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

114 CWP-8218-2024
Date of Decision : 15.05.2024

RAKESH KAUSHIK AND OTHERS … PETITIONERS

Versus

UNION OF INDIA AND OTHERS ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Naveen Daryal, Advocate
for the petitioners.

Ms. Anita Balyan, Sr. Panel Counsel
for the respondents-UOI.

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JAGMOHAN BANSAL, J. (Oral)

1. Written statement filed on behalf of respondents is taken on record. Registry is directed to tag the same at appropriate place

2. Ms. Anita Balyan, Sr. Panel Counsel, at the outset, submits that respondent has released leave encashment to the petitioners.

3. Mr.Naveen Daryal, Advocate submits that benefit of MACP was sanctioned, however, it has not been released. He further submits that petitioners are also entitled to interest on delayed payment in view of judgment of Supreme Court in ***S.K. Dua v. State of Haryana, 2008 (3) SCC 44*** and a Full Bench of this Court in ***A.J. Randhawa, Supg. Engineer (Retd.) v. State of Punjab, 1997 SCC OnLine P&H 705.***

4. Per contra, learned counsel for the respondents submits that there is no inordinate delay on the part of respondents. They released pension within four months and thereafter, substantial part of retiral benefits was released later on. Meaning thereby substantial payment of

retiral dues was made within four months from the date of retirement. With respect to gratuity and leave encashment, she expressed her inability to controvert the fact that there is delay beyond two months from the date of retirement

5. The Apex Court in ***S. K Dua (supra)*** has clearly held that an employee can claim interest in terms of Part III of Constitution of India. The relevant extracts of the said judgment read as:

> *"13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr Quraishi from the post of Secretary, Irrigation. The said Mr Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.*
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> *14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to*

be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

6. A Full Bench of this Court in ***A.J. Randhawa (supra)*** has adverted with an identical issue and held that an employee normally would be paid retiral benefits within two months and in case of payment beyond two months, he shall be entitled to interest. The relevant extracts of the said judgment read as:

"9. 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 case [1985 (2) L.L.N. 18] (vide 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 per cent unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18 per cent."

7. In the wake of aforesaid judgments, it is quite evident that an employee is entitled to interest if payment of retiral dues is made beyond two months from the date of retirement. The respondent shall pay interest @ 6% on the amou`nt of gratuity and leave encashment which was released beyond two months from the date of retirement of the petitioners. The respondent shall pay said amount within two months from today.

8. The petition stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.05.2024
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*