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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26151-2019
Date of decision: 02.09.2024

VED SINGH BENIWAL

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Yashdeep Nain, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Sanjiv Gupta, Advocate
for respondent-Bank.

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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 *certiorari* for quashing the order dated 06.08.2018 (Annexure P-1) passed by respondent No.2 with a further prayer to direct the respondent-Bank to release all the retiral benefits of the petitioner including gratuity and leave encashment, which has not been released by the respondent-Bank within 30 days from the date it became payable, along with interest @ 18% per annum without making any illegal deductions.

2. Learned counsel for the petitioner submitted that the petitioner was working as an Assistant Manager in the respondent-Bank and he had a dispute

with a person. He further submitted that a complaint was filed under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner and the salary of the petitioner was directed to be attached by the learned Judicial Magistrate 1st Class, Hisar, which reflects from the order dated 02.06.2015 (Annexure P-2), whereby the salary of the petitioner was attached by the Managing Director of the respondent-Bank. He submitted that however the petitioner retired from service on 30.09.2015 while he was under suspension due to pendency of an FIR under Sections 420, 467, 468, 406, 506 and 120-B of the IPC. He further submitted that so far as the aforesaid complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner is concerned, by way of order dated 11.07.2017 (Annexure P-3), learned Judicial Magistrate 1st Class, Hisar de-attached the salary of the petitioner. He further submitted that the trial in the aforesaid FIR is still pending and it has not been decided as yet by the learned trial Court.

3. Learned counsel for the petitioner also submitted that the petitioner had earlier also filed a writ petition before this Court bearing CWP-10951-2018, which was disposed of by a Coordinate Bench of this Court on 03.05.2018 (Annexure P-5), wherein a direction was issued to the respondents to consider and decide the representation given by the petitioner in accordance with law, rules, regulations and instructions issued by the Government from time to time. He further submitted that thereafter, vide impugned order dated 06.08.2018 (Annexure P-1), an order was passed by the Managing Director of the respondent-Bank but the same was not in the nature of a speaking order and only provided detailed bifurcation of the total amount

which has been recovered from the retiral benefits of the petitioner and the amount which is payable to the petitioner. He further submitted that by way of aforesaid impugned order (Annexure P-1), sanction was granted by the respondent-Bank to release the gratuity, leave encashment, staff security and interest of staff security to the petitioner but various other recoveries were made and net payable amount has been shown to be Rs.4,28,149/-, which was paid to the petitioner after a lapse of about 3 years after his retirement.

4. Learned counsel for the petitioner further submitted that so far as the amounts which have been shown to be recoverable from the retiral benefits of the petitioner with regard to car loan (PL), interest of car loan and four more heads i.e. amount payable to Panchkula Urban Cooperative Bank, Panchkula, Canara Bank, Sector-25, Panchkula, Hisar Postal Employee Cooperative Societies and Sh.Sajjan Singh are concerned, he does not wish to press the claim for the same because as per the reply filed by the respondent-Bank, the same were recovered in pursuance of either the recovery certificates or in pursuance of the decree passed by the Court and therefore, so far as the recovery of the aforesaid amounts is concerned, he does not dispute the same but he restricts the scope of the present writ petition only to the extent of grant of interest to the petitioner on the delayed payment of his retiral benefits, which was made only after the petitioner filed the aforesaid writ petition before this Court, in which the aforesaid direction was issued to the respondents by a Coordinate Bench of this Court vide Annexure P-5. He further submitted that so far as the interest aspect is concerned, when the petitioner retired although there was an FIR pending against him but no order by any competent authority was

passed to withhold or to forfeit any of the retiral benefits of the petitioner. He further submitted that although the petitioner does not dispute the powers of the respondent-Bank to withhold any of his retiral benefits but for that purpose, there has to be exercise of power and for the purpose of exercising of power, an order has to be passed by due application of mind as to why the retiral benefits are to be withheld but in the absence of any such order, the retiral benefits which are not only Statutory Rights but also a part of Right to Property under Article 300-A of the Constitution of India, the respondent-Bank could not have withheld the aforesaid amount and now since the same has been released to the petitioner vide Annexure P-1 in the year 2018, he was entitled for the interest on the delayed payment of the aforesaid amount and the scope of the present writ petition is restricted only to the interest thereon.

5. On the other hand, learned counsel for the respondent-Bank submitted that the aforesaid amount which has been recovered from the retiral benefits of the petitioner under different heads vide Annexure P-1, the same was recovered in pursuance of the recovery certificates and the decree passed by the Court and regarding which, now the learned counsel for the petitioner has not pressed. He further submitted that so far as the grant of interest on the delayed payment is concerned, when the petitioner retired in the year 2015, he was facing one FIR and he was under suspension and order of retirement was a conditional order and therefore, the respondent-Bank was well within its rights to have withheld the amount. He further submitted that so far as the passing on any specific order pertaining to withholding of the retiral benefits of the

petitioner is concerned, there is nothing in the reply filed on behalf of the respondent-Bank to suggest the same.

6. I have heard the learned counsels for the parties.

7. It is a case where the petitioner has now restricted the scope of the present writ petition only to a limited extent of grant of interest on the delayed payment and he has not disputed the recovery which has been effected under different heads from the retiral benefits of the petitioner vide Annexure P-1. When the petitioner retired on 30.09.2015, although he was facing FIR and the trial has not been culminated as yet, there was no legal impediment or any order of any Court to have stopped the release of retiral benefits of the petitioner. However, in case the respondent-Bank intended to withhold the retiral benefits on any ground, then the same could have been done under any provision of law which may have been exercised by the respondent-Bank but there is nothing on the record to show that any order has been passed by which retiral benefits of the petitioner have been ordered to be withheld. It is a settled law that right to pension and pensionary benefits is also a Right to Property under Article 300-A of the Constitution of India. In case the retiral benefits are to be denied or withheld then the same can be done only with the authority of law and under some provision of law and it cannot be withheld in vacuum. Admittedly, there is no order on the record to show that any such order for withholding of retiral benefits of the petitioner was passed by any competent authority. In this way, the retiral benefits have been released to the petitioner in the year 2018 vide Annexure P-1 and there had been a delay of about 3 years in the disbursal of the retiral benefits after deducting the amount under different heads.

8. In view of the aforesaid facts and circumstances of the present case, the present writ petition is partly allowed. The petitioner shall be entitled for interest @ 6% per annum (simple) on the delayed payment of retiral benefits as released to him vide Annexure P-1 dated 06.08.2018 from the date after two months of his retirement till the date of its actual disbursement. The respondent-Bank is directed to calculate the aforesaid interest and pay the same to the petitioner, within a period of two months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid two months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

02.09.2024
Chetan Thakur

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