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

CWP-21432-2023

Date of Decision: 10.07.2024

Rajbir Singh

..... Petitioner

Versus

The Indian Red Cross Society and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Deepak Sonak, Advocate,
for the petitioner.

Mr. K.K. Gupta, Advocate,
for the respondents.

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 release the retiral benefits to the petitioner along with interest.

2. Learned counsel for the petitioner submitted that the petitioner was working as a Clerk in the respondent-Society and retired on 30.04.2019 on attaining the age of superannuation. On 18.05.2018 vide Annexure P-6 the petitioner was issued a show-cause notice by making an allegation that the petitioner was instrumental in giving wrong information with regard to the complaints of theft in the Women Working Hostel which was closed for a number of years and due to the aforesaid allegation the aforesaid show-cause notice was issued. Thereafter, the petitioner was suspended vide Annexure P-7. However, after his retirement, the charge-sheet was issued to the petitioner on 26.07.2019, which could not have been issued to him

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because after retirement the employer and employee relationship ceases to exist and there was no authority with the respondents to have issued a charge-sheet to the petitioner after his retirement nor there is anything on the record or even in the reply to suggest that there was any power with the respondents to have issued the charge-sheet after the retirement of the petitioner. He further submitted that be that as it may, the petitioner had filed a writ petition bearing CWP-6238-2019 before this Court assailing the aforesaid show-cause notice in which notice of motion was issued and the same was directed to be heard along with another writ petition bearing CWP-6305-2019 which was filed by another employee, who was also facing the same show-cause notice, but there was no interim order in the case of the petitioner, however, there was an interim order for staying of proceedings in the writ petition filed by the other employee, who was also facing the same show-cause notice. He further submitted that the aforesaid charge-sheet could not be proceeded with thereafter and after the retirement of the petitioner he was not paid his full retiral benefits because his leave encashment was never paid nor any specific order was passed by any authority to withhold the same. Thereafter, during the pendency of the present petition, the aforesaid charge-sheet has also been withdrawn and the charges have been dropped against the petitioner. He also submitted that even the respondents have filed a complaint to the police with regard to the aforesaid same set of allegations but the police after inquiring into the same came to the conclusion that no offence was made out against the petitioner which is reflected in Annexure P-12.

3. Learned counsel for the petitioner further submitted that now



during the pendency of the present petition after the dropping of the charges against the petitioner, leave encashment of an amount of Rs.5,08,472/- has been paid to the petitioner on 10.06.2024. He also submitted that so far as the aforesaid prayer for releasing the remaining retiral benefits is concerned, the same has become infructuous but there has been a delay without any justifiable reason in releasing the aforesaid leave encashment amount for which the petitioner is entitled for grant of interest @18% per annum. Learned counsel for the petitioner has also referred to the judgment of Full Bench of this Court in **“A.S. Randhawa Vs. State of Punjab and others”**, **1997(3) SCT 468**.

4. On the other hand, Mr. K.K. Gupta, learned counsel for the respondents-Society submitted that so far as the aforesaid factual position is concerned, the same is not in dispute because the charge-sheet issued against the petitioner has now been dropped and leave encashment has been paid to him on the aforesaid date. He further submitted that the delay has been caused because of the aforesaid writ petition filed by one another employee, namely, Sh. Raj Kapoor, who was facing the similar show-cause notice and due to the interim order passed by this Court in CWP-6305-2019, the further inquiry proceedings could not be conducted even if there was no specific stay order in the writ petition filed by the petitioner, but the inquiry could not commence because of the interim order passed in the aforementioned writ petition. He further submitted that in this way the delay was not an intentional delay and therefore, the petitioner is not entitled for grant of interest on the aforesaid payment of leave encashment. He also submitted that the financial condition of the respondent-Society is weak and because of



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this reason as well the petitioner is not entitled for grant of interest. He also submitted that the financial position of the respondent-Society is so weak that even the salaries of employees of the respondent-Society are not being paid in time and rather in another writ petition bearing **CWP-13993-2018** titled as “*Vinod Kumar Vs. State of Haryana and others*” decided on 22.04.2024, the interest was denied to the petitioner of that case because of the aforesaid peculiar circumstances with regard to the extreme weak condition of the Society. He submitted that since the principal amount has been paid to the petitioner, he may not be granted interest because of the aforesaid reasons.

5. I have heard the learned counsel for the parties.
6. The petitioner was served with the charge-sheet after his retirement. There is nothing on the record to suggest that the respondents have any authority of law to serve charge-sheet after the retirement of an employee and the employer and employee relationship ceased to operate. Therefore, the charge-sheet was issued without any jurisdiction and without any power. The petitioner retired in the year 2019 and he has been paid his leave encashment in the year 2024 i.e. after about five years. There is no doubt that the delay which has been caused was without any legal justification. There was no embargo on the respondents to have disbursed the payment of leave-encashment of the petitioner because there was no adverse order against him at any stage and even the charge-sheet has been dropped against him now.
7. However, this Court would certainly consider the submission made by the learned counsel for the respondents-Society that the financial



condition of the respondent-Society is so weak that even salaries are not paid and regarding which this Court had an occasion to pass an order in ***Vinod Kumar's case (supra)***. The relevant portion of the aforesaid judgment is reproduced as under:-

“5. The only prayer which survives in the present petition is for grant of interest on the delayed payments. There is no dispute that there was a delay in disbursement of the retiral benefits to the petitioner and it is also a settled position of law that mere paucity of funds is no ground for denial of retiral benefits. However, it is the stand of the learned counsel for the respondents that the financial position of the Society is in such a bad shape that even salary of its employees are not being paid for long period of time. This Court had an occasion to deal with this issue of same society in CWP-10631-2023 along with other connected cases wherein the salary of employees was not paid. This Court is of the considered view that considering the peculiar facts and circumstances of the present case where salaries of the employees, who are working in the respondent-Society have not been paid because of paucity of funds, then at this stage at least it will not be proper for the Court to direct the respondents to grant payment of interest to the petitioner.

6. In view of the aforesaid position, the present petition is disposed of. At this stage, no direction can be issued for grant of interest. However, in future at any point of time, in case the financial position of the concerned Red Cross Society improves, then the petitioner will always be at liberty to make a representation to the respondent-Society for grant of



interest on the delayed payment or to file a petition before this Court in this regard in accordance with law.

7. *In addition to above, whenever the financial position of the Red Cross Society improves then the Society shall also consider payment of interest on the delayed payment to the petitioner @ 6% per annum (simple) of their own.”*

8. The subject matter of the present petition is now confined to the grant of interest on delayed payment of retiral benefits because the principal amount has already been paid. No doubt, the petitioner is entitled for grant of interest but considering the aforesaid peculiar facts and circumstances where the respondent-Society does not even have money to pay the salary to its employees, then this Court should not compel the respondent-Society to pay the interest when the principal amount has already been paid.

9. In view of the aforesaid position, the present petition is disposed of. At this stage, no direction can be issued for grant of interest. However, in future at any point of time, in case the financial position of the concerned Red Cross Society improves, then the petitioner will always be at liberty to make a representation to the respondent-Society for grant of interest on the delayed payment or to file a petition before this Court in this regard in accordance with law.

10. In addition to above, whenever the financial position of the Red Cross Society improves then the Society shall also consider payment of interest on the delayed payment to the petitioner @ 6% per annum (simple)



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of its own.

11. However, considering the peculiar facts and circumstances, at least some costs should be given to the petitioner which are assessed at Rs.10,000/- (Rupees Ten Thousand Only), which shall be paid by the respondents-Society within a period of 2 months from today.

10.07.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |