2024:PHHC:123711

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21017-2023 (O&M)
Date of decision: 18.09.2024

Subhash Chander Gupta

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.P. Garg, Advocate, for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Ms. Sehej Sandhawalia, Advocate, for respondents No.2 & 3.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to pay interest on the delayed payment of retiral benefits @ 12% per annum from the date of retirement till the date of its disbural.

2. Mr. S.P. Garg, learned counsel appearing on behalf of the petitioner submitted that a separate writ petition for the grant of interest is maintainable in view of a Full Bench judgment of this Court in ***A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468.***

3. While giving the brief facts of the present case, learned counsel submitted that the petitioner was working as a Deputy Engineer (Civil) with the

respondent-Corporation and he retired on 28.09.2018. He submitted that before retirement of the petitioner, the respondent-Corporation was apprehensive with regard to the fact that the petitioner had not accounted for some of the documents/articles and regarding which they had sought report from various other offices of the respondent-Corporation but neither any show-cause notice was issued to the petitioner nor any enquiry initiated nor any disciplinary proceeding was instituted against the petitioner and he was permitted to be retired on 28.09.2018. He submitted that after the retirement of the petitioner the master and servant relationship ceased to exist and even after the retirement of the petitioner, no charge-sheet was issued against him with regard to any lapse on his part. However, a committee was constituted to go into the aforesaid allegations against the petitioner that he has not submitted all the charges and articles at the time of his retirement and in this way, payment of the retiral benefits pertaining to the leave encashment and gratuity were unnecessarily delayed by the respondent-Corporation and thereafter on their own they paid the aforesaid amount with regard to the leave encashment on 15.12.2021 after deducting Rs. 56,000/- without any reason and with regard to gratuity on 20.12.2021 after deducting Rs. 31,217/- without any reason. He submitted that even in the reply filed by the respondent-Cooperation, no such reason has been mentioned by the respondent-Corporation and therefore, he is not only entitled for grant of interest on the delayed payments but also entitled for the refund of the aforesaid amount which has been deducted from the retiral benefits of the petitioner. He also referred to a judgment of Hon'ble Supreme Court in ***State of Jharkhand and others Vs. Jitendra Kumar, 2013 (12) SCC 210*** to contend that the retiral benefit is not a bounty of the State and in the absence of any provision of law for withholding the retiral benefits, the same cannot be withheld arbitrarily.

4. On the other hand, Ms. Sehej Sandhawalia, learned counsel appearing on behalf of the respondent-Corporation submitted that while the petitioner was in service and he was about to retire, he did not hand over the charge to the next person concerned and also did not give the account details and various other things to the next person incharge. The respondent-Corporation has tried its level best to seek information from the various offices but the petitioner did not cooperate in this respect and it was only because of the lapse on the part of the petitioner himself that after his retirement the retiral benefits could not be paid to the petitioner. She also submitted that so far as the pendency of any disciplinary proceeding at the time of retirement of the petitioner is concerned, there is no dispute that there was neither any charge-sheet nor any disciplinary proceeding pending against the petitioner at the time of his retirement nor the same was instituted after the retirement of the petitioner but since it was a case where loss has been caused to the Corporation, the Corporation was well within its rights to withhold the retiral benefits in this regard.

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

6. The only issue involved in the present case is with regard to the grant of interest on the delayed payment of retiral benefits. A perusal of the reply which has been filed by the respondent-Corporation and after hearing the learned counsel for the respondent-Corporation, it is clear that at the time of the retirement of the petitioner there was no disciplinary proceeding pending against the petitioner nor the same was instituted after his retirement. The reason for delayed payment to the petitioner with regard to retiral benefits was that the petitioner himself was responsible for the lapses because before his

retirement he did not hand over the charge properly to the next person concerned. However, it may be noted that the respondents on their own after deducting some amount from the leave encashment and the gratuity released the retiral benefits after about three years to the petitioner. However, no justification has come forth from the respondents with regard to why and under which provision of law the aforesaid retiral benefits have been withheld by the respondent-Corporation. It is a settled law that the retiral benefits are not the bounty of the State and the State does not do any charity by releasing the payment of the retiral benefits to its employees. In case the retiral benefits are to be withheld or forfeited, then the same can be done under any specific provision of law and in case there is no provision of law or the provision of law is not invoked by the respondents, then such kind of withholding or forfeiting of any amount will be certainly without the authority of law. In the facts and circumstances of the present case, it is clear that neither any provision of law has been shown to this Court nor any order has been passed nor any such order has been shown to this Court as to how the aforesaid amount has been withheld by the respondents. In the absence of any provision to provide any source or power to the respondents for withholding the aforesaid amount, the withholding of the amount of retiral benefits is certainly not only arbitrary but it is also without the authority of law and without jurisdiction.

7. So far as the amount which has been deducted from the leave encashment and gratuity of the petitioner which has been so depicted in para No.14 of the petition is concerned, no justification has come forth as to why and under which provision of law the aforesaid amount was deducted and why any order was passed with regard to the aforesaid deduction or not.

8. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondent-Corporation is directed to calculate the interest @ 6% per annum (simple) from the date of the retirement of the petitioner plus two months till the date of its actual disbursement and to pay the same to the petitioner, within a period of three months from today. So far as the aforesaid amount which has been deducted from the retiral benefits of the petitioner is concerned, since no justification has come forth from the respondent-Corporation, the petitioner is also entitled for the refund of the aforesaid amount which has been deducted from the leave encashment and the gratuity of the petitioner and the same be also refunded to the petitioner alongwith interest @ 6% per annum as aforesaid within the aforesaid period of three months. In case all the aforesaid amounts are not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future interest @ 9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

18.09.2024
rakesh

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