2024:PHHC:107987

278

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2360-2023 (O&M)
Date of decision: 21.08.2024

Bir Chand

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Padamkant Dwivedi, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Divyansh Shukla, Advocate, for
Mr. Hitesh Pandit, Advocate, for respondent No.2.

****

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 09.12.2022 (Annexure P-9) passed by respondent No.1 to the extent of denying interest on retiral benefits to the petitioner w.e.f. the date of retirement i.e. 31.05.2021 till 05.08.2022, with a further prayer to direct the respondents to refund Rs.6,800/- recovered from the retiral benefits of the petitioner.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as Accounts Clerk on 31.07.1985 with respondent No.2 and he was suffering from physical disability and he continued

to serve the department and he was promoted as Accountant on 10.03.2015 and was later on promoted to the post of District Manager on 25.07.2018. Thereafter, he became District Manager, Karnal w.e.f. 30.07.2018. He submitted that the age of the retirement of the petitioner was otherwise 58 years but being disabled, he was also entitled for the enhancement of the age of retirement from 58 to 60 years. He submitted that he was also subjected to the medical board examination but he was not given the extension and he was superannuated on attaining the age of 58 years on 31.05.2021. Since he was not granted extension of 2 years, he filed a writ petition bearing CWP No.21836 of 2021 in which notice was issued but thereafter he filed an application for withdrawal of the aforesaid petition and therefore, the aforesaid petition was dismissed as withdrawn on 06.08.2022 vide Annexure P-3. He submitted that in this way, he was not granted the benefit of extension of age and since he retired on 31.05.2021 on attaining the age of superannuation at the age of 58 years, he was entitled for the grant of all the pensionary benefits which were admissible to him at the time of retirement. He also submitted that since the retiral benefits were not paid to the petitioner, he again filed a writ petition before this Court bearing CWP No. 18012 of 2022 and the same was disposed of by a Co-ordinate Bench of this Court vide Annexure P-4 on 18.08.2022 with a direction to the respondents to consider the legal notice of the petitioner and a speaking order be passed in this regard and in case the petitioner is found to entitled for the grant of pensionary benefits, then the same be released to him within one month of passing of the order on legal notice alongwith interest @ 6% per annum. He submitted that thereafter he filed a contempt petition before this Court bearing COCP No.2572 of 2022 which was disposed of in view of the fact that a speaking order was passed. He submitted that the respondents vide Annexure P-6 rather issued a show-cause notice to the petitioner dated 02.12.2022 on the ground that while he was in service, some excess travelling allowance has been released to some employees and after the filing of the earlier writ petition, the same was detected by the internal audit and there was a recovery of Rs. 6,800/- from him. He submitted that he filed a reply to the aforesaid show-cause notice vide Annexure P-7 and thereafter the impugned speaking order Annexure P-9 was passed wherein it was so decided that the retiral benefits have been released to the petitioner but he has been denied interest and also recovery of Rs. 6,800/- has been effected from the petitioner. He submitted that however at the time when the interest @ 6% per annum was granted by way of the aforesaid impugned order Annexure P-9, the interest was restricted only w.e.f. 06.08.2022 i.e. the date on which the earlier writ petition was disposed of but the petitioner was entitled for the grant of interest from the date when he was retired and the mere fact that he had earlier filed a petition in which there was no interim order nor there was any embargo or any kind of impediment for release of the benefits, the aforesaid impugned order is liable to be set aside. He submitted that on both the counts i.e. for restricting the interest w.e.f. 06.08.2022 and also there is a recovery of Rs. 6,800/- has been made, the aforesaid impugned order is liable to be set aside.

3. Learned counsel further submitted that the respondents could not have restricted the grant of interest from the disposal of the earlier writ petition i.e. 06.08.2022 in view of the fact that once the retiral benefits were paid to the petitioner and there was no other enquiry or any disciplinary proceedings or judicial proceedings pending against the petitioner at the time of retirement and therefore, the right accrued to the petitioner at the time when he had retired. He submitted that the aforesaid amount from the date of the retirement

of the petitioner till 06.08.2022 was kept with the respondents on which they have earned the interest and therefore, it is not a case that the petitioner is wanting any extra interest or any other extra compensation on the negligence on the part of the respondents but it is a case where the petitioner is only seeking interest on the amount which the respondents kept with themselves for which he is entitled and has also referred to a Full Bench judgment of this Court in ***A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468*** in this regard. He also referred to a judgment of a Co-ordinate Bench of this Court in ***J.S. Cheema Versus State of Haryana and others, 2014 (1) SCT 782*** to contend that the basis for the grant of interest is the fact that one person's money has been used by somebody else and it is in that sense rent for the usage of money. It was further observed in the aforesaid judgment that 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 of interest because then it can also include the component of damages. He submitted that the petitioner in the present case is not seeking any damages or any compensation on account of the delayed payment but he is only seeking the interest @ 6% per annum because the aforesaid amount was kept by the respondents and in case the same is not paid to the petitioner, then it would amount to undue enrichment of the respondents.

4. On the other hand, learned counsel appearing on behalf of the respondent-Corporation submitted that it is a case where the reason as to why the retiral benefits were released to the petitioner after a delay was the pendency of the aforesaid writ which was ultimately disposed of on 06.08.2022. He submitted that it is not a case that the respondent-Corporation has deliberately withheld the retiral benefits of the petitioner but the petitioner was seeking enhancement of the age from 58 years to 60 years and in case the writ petition

was to be allowed, then the retiral benefits could not have been given to the petitioner before the age of 60 years and therefore, there was a *bona fide* reason for withholding of the retiral benefits. He further submitted that another reason as to why the retiral benefits were not released to the petitioner was that the petitioner was subjected to the medical examination for the purpose of ascertaining the percentage of disability and this process took time and it was only on the request of the petitioner that he was subjected to the medical examination for the purpose of the aforesaid ascertainment and therefore, it cannot be said that disbural of the retiral benefits have been delayed wrongly. He further submitted that another reason as to why the retiral benefits were not disbursed to the petitioner was that there was an internal audit enquiry and a Committee was constituted for ascertaining the loss for which ultimately it was found that the petitioner was liable to pay Rs.6,800/- for the loss caused to the respondent-Corporation because of wrongful disbursement of excess TA bill to another employee and therefore, it cannot be said that the withholding of the retiral benefits was because of any *mala fide* reasons or because of any negligence.

5. I have heard the learned counsels for the parties.

6. The only issue involved in the present case is as to whether the petitioner was entitled for the grant of interest from the date when he retired or not and as to whether the respondent-Corporation was justified in recovering an amount of Rs.6,800/- from the petitioner after his retirement on the basis of a report of the Internal Audit Committee.

7. So far as the first issue involved in the present case is concerned, it is a case where the petitioner attained the age of 58 years on 31.05.2021 and he was physically disabled but it was because of the percentage of disability that

he was not given additional two years, which was otherwise permissible under the rules and instructions of the respondent-Corporation. Thereafter, the petitioner was subjected to medical examination for the purpose of ascertainment of the percentage of disability and in the meanwhile, he also filed a writ petition bearing CWP No.21836 of 2021 which was dismissed as withdrawn vide Annexure P-3 on 06.08.2022. However, as per the learned counsel for the petitioner, there was no interim order or any other kind of embargo for non-release of the retiral benefits. Thereafter, when the petitioner withdrew the aforesaid writ petition, still the retiral benefits were not paid to the petitioner and in this way, he was again constrained to file another writ petition bearing CWP No. 18012 of 2022 and the same was disposed of by a Co-ordinate Bench of this Court vide Annexure P-4 on 18.08.2022 with a direction to the respondents to decide the legal notice and it was also directed that in case the retiral benefits are paid to the petitioner, then he will be entitled for interest @ 6% per annum. However, the aforesaid order was not complied with by the respondents and the petitioner was again constrained to file a contempt petition bearing COCP No.2572 of 2022 which was also disposed of because in the meantime, speaking order was passed and the aforesaid speaking order is now the impugned order in the present case. In the impugned order, the pensionary benefits have now been paid to the petitioner regarding which there is no dispute. However, interest has been restricted only from 06.08.2022, when the aforesaid writ petition was dismissed as withdrawn vide Annexure P-3.

8. The reasoning and the ground which has been taken by the respondent-Corporation in the written statement and the submission made by the learned counsel for the respondents is that since the petitioner had himself filed a writ petition seeking enhancement of the age and therefore, the

petitioner was not entitled for the grant of interest after his retirement till 06.08.2022. However, on the other hand, learned counsel for the petitioner has referred to a judgment passed by a Coordinate Bench of this Court in ***J.S. Cheema's case (Supra)*** to contend that when an employee is not seeking any damages or any compensation on account of any negligence or *mala fide* but he is only seeking interest on the amount which was lying with the respondents, then an employee was entitled for grant of interest. This Court is in agreement with the learned counsel for the petitioner in this regard because here also the petitioner is not seeking any damages or any compensation on the ground of negligence. Although the circumstances were that the petitioner had himself filed a writ petition for enhancement of the age but the fact remains which goes undisputed that the retiral benefits of the petitioner which accrued to him at the time of his retirement were lying with the respondent-Corporation and in case the same is not released to the petitioner, then it will amount to undue enrichment. Therefore, this Court is of the considered view that the petitioner was entitled for interest @ 6% per annum (simple) from the date of his retirement.

9. So far as the second issue with regard to the recovery of Rs.6,800/- from the pensionary benefits of the petitioner is concerned, it is an undisputed case that there was neither any enquiry nor any disciplinary proceedings nor any judicial proceedings against the petitioner at the time of his retirement and even till date there is no such proceedings. The aforesaid amount has been deducted from the pensionary benefits of the petitioner because after his retirement and rather after the disposal of the second writ petition, wherein a show-cause notice was issued to the petitioner on the ground that while he was in service, then he had wrongly disbursed some TA bills to some other

employee and the Internal Audit Committee has found out to the same and deducted Rs.6,800/- from the pensionary benefits of the petitioner. Such kind of ascertainment of liability without adopting any procedure prescribed under the law is unknown to service jurisprudence. The respondent-Corporation could not have on the basis of the report of the Internal Audit Committee put the petitioner to any penalty especially after his retirement when the master and servant relationship ceases to operate. There is no provision of law which has been pointed out by the learned counsel for the respondent-Corporation as to how and under what authority of law the aforesaid recovery has been made from the pensionary benefits of the petitioner. Therefore, *ex facie* the aforesaid recovery was bad in law.

10. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The impugned order dated 09.12.2022 (Annexure P-9) to the extent of non-grant of interest from the date of retirement of the petitioner and the recovery of Rs.6,800/- from the pensionary benefits of the petitioner, is hereby set aside and quashed. The respondent-Corporation is hereby directed to calculate the interest from the date of retirement of the petitioner till the date of its actual disbursement @ 6% per annum (simple) and pay the same to the petitioner, within a period of three months from today. The recovered amount of Rs.6,800/- shall also be refunded to the petitioner along with interest @ 6% per annum (simple), within a period of aforesaid three months. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple).

11. Since the petitioner has been constrained to approach this Court by way of filing multiple rounds of litigation and the present is a fourth round of

litigation filed by the petitioner and the respondent-Corporation has wrongly deducted an amount of Rs.6,800/- from the pensionary benefits of the petitioner which was without any authority of law, the petitioner shall also be entitled for costs, which are assessed as Rs.10,000/-, which shall also be paid to him within a period of aforesaid three months.

(JASGURPREET SINGH PURI)
JUDGE

21.08.2024
rakesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No