

204

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18485-2017 (O&M)

Date of Decision: 07.02.2024

Naresh Kumar

....Petitioner(s)

Versus

Federation of Consumers Cooperative Wholesale Stores Limited

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Neha Dewan, Advocate, for
Mr. Ravi Matto, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* for directing the respondent to pay the retiral benefits to the petitioner.

2. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner was working as Storekeeper in the respondent-CONFED and he had initially joined at Kaithal, Haryana in the year 1980 and he attained the age of superannuation on 30.04.2014, wherein he retired after rendering unblemished service of 33 years and 8 months as a Storekeeper. However after retirement, the retiral benefits were not paid to the petitioner and consequently, the petitioner was constrained to file a writ

petition before this Court in CWP No. 17945- of 2016 and the same was disposed of on 01.09.2016 vide Annexure P-1 with a direction to respondent-CONFED to consider the grievance of the petitioner raised in the legal notice dated 26.05.2016 by passing an appropriate order thereon strictly in accordance with law. It was further directed that if after due consideration of the matter, respondent-CONFED comes to a conclusion that the petitioner is entitled for the amount being sought to be released, then the same shall be released in favour of the petitioner without any further loss of time. She further submitted that the petitioner has been paid retiral benefits against the following dates:-

- (i) Gratuity on 04.03.2015 with a delay of about 9 months and 24 days.
- (ii) Leave encashment on 15.02.2017 after making a deduction of an amount of Rs.2,42,584/-.

3. She further submitted that so far as the grievance pertaining to the grant of LTC i.e. Leave Travel Concession is concerned, the same is not the grievance of the petitioner because it already stands paid in time and now the grievance is only with regard to delayed payment on gratuity and leave encashment. She also submitted that now the respondent-CONFED has taken a stand in the reply filed by them stating that the reason for the delayed payment was that the petitioner was posted at different places although under one Institution i.e. CONFED, which is the Apex Institution and also the petitioner submitted the documents seeking retiral benefits much prior to his retirement but since he was posted at different places, the documents pertaining to handing over the charges were not with the department and the petitioner was forced to submit the same which caused the delay. She further

submitted that such kind of inter-department communication and such documents were not the responsibility of the petitioner and the respondent-CONFED being the Apex Institution had the entire record with them and the petitioner already submitted all the retiral benefits documents prior to his attaining the age of superannuation and therefore, it cannot be said that the delay was attributable to the petitioner. She referred to a Full Bench judgment of this Court in *A. S. Randhawa versus State of Punjab and others, 1997 (3) SCT 468 (F.B.)* to contend that in case the delay in disbursement of retiral benefits is unjustified, then interest is payable on the same.

4. She also submitted that so far as the leave encashment is concerned, the same has been paid to the petitioner on 15.02.2017 after recovery of an amount of Rs.2,42,584/- and there is nothing available on the record or in the reply or even in the submission of learned counsel for the respondent that on what account and on what basis or by virtue of which order such a recovery has been made from the petitioner and therefore, no recovery could have been made in vacuum and therefore, the petitioner was also entitled for the remaining amount of Rs.2,42,584/-, which has been deducted from the leave encashment without any authority of law. She also categorically submitted that during the entire service career of the petitioner, there was no disciplinary proceeding or any charge-sheet or any other kind of proceedings against the petitioner and therefore, there was no question of any recovery from the petitioner especially in view of the fact that there is no order placed on record to show that on what account such a recovery was required to be made and therefore, the petitioner was also entitled for the aforesaid amount.

4. On the other hand, learned counsel appearing on behalf of the respondents submitted that in pursuance of the order passed by this Court vide Annexure P-1 in the earlier writ petition, an order has also been passed in this regard. While referring to the reply filed by the respondents, he submitted that the reason for delay in the disbursal of the retiral benefits of gratuity and leave encashment was because the petitioner was working at different places and it was because he did not submit the details of charge at different places and it caused delay and the gratuity and leave encashment were withheld. He further submitted that there was an amount of Rs.2,42,584.33/- outstanding against the petitioner, which is so depicted in letter dated 08.12.2016 which has been attached along with the reply and which was sent to the petitioner for deposit of the same. He also referred to para No.3 of the reply wherein it was so stated that the amount was due to advance which was recovered from the petitioner and therefore, the aforesaid amount was rightfully recovered from the petitioner from his leave encashment.

5. I have heard the learned counsel for the parties.

6. The subject matter of the present writ petition is only to the extent of payment of interest on the delayed payment of retiral benefits on two heads i.e. gratuity and leave encashment. Both the heads are to be considered separately.

7. **Gratuity**

The petitioner retired on 30.04.2014 as a Storekeeper and gratuity has been paid to him on 04.03.2015. The reason for delay as so stated in the reply and as submitted by the learned counsel for the respondents was that because the petitioner was deputed at different

branches/districts and he did not submit the details of charge at different places at the time of the retirement and therefore, it caused delay. This Court is of the view that such kind of plea which has been taken by the learned counsel for the respondents is not sustainable once the petitioner has submitted the documents pertaining to his retiral benefits much prior to his retirement then the mere fact that the details of the charge was not submitted by him does not make the petitioner responsible for the delay in the disbursement of the retiral benefits. The respondent-CONFED is an Apex Institution and all the Districts fall under its jurisdiction and it was the duty of the respondents to have collected all the record on its own without putting onus on the petitioner and therefore, such kind of plea taken by the respondent cannot be accepted. Therefore, the petitioner is entitled for the grant of interest on gratuity, in which there was a delay of 9 months and 24 days @ 6% per annum.

8. **Leave Encashment**

So far as the leave encashment is concerned, again the reason for delay was same as that of gratuity and therefore, such a plea is not sustainable. However, one issue has arisen with regard to the actual amount which was to be paid against the head of leave encashment. The respondent-CONFED has deducted an amount of Rs.2,42,584/- from the leave encashment on the ground that there was some amount outstanding against the petitioner by virtue of letter dated 08.12.2016, which has been attached along with the reply filed on behalf of the respondents. However, a perusal of the aforesaid letter as well as para No.3 of the reply nothing is clear as to on what account the aforesaid amount has been deducted from the leave encashment of the petitioner. By simply saying that the aforesaid amount

was outstanding would not mean that the same is the liability of the petitioner. During the course of arguments, learned counsel appearing on behalf of the petitioner has specifically stated that there was no disciplinary proceeding or any charge-sheet etc. pending against the petitioner. However, a perusal of para No.3 of the reply would also show that it has been so stated that the aforesaid amount of Rs.2,42,584/- was an advance which stands in the ledger account against the petitioner. Since the position pertaining to the aforesaid is not very clear, it is directed that the respondent-CONFED shall ascertain as to against what account the aforesaid amount was deducted from the petitioner. If it was a case of an advance which the petitioner had taken during the time of his service, which he was bound to return but did not return, then the aforesaid recovery would be justified. However, if it was due to some any other reason including non-handing of a charge or non-handing of articles or any other reason whatsoever, then the said amount shall not be recovered from the petitioner after his retirement in the absence of any specific order for such a recovery or any proceeding in accordance with law.

9. The petitioner shall be entitled for interest on leave encashment as well after ascertaining of the aforesaid amount @ 6% per annum.

10. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondents are hereby directed to calculate the interest as aforesaid at the rate of 6% per annum from the date of its accrual till the date of its disbursement and pay the same to the petitioner within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for a future rate of interest @ 9% per annum.

11. Since the present is a second round of litigation filed by the

petitioner only for the purpose of seeking retiral benefits, the petitioner shall also be entitled for costs of Rs.10,000/-, which shall also be paid to the petitioner within a period of three months from today.

07.02.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking

:

Yes/No

Whether reportable

:

Yes/No