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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP- 4506-2021
Date of Decision: 01.10.2024

MOHAN LAL KAUSHIK

..... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Shvetanshu Goel, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Sumeet Jain, Addl. Standing Counsel, for respondent No. 4.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed, *inter alia,* seeking a writ of *certiorari* setting aside the order dated 24.11.2020, Annexure P-5, whereby the petitioner has been considered not entitled to interest on delayed payment of Death-cum-Retirement Gratuity (for short, 'the gratuity'); and further a writ of *mandamus* directing the respondents to grant interest at the rate of eighteen per cent per annum from 31.05.2016 to 29.12.2020 on the amount of the gratuity paid after delay of about four years.

2. As per facts apparent on record, the petitioner retired from service as Director, Secondary Education on 31.05.2016. At that time he was residing in a government accommodation allotted by the Chandigarh Administration in Sector 27, Chandigarh. It is alleged that due to personal enmity with certain police officers, a false case was registered against him under Sections 10, 12, 13(1)(D), and Sections 7 and 8 of the Prevention of the Corruption Act, 1988 read with Section 120-B IPC at Police Station, Civil Lines, Hisar, on 24.02.2014. Although other retiral benefits were released to the petitioner, the amount payable as gratuity was withheld without citing any reasons. Despite persistent requests it was not released. This forced him to serve a legal notice, dated 07.06.2019, on the second respondent for the purpose. The notice was also not decided, nor was the gratuity released. Resultantly, the petitioner approached this Court by filing a petition, CWP No.35466 of 2019 titled *Mohan Lal Kaushik v. State of Haryana,* for releasing the amount of gratuity with interest. The petition was disposed of vide order dated 06.12.2019, directing the respondents to decide the legal notice by passing a reasoned order within a period of three months. Even this direction was not complied with, forcing the petitioner to approach this Court again by filing a contempt petition, COCP No.1432 of 2020 titled *Mohan Lal Kaushik v. Keshni Aanand Arora*. During pendency of the contempt petition, the legal notice was decided by the second respondent-Chief Secretary,

Government of Haryana vide impugned order dated 24.11.2020, declining the payment of interest. The reasons recorded in the order are as under:

> Whereas, a perusal of record reveals that some dues on account of Government accommodation allotted to the petitioner were pending as has been conveyed vide letter dated 29.06.2017 by the Assistant Registrar (F&A) Rents, U.T. Chandigarh, therefore, consolidated 'No Demand Certificate' could not be issued in favour of the petitioner and as such his DCRG was not released by the Principal Accountant General (A &E,) Haryana. The Assistant Controller (F&A) Rents, U.T. Chandigarh was requested time and again and lastly vide letter dated 12.06.2020 it was requested to clarify whether the outstanding dues have been cleared by the petitioner or not. A copy of the same was also endorsed to the petitioner and in response thereto, the petitioner vide letter dated 07.07.2020 submitted a copy of No Dues Certificate' issued by the Assistant Controller (F&A), Rents, U.T. Chandigarh whereby it has been clarified that no amount is due against the petitioner.
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> Whereas, on receipt of the above NDC from the petitioner, the case of the petitioner was considered by this office for issuing consolidated “No Demand Certificate' to the Principal Accountant General (A&E), Haryana to enable them to release DCRG of the petitioner. The said consolidated No Demand Certificate was issued on 17.11.2020 to the Principal Accountant General (A&E), Haryana and consequently, the Principal Accountant General (A&E), Haryana vide order dated 20.11.2020 issued order for release of DCRG to the petitioner. Thus, in these circumstances the delay in release of DCRG was due to non clearance of outstanding dues by the petitioner and submission of 'No Dues Certificate' thereon from Assistant

Controller (F&A), Rents, U.T. Chandigarh hence, he is not entitled to any interest on this count.

3. Learned counsel for the petitioner contends that the impugned order has been passed on baseless grounds, as no dues on account of the government accommodation allotted to the petitioner were pending against him. He has referred to a letter, dated 04.07.2016, Annexure P-6, issued by the fourth respondent- Assistant Controller F&A (Rents), Chandigarh Administration, to the effect that the petitioner's license fee account for the period ending 30.09.2016 stood settled, nothing was outstanding against him, and that the office had no objection if his last claim/DCR gratuity was released. The letter was sent to the second respondent; and its copy was endorsed to Director, Secondary Education as well which reads as under:

> His/her licence fee accounts for the period ending 30.09.2016 stands settled and nothing is outstanding against him/her. He/she has furnished surety of Sh. Angrej Singh Designation Personal Assistant Office of The Director, Secondary Education for regular payment of licence fee along with interest @12 % p.a. up to the date of vacation of the Government house in his/her occupation. This office has, therefore, No Objection, if the last claims/D.C.R. Gratuity of the retiree are released.

3.1 Later, the accommodation was vacated by the petitioner on 20.04.2017, and a 'no demand certificate' regarding the house allotted to the petitioner was also issued by the fourth respondent to the second respondent vide memo dated 24.08.2017, certifying that nothing was outstanding on account of license fee against him. Accordingly, it was contended that there was no reason to deny timely payment of gratuity to the petitioner. The amount has been illegally withheld causing undue harassment and humiliation to the petitioner, apart from forcing him to approach this Court for the purpose time and again.

4. Learned State Counsel, on the contrary, submits that there was no delay on the respondents' part in releasing the due amount of gratuity. In support of the contention, he has relied upon contents of the impugned order that on account of pending dues of accommodation allotted to the petitioner, and refusal of the fourth respondent to issue 'no dues certificate' on that account, the gratuity could not be released. He has also relied upon letters sent to the fourth respondent for that purpose, as referred in the letter Annexure R2/4, dated 22.10.2019, and subsequent reminders, viz., Annexure R2/5 dated 09.03.2020, Annexure R2/6 dated 12.06.2020 and Annexure R2/7 dated 24.06.2020. Therefore, the delay cannot be attributed to the State Government which could entitle the petitioner to claim interest from them.

5. Learned counsel for the fourth respondent has denied any delay on the part of Chandigarh Administration in issuing the 'no dues certificate'. He has referred to short reply, dated 27.08.2021, to the effect that the petitioner had cleared all the dues up to 30.09.2016, and 'no dues/objection certificate' was issued vide letter dated 04.07.2016. The petitioner had over-stayed in the government accommodation up to 20.04.2017, and after he cleared all the dues, 'no demand certificate' was also issued vide letter dated 24.08.2017. Therefore, the stand by the State Government in the impugned order, dated 24.11.2020, that the petitioner had not submitted 'no dues

certificate' with regard to pending dues, is denied being wrong. The relevant paragraphs of the reply filed by the fourth respondent are as under:

> 3. That after the petitioner cleared all its dues up to 30.09.2016, the answering respondent issued No Objection Certificate, vide letter no. SOR-II/H-3/2016/5106-5111 dated 04.07.2016 and further stated that this office has no objection, if the last claims/DCRG of the retiree are released. True copy of the letter is appended herewith as Annexure R-4/1. The said letter was duly communicated to State of Haryana.
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> 4. & 5. xxxx xxxx xxxx
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> 6. That the answering respondent has duly submitted to the State of Haryana no demand certificate in respect of dues of the petitioner vide Annexure R-4/1 and R-4/2. Therefore the stand of respondent State of Haryana in order dated 24.11.2020 that Petitioner has not submitted no due certificate in regards to dues of the petitioner is wrong and hence denied.

6. Arguments advanced by learned counsel for the parties have been considered.

7. As per settled law, an employer is liable to compensate an employee with interest for the harassment caused due to with-holding of retiral benefits without any justifiable reason, and for being prevented from using the same. A reference in this regard can be made to Full Bench decision in *A.S. Randhawa* v. *State of Punjab,* 1997 (3), SCT 468; relevant paragraphs whereof read as under:

> 8. 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 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. Again, as to what should be the rate of interest, it should, in our view, be generally 12% unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18%.

9. to 16. xxxx xxxx xxxx

17. …. If in spite of these safeguards as provided in the Rules the working of the administrative officers at different levels, high or low, is so indifferent in the performance of their duties as enjoined on them it is but fair that those responsible for causing delays in the matter of payment of retiral benefits should be made personally liable for the payment of interest that may have to be paid to the retiring employee. The loss caused to the State exchequer by avoidable payment of interest must, therefore, be replenished by recovering the same from the erring officers/

employees, the extent and proportion of which will be determined in each case by the Chief Secretary of the State.

8. In the instant case, the undisputed facts on record are, the petitioner superannuated from service on 31.05.2016, and was released the due amount of gratuity after delay of more than four and a half years on 29.12.2020. Prior thereto, he had to approach this Court seeking release of the gratuity amount by filing a petition, CWP No. 35466-2019 titled *Mohan Lal Kaushik v. State of Haryana,* which was disposed of by directing the respondents to decide the legal notice, dated 07.06.2019; and again, by filing contempt petition, COCP No.1432 of 2020 titled *Mohan Lal Kaushik* v. *Keshni Aanand Arora,* seeking compliance of the directions issued by this Court in the earlier petition. It was during pendency of the contempt petition, that the impugned order, dated 24.11.2020, was passed and the gratuity was released thereafter on 29.12.2020. The reasons cited in the order for not releasing the amount earlier are, "*some dues on account of Government accommodation allotted to the petitioner were pending as has been conveyed vide letter dated 29.06.2017 by the Assistant Registrar (F&A) Rents, UT, Chandigarh, therefore, consolidated 'No Demand Certificate' in favour of the petitioner and as such DCRG was not released by the Principal Accountant General (A&E) Haryana".* It is also claimed that despite reminders, the fourth respondent/ Assistant Registrar (F&A) Rents failed to clarify whether the outstanding dues had been cleared by the petitioner or not. And only after 'no dues certificate' issued by the fourth respondent was furnished to the Government by the petitioner vide letter dated 07.07.2020,

the consolidated 'no demand certificate' was issued to the third respondent/Accountant General, Haryana, on 17.11.2020, and the gratuity was released to him on 29.12.2020.

8.1 The afore-mentioned reasons assigned for not releasing the due amount of gratuity to the petitioner are not substantiated by any document on record. The impugned order records that the letter, dated 29.06.2017, was sent by the fourth respondent to the State Government conveying 'some dues on account of government accommodation allotted to the petitioner were pending'. This is factually incorrect, as the letter dated 29.06.2017, appended as Annexure R-2/1, was sent by Superintendent (Services)-I, from the office of Chief Secretary, Personnel Department, to the fourth respondent requesting for 'no dues certificate' in favour of the petitioner. No other letter of even date has been placed on record to substantiate the assertion in the impugned order. The other reason assigned for not releasing the amount of gratuity to the petitioner is that despite repeated requests/reminders to the fourth respondent, no dues certificate in the petitioner's favour was not issued, nor was it clarified whether the outstanding dues had been cleared by him. This is also factually incorrect, since as per reply filed by the fourth respondent which has not been countered by the State Government, the petitioner had been issued a 'no dues/objection certificate' vide letter dated 04.07.2016, clearly stating that the fourth respondent had no objection if the last claim/gratuity was released to him. In the face of this certificate already having been sent vide memo dated 04.07.2016 issued to the Chief Secretary, Government of Haryana, with a copy endorsed to Director Secondary Education, there was no occasion for the

Government to seek clarification in this regard and/or send reminders for the purpose.

8.2 Evidently, the State Government has denied due benefit of gratuity to the petitioner on unfounded and baseless grounds. He had been made to suffer humiliation of making entreaties to the respondent seeking release of the amount which he was legally entitled to on the date of superannuation, and the respondents were under a legal obligation to release the same without any delay. No rule or regulation could be cited by learned counsel which entitled the respondents to withhold the amount of gratuity and/or refuse payment in the facts and circumstances of the case. The petitioner had not only been caused agony and humiliation on account of non-payment of his rightful dues, but was also distressed by being forced to approach this Court time and again for the purpose. At the same time, the respondents unduly enriched themselves by retaining the amount which was not theirs, and utilising it without any authority of law. This is sheer high-handedness and misuse of power to deny rightful dues to an employee on dubious grounds, and is deprecated being reprehensible. This renders the first and the second respondent liable to pay penal rate of interest as well as costs of the petition to the petitioner.

9. In view of the discussion above, the petition is allowed and the impugned order, dated 24.11.2020, is set aside. The first and the second respondent are directed to pay interest on the total amount of gratuity at the rate of twelve per cent per annum for the period of delay from 04.08.2016 (i.e., one month after issuance of the 'no dues certificate') to the date of

payment, i.e., 29.12.2020. Costs of the petition are quantified as ₹75,000, which shall be paid to the petitioner by the first and the second respondent. These directions are to be carried out within a period of two weeks of receiving a certified copy of this order. After making the payment, the Government will recover the amount of interest as well as costs from the officer(s) and/or employee(s) responsible for the delay, in accordance with law. This exercise shall be completed within six months, and within four weeks thereafter compliance affidavit to that effect shall be filed by the Chief Secretary.

(TRIBHUVAN DAHIYA)
JUDGE

01.10.2024
Seema

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*