

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

231

CWP-18435 of 2018

Date of Decision:07.02.2023

Kuldip Chand Bhargav

....Petitioner

Versus

Punjab Agricultural University, Ludhiana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dheeraj Chawla, Advocate,
for petitioner.

Mr. Sanjeev Sharma, Advocate,
for respondent.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the impugned letter dated 19.04.2018 (Annexure P-6) whereby the claim of the petitioner for grant of interest on the payment of gratuity amount of Rs.2,84,955/- with effect from 01.04.2002 to 27.08.2009 has been rejected by the University, with a further prayer for issuance of a writ in the nature of *mandamus* directing the respondent-University to grant interest on the payment of gratuity of Rs.2,84,955/- with effect from 01.04.2002 to 27.08.2009 @24% per annum, with all consequential benefits.

The brief facts of the present case are that the petitioner retired as Sub Divisional Engineer from the respondent University on 31.03.2002 and due to pendency of some departmental proceedings against him, the retiral benefits were not paid to the petitioner. However, the petitioner filed a Civil Writ Petition No.17987 of 2005 before this Court and during the pendency of the aforesaid writ petition, the petitioner also moved an application for release of gratuity and this Court vide order dated 25.11.2008 (Annexure P-1) on the aforesaid application passed an order by directing the University to release the amount of gratuity to the petitioner within a period of two months from the date of receipt of certified copy of the order. It was also observed that in the aforesaid order on the application that since the counsel for the respondent has stated that this order may not effect the merits of this case. It was so ordered. The relevant portion of the aforesaid order is reproduced as under:-

“In view of the notification dated 09.02.1995, which is applicable to the case of petitioner since he retired on 27.03.2002, a direction is issued to the respondent University to release the amount of gratuity payable to the petitioner within a period of two months from the date of receipt of certified copy of this order.

C.M. stands disposed of.

Counsel for the respondents states that this order may not effect the merits of this case. It is so ordered.”

Thereafter, the University filed an application for recalling/ modification of the aforesaid dated 25.11.2008 and vide Annexure P-2, the application was disposed of and it was observed by this Court that the

aforesaid order by which the directions were issued for release of gratuity to the petitioner shall be subject to the final outcome of the writ petition and at that point of time, the gratuity had already been paid to the petitioner on 06.08.2009. Thereafter, the matter was finally decided by this Court vide Annexure P-4 on 11.05.2015. The aforesaid petition was allowed by this Court and the impugned order by which the recovery was sought to be effected from the petitioner was set aside and a direction was also issued to the respondents to release all the retiral benefits alongwith the interest @8% per annum from the date of retirement till its payment and the amount already deducted from the retiral dues alongwith the same interest from the date of deduction till its payment within a period of four months. It was further directed that no amount be deducted in future from the pension of the petitioner. The operative part of the aforesaid judgment is reproduced as under:-

“In view of the above facts and circumstances, the present petition is allowed, impugned orders dated 16.09.2004 (Annexure P-11); 21.12.2011 (Annexure P-15); 27.04.2012 (Annexure P-16) and 15.11.2012 (Annexure P-16A) are set aside and a direction is issued to the respondents to release all the remaining retiral benefits along with interest @8% per annum from the date of retirement till its payment and the amount already deducted from retiral dues along with the same interest from the date of deduction till its payment, within four months after the receipt of certified copy of this order. It is further directed that no amount be deducted in future from the pension of the petitioner.”

Thereafter, all the remaining benefits to which the petitioner was entitled, were paid to the petitioner alongwith interest @8% in compliance with the aforesaid judgment passed by this Court on 11.05.2015 in CWP No.17987 of 2005 and with regard to the same there is no dispute and it is not the subject matter of the present petition.

The petitioner thereafter made a representation to the respondent University for the release of interest on the gratuity which the respondent University did not pay and they had paid interest only on the other benefits apart from the gratuity. However, by way of the impugned order Annexure P-6, it was decided by the Executive Engineer that the interest on gratuity cannot be paid to the petitioner because as per the judgment passed by this Court on 11.05.2015, it was directed that “remaining retiral benefits” with interest @8% is to be paid and no direction has been issued with regard to payment of interest on gratuity and therefore the petitioner is not entitled for the grant of interest. The present petition has been filed for assailing the aforesaid impugned order dated 19.04.2018.

It has been submitted by learned counsel for the petitioner that the petitioner has been wrongly denied interest on the payment of gratuity. He submitted that after the retirement of the petitioner, he was entitled for the grant of all the retiral benefits including the gratuity but in view of the financial difficulties faced by the petitioner, he had filed an application for release of gratuity and by way of an interlocutory order passed by this Court vide Annexure P-1, he was directed to be paid gratuity and consequently the University paid the gratuity to him on

06.08.2009. Thereafter, when the matter came up for final consideration, this Court had rather allowed the entire petition and set aside the action of the respondent by which the recovery was to be effected from the petitioner and in the aforesaid judgment, it has been so observed that now the remaining retiral benefit is to be paid and for that purpose, interest @8% was fixed and the University has complied with the aforesaid judgment and paid all the remaining retiral benefits alongwith the interest @8%. However, on the aforesaid amount of gratuity, no interest has been paid which is totally irrational and arbitrary and it also violates the Constitutional right of the petitioner which is protected under Article 300-A of the Constitution of India and had submitted that there is no justification for not paying the interest on the gratuity amount to the petitioner which was delayed for about 7½ years and therefore directions may be issued for the grant of interest on the detailed payment of gratuity from the date of retirement till the date of payment, i.e. from 31.03.2002 to 06.08.2009. Learned counsel has referred to a judgment of Full Bench of this Court **A.S. Randhawa versus State of Punjab and others** 1997(3) SCT 468, to contend that a writ petition is maintainable only for the purpose of grant of interest and therefore the present petition has been filed for the grant of interest only on the amount of gratuity which was paid to the petitioner after about 7½ years in pursuance of direction of this Court which were in the form of an interlocutory order and petition was allowed thereafter.

Learned counsel for the petitioner further submitted that the aforesaid judgment has been assailed by the respondent University and it has been dismissed and attained finality.

On the other hand, Mr. Sharma, learned counsel appearing on behalf of the respondent University submitted that the impugned order has been correctly passed in view of the fact that when the main writ petition was decided by this Court, the expression used was that direction was issued for release of the 'remaining retiral benefits' alongwith interest @8% and that direction has been complied with and all the remaining benefits have been paid to the petitioner alongwith interest @ 8%, but so far as the gratuity is concerned, it did not cover the aforesaid direction and there was no specific direction for the grant of interest on gratuity amount and therefore the respondent University was well within its right to have not paid interest on the delayed payment of gratuity. He has also submitted that the present writ petition is not maintainable and it is barred by the rule of constructive res judicata. He further submitted that the gratuity was paid subject to outcome of the writ petition.

I have heard the learned counsels for the parties.

The aforesaid factual position would show that when the main petition, i.e. CWP-17987 of 2005 was decided by this Court on 11.05.2015, the gratuity had already been paid to the petitioner in pursuance of an interlocutory order passed by this Court vide Annexure P-1 and therefore this Court directed that all the remaining retiral benefits be paid @8% per annum. The respondent University has already complied

with the direction of this Court and paid the remaining retiral benefits alongwith interest @8%. Only dispute in the present case is pertaining to grant of interest on the payment of gratuity which has been paid to the petitioner during the pendency of the earlier petition but by way of an interlocutory order passed by this Court vide Annexure P-1 which was only an interim measure so as to cope up with the financial difficulties faced by the petitioner and that is why there was no component of interest mentioning in that order. Thereafter, when the main petition was allowed, the interlocutory order would therefore merge in the aforesaid main judgment. It is not a case that the petitioner had earlier filed some petition for grant of interest on the retiral benefits whereby it was declined to him, but it's a case where rather this Court intervened and directed the University to give the gratuity to cope up with the financial difficulties. The plea which has been taken by learned counsel for the respondent that the prayer of the petitioner would be barred by the rule of constructive res judicata is not only irrational but is also unsustainable. The right of gratuity and retiral benefits and of interest is a Constitutional right which is guaranteed under Article 300-A of the Constitution of India. In other words, right to receive pensionary benefits is a part of Constitutional right under Article 300-A of the Constitution of India. At the time when this Court had decided the earlier writ petition on 11.05.2015, the gratuity had already been paid to the petitioner and therefore this Court had directed that the remaining retiral benefits be paid to the petitioner alongwith interest. It is not a case of the respondent University nor it has been so

held anywhere that the petitioner was not entitled for the grant of gratuity but rather it was other way round that the petition itself was allowed by this Court. Therefore, this Court is of the view that in the light of the aforesaid position, the plea which has been taken by the respondent University that it is hit by the rule of constructive res judicata is totally unsustainable. The reliance which has been placed on a Full Bench judgment of this Court by learned counsel for the petitioner in *A.S. Randhawa's* case (supra) is also well placed. A separate writ petition can independently lie only for the grant of interest. Interest was not denied to the petitioner on the gratuity amount at any point of time. Therefore, the right to receive gratuity was not only his statutory right under the Pension Regulations of University but was also a Constitutional right and interest being a consequential part of the same, cannot be deprived of by taking such hyper-technical pleas. Apart from the above, the aforesaid plea taken by learned counsel for the respondent with regard to constructive *res judicata* is a procedural plea. On the one hand, there is a procedural plea taken by learned counsel for the respondent University and on the other hand, there is a substantive right of the petitioner and this Court is of the view that the procedural objection taken by learned counsel for the respondent will have to give way to the substantive right of the petitioner. Apart from the above, so far as the other retiral benefits are concerned, undoubtedly and admittedly the same has been paid to the petitioner alongwith interest @8% and no artificial distinction can be drawn with regard to the right of interest on delayed payment of gratuity.

Therefore, this Court is of the view that the present petition deserves to succeed. Consequently, the impugned order dated 19.04.2018 (Annexure P-6) is hereby set aside and quashed. The petitioner shall be entitled for the interest at the same rate, i.e. @8% per annum on the payment of gratuity from the date of his retirement till the date of payment. The respondent University is hereby directed to calculate the aforesaid interest amount and pay to the petitioner within a period of three months from today, failing to which the University shall be liable to pay interest @12% per annum after the expiry of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

February 07, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No