IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

250 **CWP-20108-2019 (O&M)**
Date of Decision :05.05.2025

Gurdev Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ankit Midha, Advocate for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the prayer of the petitioners is for the grant of benefit of interest on the amount which was paid in excess by them to the respondent-department when they were governed under the New Restructured Defined Contributory Pension Scheme (NPS) i.e. prior to the date they were brought under the Old Pension Scheme keeping in view the judgment of the Division Bench of this Court in ***CWP-2371-2010 titled as Harbans lal vs. State of Punjab and others, decided on 31.08.2010,***

2. Learned counsel for petitioners submits that after the petitioners were appointed with the respondents in the year 1982 and further on various dates their services were regularized in the year 2009 and ultimately they retired from service on various dates starting from the year 2012.

3. Learned counsel for the petitioners further submits that as the

services of the petitioners were regularized after 01.01.2004, they were being treated under the New Restructured Defined Contributory Pension Scheme (NPS) instead of Old Pension Scheme.

4. Learned counsel for the petitioners argues that keeping in view the judgment passed by the Division Bench of this Court in ***Harbans Lal (supra)*** wherein, it has been held that an employee, who was in service on 01.01.2004 will be governed by the Old Pension Scheme even if, his/her services were regularized after 01.01.2004, the petitioners prior to their retirement from service were brought under the Old Pension Scheme. Learned counsel for the petitioners submits that keeping in view the change of scheme under which they were to be governed, certain emoluments which were deposited by the petitioners were in excess of what they were liable to and the said excess amount was directed to be refunded to the petitioners by the respondents and though, the said excess amount was refunded but the same was disbursed without interest.

5. Learned counsel for the petitioners submits that as the excess amount paid by the petitioners was retained by the respondent-department without any valid jurisdiction hence, the petitioners on the refund of the said amount were also entitled for the grant of benefit of interest from the date the same was deposited till the refund of the same.

6. Learned counsel for the petitioners further submits that the respondents are declining the benefit of the interest on the said amount by placing reliance upon the Clarification dated 17.07.2014 (Annexure P/11) given by the Government of Punjab, Department of Finance wherein, it has been mentioned that the refund of excess amount paid by employees is to

be made where an employee who was earlier being treated under the New Contributory Provident Fund Scheme and was thereafter, brought under the Old Pension Scheme but the same is to be paid without interest. Learned counsel for the petitioners submits that the excess amount paid by petitioners which was lying with the respondents and same was used by the respondents though, said amount belonged to the petitioners and hence, on the refund of the said amount, the petitioners should also be given benefit of interest on the said amount.

7. Learned counsel for the respondents on the other hand submits that the petitioners only deposited the contribution payable under the New Contribution Provident Fund Scheme, which was their liability and it is only after they were considered to be governed under the Old Pension Scheme, the liability upon the petitioners changed and the excess amount deposited by the petitioners was refunded back but as per the Clarification dated 17.07.2014 (Annexure P/11) issued by the Government, no interest was to be paid and therefore, no interest on the said amount is payable to the petitioners and the amount which was to be refunded to them, has already been refunded since long.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. No doubt, the petitioners deposited their contribution under the New Contributory Provident Fund Scheme, which was being made applicable upon them but after the change of scheme under which the petitioners were to be governed, as the petitioners were brought under the Old Pension Scheme, their contribution was reassessed and the excess

amount deposited by them under the New Contributory Provident Fund Scheme was liable to be refunded by the respondents and the said amount though, has been refunded by the respondents but without interest and the claim of the petitioners is that they should also be given benefit of interest on the said excess amount refunded to them.

10. As per the settled principle of law settled by the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,*** where it has been held by this Court that where an amount belonging to an employee, has been retained and used by the employer, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

> *"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 lying 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. In the present case, the excess amount paid by the petitioners which was being refunded to the petitioners, has been retained and used by the respondent-department and hence, the respondents are under an obligation to refund the said amount to the petitioners along with benefit of interest.

12. Keeping in view the facts and circumstances recorded hereinbefore, coupled with the settled principle of law cited hereinbefore, the petitioners are held entitled for the grant of benefit of interest @ 6% per

annum on the excess amount paid by petitioners from the date the petitioners were brought under the Old Pension Scheme till the actual refund of the excess amount to them.

13. No other argument has been raised.

14. Present writ petition is allowed.

15. Civil miscellaneous application pending, if any, is also disposed of.

May 05, 2025 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No