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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20961-2023
Date of decision: 21.05.2024

Sanjeev Malhotra

...Petitioner

Versus

UT Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Animesh Sharma, Advocate for the petitioner.

Mr. A.P.S. Sekhon, Advocate for respondent No.1.

Mr. Avinit Avasthi, Advocate for respondent No.2.

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VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents for grant of interest @ 8.70% p.a. to the present petitioner on the delayed payment of General Provident Fund w.e.f. 01.04.2020 to 20.08.2020.

2. Learned counsel for the petitioner has submitted that the petitioner was promoted to the post of Deputy Registrar of the Punjab and Haryana High Court and had subsequently retired from the said post on 31.03.2020. It is submitted that however, General Provident Fund amounting to the tune of Rs.66,49,408/- was released to the petitioner on

20.08.2020 i.e. after a delay of 4 months and 19 days. It is further submitted that the said amount was the amount which was deducted from the monthly salary of the petitioner and as per the Rules and Regulations which are applicable in the present case, the said amount was to be released on the date of retirement. In support of the said arguments, learned counsel for the petitioner has relied upon Rule 34 of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 as well as General Provident Fund (Central Service) Rules, 1960 and also to the Office Memorandum dated 16.01.2017 (Annexure P-6). It is submitted that the said Rules and Instructions are applicable to the case of the petitioner as is apparent from the admissions made in paras 14 and 15 of the written statement filed by respondent No.2. It is argued that a perusal of the above Rules/Office Memorandum would show that it is the duty of the authorities to initiate the process of payment of the General Provident Fund due to the petitioner on the date of superannuation, one month prior to the date of superannuation and the said amount was to be paid to the petitioner on the date of superannuation and any delay in the same would entitle the petitioner to interest. It is further argued that since the said amount was retained by the UT Chandigarh, thus, the same is to be paid by the UT Chandigarh. Learned counsel for the petitioner has relied upon the judgment of the Coordinate Bench of this Court in case bearing No.***CWP-15350-2003 titled as "Assistant Commandant Sukhdarshan Singh (Retd.) Vs. Union of India and others, decided on 09.12.2014***, to highlight the fact that with respect to the release of General Provident Fund, interest was granted from the date of retirement till the date of disbursement. Further reliance has also been placed upon a judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others*** reported as ***2013 SCC Online P&H 24157***, to contend that the jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else.

3. Learned counsel for respondent No.2 has submitted that the amount was not retained by respondent No.2 and thus, the question of interest to be paid by respondent No.2 does not arise. It is further submitted that respondent No.2 had immediately forwarded the case of the petitioner to respondent No.1 and delay, if any, is at the end of respondent No.1 and thus, interest, if any, is to be paid by respondent No.1.

4. Learned counsel for respondent No.1 has submitted that letter dated 07.05.2020 issued by respondent No.2 was received by respondent No.1 on 29.05.2020 and thereafter, the amount was released to the petitioner on 20.08.2020. It is submitted that since during the said period, there was COVID and respondent No.1 was working with 50% staff thus, delay was not on account of any inaction by respondent No.1.

5. This Court has heard learned counsel for the parties and has perused the record.

6. It is not in dispute that the petitioner had retired on 31.03.2020 and the amount of Rs.66,49,408/- was released to the petitioner on 20.08.2020. It is also not in dispute that the petitioner is governed by the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 and Rule 34 of the same, which has been reproduced in para 14 of the writ petition, provides that with respect to the conditions of service for which no provision or insufficient provision has been made in these Rules,

the Rules and orders for the time being in force and applicable to the Government servants appointed to corresponding or comparable civil services and posts in connection with the affairs of the Union shall apply to the members of the establishment of this Court. It is also not in dispute that the petitioner and other employees of the Punjab and Haryana High Court in the matter of General Provident Fund are governed by the General Provident Fund (Central Service) Rules, 1960. The said facts have been specifically pleaded in paras 14 and 15 of the writ petition and have been admitted in the corresponding paras 14 and 15 of the reply filed on behalf of respondent No.2. Paras 14 and 15 of the writ petition and corresponding paras 14 and 15 of the reply filed on behalf of respondent No.2 are reproduced hereinbelow:-

> *"**PARAS 14 AND 15 OF THE WRIT PETITION:-***
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> *14. That at the outset it is submitted that the Rules applicable to the employee of the Hon'ble Punjab and Haryana High Court are High Court Establishment (Appointment and Conditions of Service) Rules, 1973, framed by the Hon'ble Punjab and Haryana High Court. The relevant Rule 34 has been reproduced herein:*
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>> ***"Pension and other condition of services**: 34. (1) In the matters regarding the conditions of service for which no provision or insufficient provision has been made in these rules, the rules and orders for the time being in force and applicable to the Government Servants appointed to corresponding or comparable civil services and posts in connection with the affairs of the Union shall apply to the members of the Establishment of this Court subject to such modifications, variations and exceptions, if any, in the said rule and orders as the*

Chief Justice may from time to time specify. Provided that the powers exercisable under the said rules and orders by the competent authority shall be exercisable by the Chief Justice or by such person as he may, by general or special order, direct

15. That the perusal of the above Rule reveals that in the matter of General Provident Fund, the employees of the Hon'ble High Court of Punjab and Haryana are governed by the General Provident Fund (Central Service) Rules, 1960 as applicable to the employees of the Central Government.

PARAS 14 AND 15 OF THE REPLY FILED ON BEHALF OF RESPONDENT NO.2:-

14. That the contents of para No.14 being matter of record need no reply.

15. That in reply to the contents of para No.15, it is submitted that General Provident Fund (Central Services) Rules, 1960 are applicable qua employees of the Hon'ble Punjab and Haryana High Court."

7. The said admission is further clear from the perusal of para 18 of the written statement filed on behalf of respondent No.2 which is reproduced as under:-

"18. That in reply to the contents of para No. 18 it is submitted that the answering respondent is bound by the General Provident Fund (Central Services), Rules, 1960 which are applicable to the employees of Hon'ble Punjab and Haryana High Court and since the amount has to be disbursed from the Central Treasury, Chandigarh, therefore, the case of the petitioner first sent to the office of Accountant General (A&E) U.T. Chandigarh on 07.05.2020."

8. A perusal of paras 14 and 15 of the reply filed on behalf of

respondent No.1 would also show that the said averments are not being disputed and rather it has been stated that same are legal and need no reply. The petitioner has sought to place reliance on the Office Memorandum dated 16.01.2017 (Annexure P-6) issued by the Ministry of Personnel, PG & Pensions, Department of Pension & Pensioners' Welfare, Desk-F, and specific averment regarding the same has been made in para 16 of the writ petition. Respondent No.2 in response to para 16 of the writ petition has not denied the said Memorandum but however has submitted that the same pertains to respondent No.1. A perusal of the reply filed by respondent No.1, more so paras 16 and 17 of the same would show that issuance of the said memorandum has not been disputed. A perusal of the said Office Memorandum would show that after taking into consideration Rule 34 of the General Provident Fund (Central Service) Rules, 1960, it has been stated that it is the duty of the Accounts Officer to make the payment of the amount standing at the credit of a subscriber when the General Provident Fund becomes payable and the said process has to start at least one month before the date of superannuation and the said amount is to be payable on the date of superannuation and that a Government servant is not even required to submit a written application regarding the same. It is further provided that in case GPF balance is not paid on retirement then interest on the GPF balance is required to be paid for the period beyond the date of retirement. It is not in dispute that GPF is an amount which had been accumulated on account of deduction(s) made from the monthly salary of the petitioner.

9. A Coordinate Bench of this Court in the case of ***Assistant***

Commandant Sukhdarshan Singh (Retd.) (Supra), after taking into consideration the law laid down by the Hon'ble Supreme Court in ***Vijay L. Mehrotra Vs. State of UP and another,*** reported as ***(2001) 9 SCC 687***, granted the interest on GPF for the delayed payment from the due date. Paras 2 to 4 of the judgment of the Hon'ble Supreme Court in the case of ***Vijay L. Mehrotra*** (Supra) which had been reproduced in the abovesaid judgment, in which it was specifically stated that the interest has to be paid from the date of retirement, were also considered. In the said circumstances, this Court is of the opinion that the petitioner is entitled to interest at the rate of 8% p.a. on the delayed payment of GPF from 01.04.2020 to 20.08.2020.

10. The next question which arises before this Court is as to who would pay the said amount on account of interest. It is not in dispute that an amount of Rs.66,49,408/- which was payable to the petitioner on 01.04.2020 was lying in the accounts under the control and for the benefit of the UT Chandigarh. The Coordinate Bench of this Court in ***J.S. Cheema's case*** (Supra), had observed that the jurisprudential basis for grant of interest was the fact that one person's money had been used by somebody else and in that sense was rent for the usage of money and in case, user is compounded by any negligence on the part of any person then it could also include payment of damages and thus, even if there was no negligence on the part of the State, it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it. Relevant portion of the said judgment is reproduced hereinbelow:-

"4. In the written statement, the plea taken is that the

petitioner submitted his pension papers very late and that is why some delay was caused in the disbursal of his retiral benefits.

5. In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

11. Keeping in view the abovesaid facts and circumstances and in view of law laid down in the abovesaid judgments, the present Civil Writ Petition is allowed and the petitioner is held entitled to interest at the rate of 8% per annum on the delayed payment of General Provident Fund i.e. Rs.66,49,408/- from 01.04.2020 to 20.08.2020 and the UT Chandigarh is directed to pay the said interest within a period of two months from the date of receipt of certified copy of the present order.

12. Registrar of this Court is directed to forward the copy of the present order to the UT Chandigarh for necessary compliance.

13. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

21.05.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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