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

**CWP-29577-2017
Date of Decision: 17.05.2024**

Hari Krishan Gopal Sharma

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Raman B. Garg, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. R.K. Sheoran, Advocate,
for respondent No.4.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to pay the petitioner all the retiral benefits including Gratuity, Leave Encashment, monthly pension and commuted value of pension besides arrears of pension since 01.01.2016 with interest and further writ in the nature of *certiorari* for quashing the order dated 27.10.2017 (Annexure P-18) passed by respondent No.4 whereby the pay-scale of the petitioner was reduced from ₹1200-2040/- to ₹950-1500/- w.e.f. 01.01.1986.

2. Mr. Raman B. Garg, learned counsel for the petitioner



submitted that during the pendency of the present petition, the retiral benefits have been paid to the petitioner but with a delay and regarding which he has submitted a detail of description in the form of a chart which is reproduced as under:-

Sr. No.	Description	Amount	Date of payment	Remarks
1.	Part payment of Gratuity	₹2,00,000/-	18.8.2017	
2.	Arrears of monthly pension from 1.1.2016 to 28.2.2018	₹5,34,911/-	12.4.2018	
3.	Part payment of Commutation of pension	₹2,46,916/-	22.5.2018	
4.	Part payment of arrears of salary due to revision of pay w.e.f. 1.1.2006 (7th pay commission)	₹87,520/-	11.7.2018	
	Arrears of increased pension	₹34,368/-	11.7.2018	
5.	Part payment of enhanced salary, enhanced gratuity & enhanced leave encashment due to promotion on the post of Junior Engineer (Electrical) w.e.f. 3.3.2011	₹60,282/-	18.7.2018	
6.	i) Balance amount of Gratuity (₹5,96,442/-); and ii) Leave Encashment (₹4,89,680/-) and iii) Arrears of Increased Pension due to withdrawal of order dated 27.10.2017 (Annexure P-18) (₹5,47,584/-)	₹16,33,706/-	20.7.2022	
7.	i) Refund of recovery of salary due to withdrawal of order dated 27.10.2017 (Annexure P-18) (₹8,28,609/-); and ii) Increased amount of salary due to refixation of pay on withdrawal of order dated 27.10.2017 (Annexure P-18) (₹93,897/-)	₹9,22,506/-	20.7.2022	₹3,00,000/- deposited in Income Tax on behalf of the Petitioner
8.	Outstanding Commutation pension	₹95,424/-	To be paid	

3. Learned counsel for the petitioner submitted that now the

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petitioner has only two grievances in the present petition. Firstly, that he is entitled for grant of interest on the delayed payment of retiral/pensionary benefits as the delay was because of the respondents and not because of the petitioner and secondly, the respondents have wrongly deducted an amount of ₹95,424/- from the commutation of pension of the petitioner regarding which he will file a separate representation to the respondent and a direction may be issued to the respondent to pass a speaking order bagged by reasons in this regard within a fixed time framework.

4. Learned counsel for the petitioner further submitted that it is a case where the petitioner was working as a Light Inspector in the respondent-Municipal Corporation and retired on 31.12.2015 and at that point of time, although he was claiming to have been promoted to the post of Junior Engineer but in fact he was not promoted to said post and later on in the year 2018, he was promoted by the respondent itself. He submitted that be that as it may, once the petitioner has retired from service and there was no enquiry or any disciplinary proceedings or any criminal case against the petitioner, then the respondents would not have withheld the retiral/pensionary benefits of the petitioner because even if the petitioner had claimed for further promotion, at least the petitioner was entitled for grant of pensionary benefits on the post from which he retired immediately on the date of his superannuation and there is no justification for withholding the aforesaid amount. He further submitted that later on from the year 2017-2018 as aforesaid on different dates, the pensionary/retiral benefits have been released to the petitioner and even now he has also been promoted to the post of Junior Engineer in the year 2018. He also submitted that in the



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absence of any justification for withholding the pensionary/retiral benefits, he is entitled for grant of interest on the same.

5. On the other hand, Mr. R.K. Sheoran, learned counsel appearing for respondent No.4 while referring to the reply filed by the respondent-MC submitted that there are two reasons for delay in disbursement of the retiral/pensionary benefits. Firstly, when the petitioner retired, there was an amount of ₹1,39,980/- due against him as he had obtained this amount in advance from the department which he did not return and he was asked to return the aforesaid amount. Since the amount was not returned, the pensionary benefits were withheld. Secondly, when the petitioner was in service, excess salary was paid to him because of wrong fixation of pay for the period w.e.f. 01.07.1992 to 31.12.2015 i.e. till his retirement and because of the wrong fixation of pay, the amount of ₹8,28,609/- was required to be recovered from him and again this was the reason as to why the pensionary/retiral benefits were withheld. Learned counsel for respondent No.4 further submitted that the aforesaid amount of ₹8,28,609/- has now been paid to the petitioner.

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

7. During the course of arguments, the learned counsel for the petitioner submitted that now only two grievances are left in the present case. So far as the first grievance with regard to withholding of an amount of ₹95,424/- from the commutation of pension of the petitioner is concerned, the petitioner himself has stated that he will file a separate representation to the competent authority and in this regard a direction may be issued to pass a speaking order for the same.



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8. The aforesaid prayer of the learned counsel for the petitioner is justifiable and reasonable. Liberty is granted to the petitioner to file a comprehensive representation to the respondent/competent authority with regard to the aforesaid claim of ₹95,424/- from the commutation of pension. In the event of the petitioner filing any representation to the respondent/competent authority, then the competent authority shall consider and decide the same in accordance with law and by passing a well reasoned speaking order on the same within a period of three months thereafter.

9. So far as the second grievance of the petitioner with regard to the delayed payment of pensionary/retiral benefits is concerned, it is an admitted position that when the petitioner had retired, there were no proceedings against the petitioner in any form. One of the reason which has been given by the respondent in the reply and as submitted by the learned counsel for the respondent is that at the time of retirement of the petitioner, he had not returned an amount of ₹1,39,980/- which he had obtained in advance from the department, this Court is of the considered view that the aforesaid reason cannot become a ground for withholding of the entire retiral/pensionary benefits. At the most, the aforesaid amount could have been withheld from the total amount but that itself cannot constitute a ground for withholding the entire pensionary benefits of the petitioner and therefore, objection taken by the respondent is not sustainable. The second reason given in the reply and as stated by the learned counsel for the respondent is that at the time when the petitioner was in service then he was given excess payment of salary on the basis of wrong fixation of pay for the period w.e.f. 01.07.1992 to 31.12.2015 i.e. till the date of his retirement, and



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therefore, an amount of ₹8,28,609/- was required to be recovered from the pensionary benefits of the petitioner, this Court is of the view that the aforesaid reason is also not sustainable in view of the law laid down by Hon'ble Supreme Court in "*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*", 2015(4) SCC 334. Once the petitioner has retired, the aforesaid amount could not have been recovered from him because it was the amount which was paid to him while he was in service on the basis of wrong fixation of pay by the respondent itself and the case of the petitioner is covered by the aforesaid judgment of Hon'ble Supreme Court. Even otherwise also, the aforesaid amount of ₹8,28,609/- has now been paid to the petitioner, therefore, that also cannot constitute a ground for delay in payment of the retiral benefits.

10. In view of the above, the present petition is partly allowed. The respondents are directed to pay an interest on the delayed payment of retiral benefits @ 6% per annum (simple) from the date of its accrual i.e. two months after the retirement of the petitioner till its actual disbursement on different heads. The aforesaid amount shall be calculated and paid to the petitioner by the respondents within a period of three months from today.

11. In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled to future interest @ 9% per annum (simple) instead of 6% per annum (simple).

12. Since the aforesaid two grounds which have been taken by the respondents were without any justification and the pensionary/retiral benefits were wrongly withheld by the respondents, the petitioner is also entitled for costs of ₹20,000/- (Rupees Twenty Thousand Only) which shall

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be paid by the respondents within the aforesaid period of three months from today.

17.05.2024

(JASGURPREET SINGH PURI)

Bhumika

JUDGE

1. Whether speaking/reasoned:

2. Whether reportable:

Yes/No

Yes/No