**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

223

CWP-5316-2020
Date of decision : 30.09.2024

Parvesh Kumar …..Petitioner

Versus

Punjab State Power Corporation Limited and others …..Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Jyoti Sareen, Advocate for the petitioner.

Mr. Sylvester, Advocate for
Mr. Alok Mittal, Advocate for the respondents.

NAMIT KUMAR, J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 10.01.2019 (Annexure P-6), passed by respondent No.2, whereby recovery of an amount of Rs.3,56,510/- has been effected from the gratuity amount payable to the petitioner. Further seeking a writ of mandamus, directing the respondents to refund the abovesaid deducted amount to the petitioner, along with interest @ 12% per annum from the date of retirement of the petitioner till realization.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner was appointed on work charge basis in Punjab State Electricity Board (now Punjab State Power Corporation Limited) in the year 1979 and his services were regularized as Assistant Lineman on 01.06.1994. Thereafter, he was promoted as S.S.A. vide order dated 27.06.2002. However, the petitioner represented to the

department regarding his inability to join the promoted post and requested for forgoing the promotion. Vide order dated 04.09.2002 passed by the Corporation, the promotion of the petitioner as S.S.A. was approved to be forgone for a period of three years. After the expiry of three years from the date of promotion i.e. 27.06.2002, the petitioner represented the Corporation vide letter dated 04.09.2005 for grant of promotion to the post of S.S.A., however, he was not given the promotion even after the expiry of more than three years, from the date of forgoing the promotion. Vide order dated 10.04.2008 passed by Senior Executive Engineer/Operation, Sub Urban Division, Hoshiarpur, the petitioner was allowed time-bound scale w.e.f. 01.06.2006, after completion of 09 years of regular service on the post of Assistant Lineman. Further, the petitioner was promoted as Lineman vide order dated 06.12.2014 passed by Deputy Chief Engineer Operation, Halka Hoshiarpur and he joined on the said post on 05.06.2015. Thereafter, vide letter dated 18.05.2016 issued by respondent No.3, addressed to respondent No.2, the service book of the petitioner, after being completed in all respects upto 31.08.2015, was sent for audit inspection as the petitioner was to retire on 30.06.2018. Vide letter dated 27.05.2016, respondent No.2 returned the service book of the petitioner to respondent No.3 with certain objections and with the remarks that on forgoing of the promotion by the petitioner, the pay of the petitioner was to be held in abeyance and over payment was to be recovered. In response thereto, a detailed explanation was given by respondent No.3 in letter dated 24.01.2017 that the time bound scale after completion of

09 years of service has been given to the petitioner after a delay of 03 years w.e.f. 01.06.2006 instead of 01.06.2003, due to adding of 03 years period, on account of forgoing promotion by the petitioner. The petitioner has retired from service on 30.06.2018, on attaining the age of superannuation and after the retirement of the petitioner, vide order dated 01.10.2018 issued by respondent No.2, the pay of the petitioner was re-fixed and time-bound scales given to him on 01.06.2006 on completion of 09 years of service and on 01.06.2010, on completion of 16 years of service, were withdrawn and vide impugned order dated 10.01.2019 issued by respondent No.2, amount of Rs.3,56,510/- was ordered to be recovered from the gratuity amount payable to the petitioner. The petitioner has served legal notice dated 21.11.2019 to the respondent-Corporation for refund of the abovesaid deducted amount but to no avail. Hence, the present petition.

3. Learned counsel for the petitioner submits that although during the pendency of the present petition, the amount of Rs.3,56,510/-, recovered from the gratuity amount of the petitioner, has been refunded on 01.09.2023, however, the same has been refunded without any interest. Since there is a considerable delay of more than 04 years in refunding the recovered amount, therefore the petitioner is entitled for interest on the same.

4. On the other hand, learned counsel for the respondents submits that since the amount of Rs.3,56,510/- recovered from the gratuity amount of the petitioner has been refunded to him vide cheque

No.423430 dated 01.09.2023, therefore, the instant petition has been rendered infructuous.

5. I have heard learned counsel for the parties and perused the relevant documents.

6. Admittedly, the petitioner has retired from service on 30.06.2018 on attaining the age of superannuation and after his retirement vide impugned order dated 10.01.2019 amount of Rs.3,56,510/-, being excess payment made to him, was recovered from the gratuity amount of the petitioner which is totally contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) and others*** : ***2015(1) S.C.T. 195***. Although, the respondent-Corporation has refunded the abovesaid amount to the petitioner on 01.09.2023 during the pendency of the petition, however, the same has been released after a period of more than 04 years. Since there is a considerable delay in refunding the amount deducted from the gratuity amount of the petitioner, therefore, the petitioner cannot be denied the benefit of interest on the same.

7. A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others : 1997(3) S.C.T. 468*** has held that where there is an inordinate delay in releasing benefits and the delay is not justifiable, employee will be entitled for interest. 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 was due to him on the date of his retirement."

8. Apart from this, in ***J.S. Cheema Vs. State of Haryana : 2014(13) RCR (Civil) 355*****,** this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. 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."

9. In view of the above factual position and settled principles of law, the present petition is disposed of with a direction to the respondent-Corporation to pay interest @6% per annum to the petitioner

on the amount of Rs.3,56,510/-, w.e.f. 10.01.2019 (i.e. the date of deduction) till the actual date of payment i.e. 01.09.2023, within a period of 02 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

30.09.2024
Kothiyal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No