

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4660 of 2022 (O&M)
Date of decision: 09.02.2024

Shakuntla Devi
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Sonia G. Singh, Advocate
with Ms. Amandeep Kaur, Advocate
for the petitioner.

Mr. Ajit Singh Natt, AAG, Punjab.

Ms. Amrita Garg, Advocate
for respondent No.4.

NAMIT KUMAR J.

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking a writ of mandamus, directing the respondents to release the complete retiral benefits of the petitioner i.e. full pension, complete gratuity, leave encashment etc., as admittedly an amount of Rs.9,31,993/- is pending against the respondents and further to issue direction to the respondents to grant interest @ 18% on the delayed payment to the petitioner.
2. The grievance of the petitioner is that although she retired as Safai Sewak from service on 31.12.2020 from the office of Municipal Council, Tapa, after serving the department for 35 years and 02 months and 09 days and despite making various representations followed by

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legal notice dated 28.06.2021, the retiral benefits were not released compelling the petitioner to file CWP No.17504 of 2021, which was disposed of by this Court vide order dated 29.09.2021, directing the respondents to decide the legal notice dated 28.06.2021, by passing a speaking order within a period of 01 month, however, nothing was done by the respondents and then, the petitioner served contempt notice dated 26.11.2021 (Annexure P-4) and thereafter, vide speaking order dated 28.01.2022, it was admitted by the respondents that a sum of Rs.13,56,993/- is due to be paid to the petitioner on account of gratuity and leave encashment, however, only a sum of Rs.4,25,000/- were paid to the petitioner, by issuing various cheques ranging from 31.12.2020 to 24.01.2022 and still the remaining due amount is of Rs.9,31,993/- and for the release of the due amount and for grant of interest on the delayed payment, the instant petition has been filed.

3. After issuance of notice of motion, short reply dated 16.01.2023, has been filed stating therein that now the total amount due to the petitioner has been released. Along with the reply, a chart (Annexure R-2/1), has been attached giving the details of payments released to the petitioner and a note has also been appended therewith wherein it has been mentioned that the pension contribution amount including interest of the petitioner amounting to Rs.1,51,063/- was sent by the respondent/office vide letter dated 13.10.2022 to the Additional Deputy Commissioner (U.D.), Barnala. The chart (Annexure R-2/1), reads as follows:-

Office Municipal Council Tapa (Barnala)

Email ID: tapa.mc11@gmail.com

No.1367

Dated: 20.12.2022

Subject: *Detail of payment made to Shakuntla Devi, Safai Sewak retired in CWP No.4660 of 2022 (O&M)*

Sr. No	Name of employee		Amount of retirement dues payable	Cheque No. and date vide which payment made			Balance payment	Remark
1	Smt Shakuntla Devi	Gratuity	907543.00	130051	31.12.20	200000.00		
2		Leave Encashment	449450.00	386507	15.03.21	100000.00		
3				386547	06.07.21	75000.00		
4				192345	24.01.22	50000.00		
5				192371	01.02.22	50000.00		
6				170263	24.08.22	100000.00		
				006162	13.10.22	200000.00		
				982949	29.11.22	300000.00		
				982954	19.12.22	281993.00		
Total			1356993.00	Total		1356993.00	0.00	

Note:1) The pension contribution amount including interest of Shakuntla Devi, Safai Sewak retired amounting to Rs.151063/- was sent by this office letter No.1235 dated 13.10.2022 to the Additional Deputy Commissioner (U.D.), Barnala.

Sd/-

Executive Officer,

Municipal Council Tapa.

12.12.2022.

4. Learned counsel for the petitioner argues that though the pensionary benefits have been released to the petitioner but the same were liable to be released immediately upon the retirement of the petitioner and as the release of the pensionary benefits has been delayed, petitioner is entitled for the grant of interest.
5. Learned counsel for the respondents opposed the plea of the petitioner for the grant of interest on the ground that due to poor

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financial condition of the Municipal Council, Tapa, the delay has occurred in releasing the pensionary dues of the petitioner and the Municipal Council, Tapa is already under financial crisis and, therefore, the grant of interest will put further burden upon the Municipal Council and hence, the claim of the petitioner for the grant of interest may be declined.

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

7. The Division Bench of this Court has already considered as to whether the weak financial position can be taken as a ground to decline the pensionary benefits to the retired employees. In case titled as ***“Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another”***, 2005(3) PLR 580, wherein it has been held that keeping in view the fact that the State is a welfare State and the retired employees have no other source of income to lead a dignified life, the retiral benefits cannot be declined or withheld on account of financial difficulty. The relevant paragraph of the said judgment is as under:-

“8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the arguments advanced by the learned Counsel for the respondents. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many other facets thereof. It means something more than mere existence and inhabitation against the proposition of

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*life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of **Chameli Singh v. State of U.P. 1996(2) SCC 549** has held as under:-*

"In any organized society right, to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies to right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society.

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Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to

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develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, **Municipal Council Vs. Ratlam, (1980)4 S.C.C. 164, B.L Wadhera v. Union of India, AIR 1996 SC 2969 All India Imam Organisation and Ors. v. Union of India and Ors., 1993 (3) SCT 531 (SC) : 1993 (3) SCC 584 Kapila Hingorani v. State of Bihar, 2003 (3) R.S.J. 42.** As far back as in the year 1993, the Apex Court in All India Imam Organisation's case (*supra*) observed as under:-

"6... Much was argued on behalf of the Union and the Wakf Board that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."

We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority

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to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it.”

8. Keeping in view the above, it is clear that the plea, which has been taken by the respondent-Municipal Council, Tapa for not releasing the pensionary benefits of the petitioner due to financial crisis, is contrary to the settled principle of law settled by this Court in Ram Karan's case (supra).

9. From the facts, which have been stated above, it is clear that there was no impediment in the release of the pensionary benefits of the petitioner. There were no proceedings pending against the petitioner, which would entitle the respondents to withhold her pensionary benefits. The only reason, which has been advanced by learned counsel for the respondents not to release the pensionary benefits of the petitioner is financial instability of the Municipal Council, Tapa.

10. Once, as per the settled principle of law settled in Ram Karan's case (supra), financial instability is no ground to withhold the pensionary benefits, the same cannot be projected to justify the inaction on the part of the Municipal Council for not releasing the pensionary benefits of the retired employees. Retired employees have to support their life on the retiral benefits only. A retired employee can only lead a dignified life as enshrined in Article 21 of the Constitution of India, in case he/she is allowed the retiral benefits in time. In the absence of the

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release of the retiral benefits, no retired employee will be able to lead a dignified life, which will be contrary to Article 21 of the Constitution of India. Further, nothing has been produced before this Court that there was any financial crunch.

11. Be that as it may, the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468** has held that employee is entitled for the release of the pensionary benefits within a reasonable time after the retirement in case there is no impediment. The reasonable time fixed by the Full Bench of this Court in A.S. Randhawa's case (supra) is two months after the retirement. In case of the failure of the authority to release the pensionary benefits, employee has been held entitled for interest so as to compensate the employee for the delay. The relevant paragraph 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 retiree 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

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was due to him on the date of his retirement.”

12. Also, a co-ordinate bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*** has held that where an amount belonging to an employee has been retained and used by the department, employee will be entitled for interest. The relevant paragraph of the said judgment is as under:-

“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.”

13. In the present case, the respondent No.3 has admitted vide Annexure R-2/1 that the pension contribution amount including interest amounting to Rs.1,51,063/- was sent to the Additional Deputy Commissioner vide letter dated 13.10.2022. Thereby, respondent No.3 admits the fact that the petitioner is entitled for interest on the delayed pensionary benefits, which were retained by the Department and used for their benefit and therefore, the petitioner is entitled for grant of interest on the said amount.

14. Keeping in view the above facts and settled principles of law, the claim of the petitioner for grant of interest is allowed and the petitioner is held entitled for interest @ 9% per annum. The interest

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shall be granted to the petitioner, from the date the amount became due till the same was actually released to the petitioner. Petitioner shall also be entitled to the costs as she, being a class IV retired employee, had to file three cases for claiming her legitimate dues. The same is assessed at Rs.25,000/-, to be paid by respondent No.3 within a period of 06 weeks from today.

15. Let the calculation of interest under this order be done by the respondents within a period of 02 months from the date of receipt of certified copy of this order and the interest so calculated by the respondents shall be paid to the petitioner within a period of one month thereafter.

16. Writ petition is allowed in above terms.

(NAMIT KUMAR)
JUDGE

09.02.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No