IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(113) **CM-1419-C-2023 and
CM-1422-C-2023 in/and
RSA-4870-2017
Date of Decision : February 20, 2023**

Municipal Council, Bahadurgarh **.. Appellant**

Versus

Ram Karan Rathee and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagdish Manchanda, Advocate, for the appellant.

Mr. Vaibhav Sharma, Advocate, for respondent No.1.

<u>HARSIMRAN SINGH SETHI J. (ORAL)</u>

<u>CM-1419-C-2023</u>

Learned counsel for the parties submits that though the present application has been filed for preponement of CM-12854-C-2017 for the grant of stay but the parties will be satisfied in case the main regular second appeal is taken up for hearing and decided.

Prayer of the parties is allowed and the main regular appeal is taken up for hearing today itself.

<u>CM-1422-C-2023</u>

As prayed for, the present application for placing on record list and dates of events is allowed. Documents are taken on record.

<u>RSA-4870-2017</u>

Learned counsel for the appellant submits that the only grievance of the appellant-Municipal Council is qua the rate of interest which has been granted by the trial Court vide order dated 19.03.2016 to be paid to the respondents-plaintiffs in respect of the payments, which were made to the respondents-plaintiffs for inordinate delay in providing service benefits. Learned counsel for the appellant further submits that interest @ 18% per annum granted by the Courts below to be paid to the respondents upon delayed release of pensionary benefits is too excessive and is contrary to the settled principle of law hence, the rate of interest needs to be modified accordingly.

Learned counsel for the respondents-plaintiffs submits that keeping in view the fact that there was delay in the release of the pensionary benefits, the Courts below in their wisdom have granted appropriate rate of interest and the same is liable to be maintained and the present regular second appeal may kindly be dismissed.

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

Though, learned counsel for the appellant has conceded the fact that appellant becomes entitled for the grant of interest upon delayed payment of pensionary benefits but grant of interest @ 18% per annum is exorbitant keeping in view the facts and circumstances of the present case as even Bank rate is not 18% per annum, which has been accepted by the respondents as well.

As per Section 34 of the CPC, the interest can be granted by the

Courts, which is as under:-

> "Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 1 [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.
> 2[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

A bare perusal of the above section would show that the rate of interest should be according to the Bank rate as admissible for lending the loan. Nothing has been brought to the notice of this Court that the bank rate of interest is 18% per annum which has been awarded by the Courts below hence, the same needs to be modified.

The Hon'ble Supreme Court of India while deciding **Civil Appeal No.7113-2014** titled as **D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Ltd. And others** decided on 01.08.2004 has held that wherever the interest is being granted by the Court, the same should be 9% per annum on the amount due on the pensionary benefits, which is justifiable. Relevant paragraphs of the said judgment is as under:-

> "4.It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.
>
> 5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

Thereafter, the same question of law has also been decided by this Court in ***RSA-2963-2014*** tilted as ***Financial Commissioner & Principal Secretary to Government of Haryana vs. Randhir Singh Yadav*** decided on 11.01.2023.

Learned counsel for the respondents has not been able to dispute the fact that Courts below have not taken into consideration Section 34 of the CPC as well as the judgement of the Hon'ble Supreme Court of India in ***D.D. Tewari (supra)*** while awarding the rate of interest @ 18% per annum. Learned counsel for the respondents has also not been able to rebut the settled principle of law settled by the Hon'ble Supreme Court of India in ***D.D. Tewari (supra)***.

No other argument has been raised.

Keeping in view the above, judgments dated 19.03.2016 and 10.10.2016 passed by the Trial Court and Lower Appellate Court respectively are upheld qua the merits of the case but are modified qua the rate of interest on the delayed release of pensionary benefits. The rate of interest for which, the respondents-plaintiffs will be entitled for is @ 9% per annum instead of 18% per annum as awarded by the Courts below.

The present regular second appeal stands disposed of in above terms.

February 20, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No