IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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227 CWP-36439-2019

Decided on : January 18, 2024

PRITAM SINGH AND OTHERS

...... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Inderjeet Sharma, Advocate for the petitioners.

Mr. Ajit Singh Natt, AAG Punjab for respondent nos.1 and 2.

Mr. Tarun Vir Singh Lehal, Advocate for respondent no.3.

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NAMIT KUMAR, J. *(Oral)*

1. The petitioners have approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India seeking writ of *mandamus* directing the respondents to release revised gratuity to the tune of Rs.10,00,000/- in the light of Punjab Government Circular dated 17.08.2009 and subsequent letters dated 26.05.2010 and 13.08.2010 (Annexure P-1 to P-3).

2. Learned counsel for the petitioners contends that petitioner no.1 has retired as Junior Assistant on 31.03.2007 and petitioner no.2 has retired as Inspector on the same very date i.e.31.03.2007 from Municipal Council, Gurdaspur. He submits that in terms of notification dated 17.08.2009 (Annexure P-1) whereby as per recommendation of 5th Pay Commission regarding Pension and other retiral benefits have been implemented w.e.f. 01.01.2006 and rate of

retirement -cum – death gratuity have been raised from Rs.3.50 lakh to Rs.10 lakh, however, the said benefits of revised gratuity have not been extended to the petitioners. The relevant portion from the notification dated 17.08.2009 is as under :-

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GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
(FINANCE PENSION POLICY AND COORDINATION BRANCH)

Dated Chandigarh, the 17-8-2009

To

All Heads of Departments,
Commissioners of Divisions,
Registrar, Punjab and Haryana High Court,
District and Sessions Judges and
All Deputy Commissioners in the State.

Sub: Implementation of recommendations of the fifth Punjab Pay Commission regarding Pension and other retirement benefits.

Sir/Madam,

I am directed to address you on the subject cited above and to say that after careful consideration of the recommendations of the Fifth Punjab Pay Commission, the Government of Punjab is pleased to revise/modify/grant various benefits to the pensioners of the State indicated in the succeeding paragraphs:

DATE OF EFFECT:

1. The revised provisions as per these orders shall apply to govt. employees who retire/die in harness on or after 1st January, 2006 (separate orders are being issued in respect of employees who retired/died before 1st January 2006). Where pension, family pension *gratuity /communication of pension etc., has already been sanctioned in cases occurring on or after 1-1-2006, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre- revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of proviso to rule 9.15(1) of Punjab Civil Services Rules, Volume-II.*

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Rate of Retirement-cum-death gratuity/DCRD

4. The maximum limit of Retirement-cum-Death Gratuity is raised from the present Rs.3.50 lacs to 10.00 lacs.

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Travel Concession

12. All proposed increases in allowances and other benefits (Such as old age allowance, indicial allowance, constant attendant allowance, ex-gratia payment) shall take effect from the date of issue of these orders by the Government whereas the revised pensionary benefits (such as basic pension, commutation of pension, gratuity) shall be from 1-1-2006. Decision above the payment of arrears of pensions from 1-1-2006 to 31-7-2009 shall be taken in due course of time and with effect from 1-8-2009 enhanced pension in case shall become payable.

13. Punjabi version of these orders will follow in due course of time.

Yours Faithfully

Sd/-
(Om Parkash Bhatia)
Under Secretary, Finance (B) ”

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In support of his claim, he has further placed reliance on the Notification dated 13.08.2010 (Annexure P-3) issued by the Department of

Finance, Government of Punjab, which has been issued regarding implementation of the recommendations of the 5th Punjab Pay Commission, to the effect to make payment of arrears on account of enhanced amount of gratuity on the basis of revised basic pay under the Punjab Civil Service (Revised Pay) Rules, 2009 to those employees who retired during the period from 01.01.2006 to 31.07.2009. The said notification reads as under : -

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"No.3/10/-3FPPC/965
Government of Pun jab
Department of Fiancial
(Fiancé, Pension Policy and Coordination Branch)

Dated Chandigarh the 13.08.2010

To

All Heads of Departments,
Commissioners of Divisions,
Registrar, Punjab and Haryana High Court,
District and Sessions Judges and
Deputy Commissioners in the State.

Sub: Implementation of recommendations of the fifth Punjab Pay Commission regarding Pension and other retirement benefits.

Sir,

I am directed to invite a reference to the Government Letter No.3/23/09-3FPPC/879 dated 17th Agusut, 2009 and subsequent clarification issued vide No.3/10/10 – 3FPPC / 635 dated 26th May, 2010 on the subject cited above and to say that the Governor of Punjab is pleased to decide that the payment of arrears on account of enhanced amount of gratuity on the basis of revised basic pay under the Punjab Civil Service (Revised Pay) Rules, 2009 to those employees who retired during the period from 01.01.2006 to 31.07.2009 shall be paid immediately.

Sd/-

Under Secretary Fiannce (B)"

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3. Learned counsel for the respondents could not dispute the above said factual position with regard to the entitlement of the petitioners in terms of notification dated 17.08.2009 (Annexure P-1), which has been made effective w.e.f. 01.01.2006, so far as the rate of gratuity is concerned. However, he has referred to the order dated 19.08.2016 (Annexure R-1/2) passed by the Committee, rejecting the claim of the petitioners, whereby the gratuity amount of the petitioners has been calculated and they have been paid gratuity as per the unrevised rates on the ground that petitioners already stood retired on 31.07.2007 and whereas notification for gratuity at the enhanced rates have been issued on 24.05.2010.

4. Since, it is not disputed that the notification dated 17.08.2009 (Annexure P-1) and 13.08.2010 (Annexure P-3) is applicable to respondent no.3, therefore, the petitioners cannot be denied the benefits accruing there from with regard to the revised rate of gratuity, therefore, the action of the respondents in not releasing the gratuity at the revised rates is totally illegal and arbitrary.

5. The Full Bench of this Court in '***A. S. Randhawa Supdg. Engineer (Retd.) v/s State Of Punjab and others' 1997 (3) SCT, 468*** while dealing the common question of law involved in the writ petitions that as to whether interest on account of delayed payment of pension and other retiral benefits to the Government Employee is maintainable, it was held that since there was no satisfactory explanation for the delay in disbursing the retiral benefits to the pensioners and they are, therefore, entitled to interest at the rate of 12% per annum for the period of delay on the amounts as paid to them. The relevant paras of the aforesaid Judgement are as under:-

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" 16. In the result, we answer the question posed in the earlier part of the judgment in the affirmative and hold that a writ petition is maintainable for claiming interest only on delayed payment of pension and other retiral benefits to which a retired government employee is entitled under the Civil Service Rules relating to pension and provident fund.

17. Before concluding we are constrained to observe that it has been noticed that invariably in the matter of payment of pension and other retiral benefits to a retiring employee there have been delays and sometimes to an extent that is shocking. It must be realised by the concerned functionaries of the State at all levels that for a government servant, the only source of his subsistence after retirement is his pension and other retiral benefits and if they are not made available to him on time, he and his family are put under great mental tension making it difficult for them even to survive. Those dealing with the preparation of pension cases at different stages and with disbursement of retiral benefits must not forget that they too have to retire one day and will be looking up for the payment of those benefits and how will they feel if they are driven from pillar to post to get their dues and if hurdles are put and delay is caused in payment thereof. It is to save this harassment to the retired that the Rules require that the procedure to compute pension and retiral benefits should commence two years before the date of superannuation so that whatever be the apathy or the inefficiency of the concerned officials in working out the amounts, they will be able to complete the cases atleast in two years and pay the dues to the retirers. If in spite of these safeguards as provided in the Rules the working of the administrative officers at different levels high or low is so indifferent in the performance of their duties as enjoined on them it is but fair that those responsible for causing delays in the matter of payment of retiral benefits should be made personally liable for the payment of interest that may have to be paid to the retiring employee. The loss

> *caused to the State exchequer by avoidable payment of interest must, therefore, be replenished by recovering the same from the erring officers/employees, the extent and proportion of which will be determined in each case by the Chief Secretary of the State.*
>
> *18. <u>In the cases before us there is no satisfactory explanation for the delay in disbursing the retiral benefits to the pensioners and they are, therefore, entitled to interest at the rate of 12 % per annum for the period of delay on the amounts as paid to them. The writ petitions are accordingly allowed and the respondents are directed to pay the interest as aforesaid within 3 months from the date of receipt of a copy of this order</u>. The Chief Secretaries of the two State Governments of Punjab and Haryana are further directed to fix the responsibility of the erring officers/officials in each case pertaining to their State in regard to the delay Caused in the disbursement of retiral benefits to the petitioners and recover the amount of interest from them so that there is no loss caused to the State exchequer for their default. A copy of this judgment be sent to the Chief Secretaries of the States of Punjab and Haryana for information and necessary action."*
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6. In view of the above, the present writ petition is allowed and Respondent No.3 – Muncipal Council, Gurdaspur is directed to release the gratuity to the petitioners as per revised rates in terms of notification dated 17.08.2009 (Annexure P-1) after deducting the amount already paid to them, within a period of three months from the date of receipt of certified copy of this order.

7. Since, the gratuity at the revised rates has been withheld by the respondents without any satisfactory and justifiable reasons, therefore, in view of the law laid down by the Full Bench of this Court in '***<u>A.S. Randhawa Supdg.</u>***

<u>Engineer (Retd.) v/s State Of Punjab and others' (Supra)'</u> the petitioners shall be entitled to payment of interest @ 6 % per annum from 13.08.2010 *(i.e. from the date of notification dated 13.08.2010 (Annexure P-3), when the Government of Punjab has taken a decision to make payment of arrears on account of enhanced amount of gratuity on the basis of revised basic pay under the Punjab Civil Service (Revised Pay) Rules, 2009 to those employees who retired during the period from 01.01.2006 to 31.07.2009),* till the actual date of payment.

8. Disposed of.

January 18, 2024 **(NAMIT KUMAR)**
mkkoundal **JUDGE**

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