IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121 **CWP-28339-2023**
Date of Decision: 18.01.2024

Kanwar Sahib **…Petitioner**

Versus

Union of India and Others **...Respondents**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Jitender S. Chahal, Advocate for the petitioner

Ms. Shreyansi Verma, Central Govt. Counsel,
for Union of India-respondents

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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. On 16.12.2023, the following order was passed:-

> "*The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to the respondents to release Golden Jubilee Seema Prahari Kalyan Kavach amounting to ₹40,000/- along with interest and a sum of ₹1,08,467/- in terms of Central Government Employees Group Insurance Scheme. The petitioner is further seeking interest on delayed payments of provident fund, pension, commutation of pension, gratuity and leave encashment. The petitioner joined Border Security Force as Sub-Inspector in 1987. He was, from time to time, promoted and thereafter, retired on 30.09.2022 on attaining the age of superannuation. The petitioner at the time of retirement was holding post of Second in Command. The petitioner, on his retirement, was released retiral benefits as below:*

Sr.No.	*Particulars*	*Date*	*Amount*
1.	*Financial assistance*	*23.12.2022*	*₹25,000/-*
2.	*Provident Fund*	*27.12.2022*	*₹25,17,289/-*
3.	*Arrears of pension*	*28.12.2022*	*₹1,08,270/-*
4.	*Commutation of pension*	*13.02.2023*	*₹22,10,414/-*
5.	*Gratuity*	*21.07.2023*	*₹20,00,000/-*
6.	*Leave encashment*	*21.07.2023*	*₹15,51,120/-*

The petitioner, as noted above, was paid a sum of ₹82 Lacs as retiral dues apart from pension.

On being asked, learned counsel for the petitioner seeks time to show rule/regulation prescribing period for release of retiral benefits and right of interest in case of non-payment within the said period.

Adjourned to ***18.01.2024****."*

2. Learned counsel for the petitioner submits that as per judgment of Supreme Court in ***S.K. Dua v. State of Haryana, 2008 (3) SCC 44***, even in the absence of statutory rules, administrative instructions or guidelines an employee can claim interest under Part III of the Constitution of India. Similarly, a Full Bench of this Court in ***A.J. Randhawa, Supg. Engineer (Retd.) v. State of Punjab, 1997 SCC OnLine P&H 705*** has held that an employee is entitled to interest if there is delay beyond two months from the date of retirement. The High Court has laid down said period in terms of judgment of Apex Court in ***State of Kerala v. M. Padmanabhan, AIR 1985 Supreme Court 356***.

3. On being pointed out, learned counsel for the petitioner does not press his claim of interest qua financial assistance, provident fund and arrears of pension.

4. Learned counsel for the respondents submits that there is no inordinate delay on the part of respondents. The petitioner had retired on 30.09.2022. He was released pension within two months and thereafter, substantial part of retiral benefits was released in December' 2022. Meaning thereby substantial payment of retiral dues was made within three months from the date of retirement. With respect to commutation of pension, gratuity and leave encashment, she expressed her inability to controvert the fact that there is delay beyond two months from the date of retirement.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. From the perusal of record, it comes out that petitioner retired on 30.09.2022 on attaining the age of superannuation. The petitioner was released pension, financial assistance, provident fund and arrears of pension within time and he is not claiming interest on these elements. The payment of commutation of pension, gratuity and leave encashment was made beyond two months' period as laid down by Full Bench of this Court in ***A.J. Randhawa (supra)***.

7. The Apex Court in ***S. K Dua (supra)*** has clearly held that an employee can claim interest in terms of Part III of Constitution of India. The relevant extracts of the said judgment read as:

> *"13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously,*

therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr Quraishi from the post of Secretary, Irrigation. The said Mr Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.

14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

8. A Full Bench of this Court in ***A.J. Randhawa (supra)*** has adverted with an identical issue and held that an employee normally would be

paid retiral benefits within two months and in case of payment beyond two months, he shall be entitled to interest. The relevant extracts of the said judgment read as:

> *"9. Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair case [1985 (2) L.L.N. 18] (vide supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement. Again, as to what should be the rate of interest, it should, in our view, be generally 12 per cent unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18 per cent."*

9. In the wake of aforesaid judgments, it is quite evident that an employee is entitled to interest if payment of retiral dues is made beyond two months from the date of retirement. In view of changed rate of interest granted by banks, at present an employee cannot be granted interest beyond 7.5% per annum.

10. In view of above facts and findings, it is hereby held that the petitioner is entitled to interest @ 7.5% per annum on delayed payment of

commutation of pension, gratuity and leave encashment. The period of interest would run from 01.12.2022 to the date of payment.

11. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

18.01.2024
Mohit Kumar

Whether speaking/reasoned	*Yes/No*
Whether reportable	*Yes/No*