to the respondent-department was wrongly extended to him be withdrawn and his pay be refixed and pensionary benefits be released on the basis of refixation.

5. Thereafter, the department withdrew the said increment and refixed the salary of the appellant-plaintiff and while releasing the pensionary benefits, a sum of ₹50,403/- was deducted on the ground that the said amount was paid in excess to him due to the grant of an increment, which was not admissible to the appellant-plaintiff. It was only thereafter in March, 2008, after 11 months of retirement, the pensionary benefits were released to the appellant-plaintiff.

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6. Aggrieved against the action of the department in making recovery from his pensionary benefits and not paying him interest for the delayed release of his pensionary benefits, the suit was filed claiming the interest on the delayed release of pensionary benefits and also challenging the action of the respondent-department in deducting an amount of ₹50,403/- from his pensionary benefits.

7. Keeping in view the evidence and facts which came on record before the trial Court, the trial Court dismissed the suit on the ground that an amount of ₹50,403/- has rightly been recovered as the same was paid in excess of the entitlement of the appellant-plaintiff hence, keeping in view the affidavit given by the appellant-plaintiff, the department was well within its right not only to refix his salary but also to recover the excess amount already paid to him. Even with regard to interest claimed on the delayed release of the payment, the Court held that as the dispute regarding the correct fixation of pay was pending, delay in release of the pensionary benefits was not intentional so as to entitle the appellant-plaintiff for interest on those payments.

8. The judgment and decree of the trial Court dated 31.08.2012 was challenged before the lower Appellate Court, which appeal also came to be dismissed.

9. Hence, the present Regular Second Appeal.

10. Learned counsel for the appellant argues that the Courts below have not considered the facts and the law while declining the relief to the appellant. Learned counsel submits that in the present case, it is a conceded position that on the date when the recovery was done, the appellant has already retired from service and nothing has come on record that the

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2023.05.25 12:19
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increment was obtained by the appellant-plaintiff by playing any fraud or by mis-representating the facts rather the said increment was granted by the department itself which benefit, the appellant-plaintiff continue to get for more than five years before the same was withdrawn hence, keeping in view the settled principles of law settled by Hon’ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Waster) etc., 2015(1) SCT, 195,** no recovery of the excess amount paid should have been done from the pensionary benefits.

11. Learned counsel for the respondent submits that once it has already come on record that the increment, which was withdrawn, was wrongly given to the appellant-plaintiff hence, being the public money, he was not entitled to retain the amount excess than his entitlement.

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

13. The first question is whether, any recovery could have been done from a retired employee especially when the benefit withdrawn was not obtained by the employee concerned by playing any fraud or mis-representation. The law on this issue is settled by the Hon’ble Supreme Court of India in **Rafiq Masih’s case (supra). T**he relevant para 12 of the said judgment is as under:

> “12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service). (ii) Recovery from retired employees, or employees who are due to retire within one year,

JYOTI
2023.05.25 12:19
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> of the order of recovery. (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post. (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. The case of the appellant is squarely covered by the aforementioned judgment as on the date when the recovery was effected in March 2008, the appellant-plaintiff had already retired from service. Even otherwise, the increment which was withdrawn, the benefit of same was enjoyed by the appellant-plaintiff for more than five years before the same was withdrawn hence, under any circumstances recovery of the excess amount paid could not have been done from the appellant-plaintiff upon withdrawal of the increment.

15. Learned counsel for the respondent has not been able to rebut that the claim of the appellant-plaintiff is covered by the judgment in **Rafiq Masih's case (supra)** in the favour of appellant-plaintiff. Hence, the Courts below have not at all taken into consideration the relevant settled principle of law while declining the claim as raised by the appellant-plaintiff hence, the same cannot be sustained.

16. The second prayer of the appellant-plaintiff is for the grant of interest on the delayed release of the pensionary benefits. It has already come on record that there were no proceedings pending against the appellant-plaintiff at the time of retirement, so as to give jurisdiction to the department to withhold his pensionary benefits. The correction of the pay is the duty of

JYOTI
2023.05.25 12:19
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the department and the department should have seen that any wrong benefit granted to an employee is to be rectified within the service career of the said employee, but an employee who does not have any source of income after the retirement, cannot be made to suffer by delaying the grant of pensionary benefits only on the ground that the department is considering rectification of its own error.

17. Even otherwise, the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468** has held that whenever there is no impediment in the release of the pensionary benefits, the same are liable to be released within a period of two years of retirement, failing which the employee will be entitled for the grant of interest. The relevant para of 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 retirer 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 front 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."

18. In the present case, there was no impediment as envisaged under law, which would give jurisdiction to the department to withhold the pensionary benefits as concededly the appellant-plaintiff became entitled for the release of pensionary benefits on 01.05.2007 whereas the same were only released to him in the month of March 2008.

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19. Even otherwise, a Coordinate Bench of this Court in **J S Cheema Vs. State of Haryana, 2014(13) RCR(Civil) 355** held that where an amount belonging to an employee has been retained and used by the department, the employee will be entitled for interest. The relevant para is as under:-

> "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 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."

20. Keeping in view the above, the prayer of the appellant for the grant of interest on the delayed release of payment is also covered by the judgment of the Full Bench of this Court in **A.S. Randhawa's case(supra)** and **J.S. Cheema's case (supra),** therefore, on this ground also the judgments of the Courts below cannot be sustained.

21. Accordingly judgments of the Courts below dated 31.08.2012 and 29.09.2014 are set aside. The suit filed by the appellant is allowed. Recovery of ₹50,403/- from the pensionary benefits of appellant-plaintiff is held to be bad and the respondents are directed to refund the same within a period of two months from the date of receipt of copy of this order.

22. With regard to the delayed release of the pensionary benefits, the appellant-plaintiff is held entitled for interest @6% per annum from 01.05.2007 till the actual payment of the pensionary benefits. The

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2023.05.25 12:19
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computation of interest upon sum released as retiral benefits for which the appellant becomes entitled for under this order be assessed within the time period already granted and the amount so calculated be released to him within a period of one month thereafter.

23. The appeal is allowed in the above terms.

24. Any Civil Misc. application pending is also disposed of as such.

May 10, 2023 **(HARSIMRAN SINGH SETHI)**
jt **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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