

237 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-7299-2023 (O&M)
Date of Decision:08.02.2024

Banarsi Dass

.....Petitioner

versus

State of Haryana anda others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vivek Aggarwal, Advocate for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Mr. Anil Chawla, Advocate for respondents No.3 and 4.

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 *Mandamus* directing the respondents to release gratuity, leave encashment and security amounting to Rs.2,22,000/- to the petitioner alongwith interest from the due date till its payment.

2. Learned counsel for the petitioner has submitted that the petitioner was working as a Store Keeper in the respondents-Department/HAFED and he was compulsorily retired from the service on 25.07.2005. After the retirement of the petitioner, his entire retiral benefits i.e. gratuity and leave encashment were not paid to him and were adjusted towards an amount of Rs.16,32,881.24/- which was stated to be a recoverable amount from the petitioner and it was also decided that surcharge proceedings will be initiated against the petitioner. Thereafter the respondents-department filed surcharge proceedings under Section 101 of the Haryana Cooperative

Societies Act 1984 (hereinafter to be referred to as the Act) against the petitioner to recover an amount of Rs.4,97,013/-. He further submitted that prior to his retirement, there was a punishment order against him on the basis of which a recovery was to be made for an amount of about thirteen lakhs. However, vide Annexure P-2 the surcharge proceedings were dismissed by the Registrar Cooperative Societies Haryana on 29.06.2022 and consequent upon the same vide Annexure P-4, the respondents-department itself took a decision to waive off the entire amount of Rs.13,93,463.13/- which was the surcharge amount claimed. In this way the entire recovery which was required to be made from the petitioner i.e.Rs.13,93,463.13/- was waived off by the department because the surcharge proceedings were dismissed by respondent No.2/Registrar Cooperative Societies vide Annexure P-2. The aforesaid order (Annexure P-4) was passed on 23.02.2018 and thereafter the petitioner made a representation to release the gratuity, medical security and leave encashment vide Annexure P-5 but the same has not been done. He further submitted that now today a short reply has been filed on behalf of respondents No.3 and 4 in which it has been so mentioned that the amount of security and leave encashment of Rs.2,21,598/- has been paid to the petitioner vide order dated 13.09.2023 (Annexure R-3). He submitted that the petitioner retired in the year 2005 and the aforesaid amount has been paid in the year 2023 and as such the petitioner is entitled for the grant of interest because the delay was not on the part of the petitioner and the aforesaid amount was wrongfully with-held by the respondents-HAFED

3 On the other hand, learned counsel for respondents No.3 and 4 while referring to the reply filed today submitted that since the surcharge proceedings were dropped by the department, the retiral benefits have now

been paid on 13.09.2023 and the petitioner has furnished an affidavit on 13.07.2023 vide Annexure R-4 i.e. about two months before the aforesaid release of amount by stating that he undertakes that he will not claim any interest after the receipt of the aforesaid amount and will also withdraw the writ petition and therefore he is not entitled for any interest.

4. I have heard learned counsel for the parties.

5. The only issue involved in the present case is that after the retirement of the petitioner on 25.07.2005, the petitioner was not given his gratuity, leave encashment and security amounts on the ground that there was some amount of about thirteen lakhs recoverable from him. With regard to the aforesaid amount, the department proceeded under the Act but vide Annexure P-2, the surcharge proceedings were dismissed being barred by limitation and thereafter the department itself considered it fit to waive off the entire recoverable amount from the petitioner vide Annexure P-4 and thereafter now in the year 2023 the amount i.e. gratuity etc. has been paid to the petitioner.

6. From the aforesaid facts and circumstances, it is very clear that with-holding of the gratuity and leave encashment and other security amount etc. was not because of the fault of the petitioner and it was only because of the surcharge proceedings which were initiated against the petitioner after his retirement which ultimately was dismissed although on the ground of limitation and therefore the petitioner is certainly entitled for the interest on all the delayed payments of retiral benefits.

7. Another important issue which arises in the present case is that the respondents-department are relying upon Annexure R-4 which is an affidavit furnished by the petitioner alongwith an application on 13.07.2023

by stating that he undertakes that he will not claim interest and will

withdraw the present writ petition and consequent upon the same after two months, Annexure R-3 dated 13.09.2023 was passed by the Managing Director, HAFED, Panchkula, whereby the aforesaid amount of gratuity etc. was released to the petitioner. The contents of affidavit are reproduced as under:-

“I Bararsi Dass son of Jamna Dass EX-FI(s) resident of village Chuhar Majra tehsil and Distt. Kaithal do hereby solemnly affirm and declare as under:-

- 1. That the deponent has filed a CWP No.7299 of 2023 before the Hon'ble High Court of Punjab and Haryana Chandigarh titled as Banarsi Dass versus State of Haryana and others.*
- 2. That the deponent undertakes that after receipt of amount of Rs.2,21,598/-,I will not claim any interest thereon in future and withdraw above said CWP.*

Kaithal/13.7.2023

*Sd/-
Deponent”*

8. Such kind of affidavit has got no significance in law . During the course of arguments the learned counsel for the petitioner has specifically pleaded that it was because of pressure that was imposed upon him for the release of the aforesaid amount i.e. Gratuity, leave encashment etc. that such affidavit was given. The aforesaid submission made by learned counsel for the petitioner that it was because of the pressure has been rebutted by the learned counsel for the respondents-department. The aforesaid justification given by learned counsel for the respondents-department could have been accepted had the respondents not now relied upon Annexure R-4 but now the learned counsel for the respondents-department, has specifically relied

therefore it can be safely inferred that it was only because of the pressure imposed upon the petitioner. Such kind of affidavits have no force of law and they are *non-est* and cannot be enforced. Such practice of seeking affidavits from the employees for giving the retiral benefits is highly deprecated. It is against the spirit of the basic scheme of the Constitution of India.

9. In view of the above, the following directions are issued:-

1. From henceforth no such kind of affidavits whereby the employees are compelled to furnish such kind of undertaking that they will withdraw the cases from the Court and will not claim interest will be taken by the respondent-department. In case any such affidavit is again taken by the department from any employee then it shall be considered to be contempt of Court.
2. The respondents-HAFED is hereby directed to release the interest @ 6% per annum on the amount of Rs.2,21,598/- from the date of its actual accrual after the retirement till its disbursement within a period of three months from today. In case the interest on the aforesaid amount is not released within the aforesaid stipulated time frame then the petitioner shall be entitled for future rate of interest @9% per annum.
3. Considering the aforesaid conduct of the respondents-department, it is directed that the petitioner is entitled for a cost of Rs.50,000/-and which shall be paid to the petitioner by the respondents-HAFED within the aforesaid period of three months. In addition to above, the Managing Director, HAFED, Panchkula, Haryana, shall be at liberty to conduct a fact finding enquiry and fix accountability of the person(s) who got the affidavit from the petitioner in this regard and

thereafter may recover the aforesaid amount from the person who is held to be responsible.

10. Disposed of accordingly.

(JASGURPREET SINGH PURI)
JUDGE

08.02.2024
shweta

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