

2025:PHHC:001074



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

103+219

**CWP-25479-2023 (O&M).
Date of Decision: 08.01.2025.**

HARDEEP SINGH

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Kashmiri Lal Singla, Advocate,
for the petitioner.

Mr. Sandeep S. Majithia, Advocate,
for respondent No.2/NIPER.

Mr. Naresh Kumar, Advocate,
for respondent No.3.

Mr. Harsh Aggarwal, Advocate,
for respondent No.4

VINOD S. BHARDWAJ, J. (ORAL)

Even though the present writ petition has been filed
challenging the order dated 03.03.2023 issued by respondent No.2-National
Institute of Pharmaceutical Education and Research (hereinafter referred to
as 'NIPER') holding that the petitioner is not entitled to any pensionary

2025:PHHC:001074



benefits for the combined service rendered by him with respondent No.2/NIPER and prior thereto with respondent No.3-Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as 'BFUHS'), however, on account of developments in the interregnum, admissible pensionary benefits already stand released to the petitioner, hence, the prayer has now been confined only to the extent of award of interest on the delayed release of the pensionary benefits including the commutation of pension, DCRG, GPF, GIS etc. to the petitioner.

2 Learned counsel appearing for the petitioner contends that the petitioner retired from the service of respondent No.2-NIPER on 17.04.2014 afternoon and as per Rule 37 of the CCS (Pension) Rules, 1972, he was entitled to the release of service benefits including pension, gratuity, commutation of pension, GPF, Group Insurance etc. on the basis of his combined pensionable service of 14 years, 09 months and 18 days from 01.07.1999 to 17.04.2014 but the same was wrongly not released. He contends that the petitioner was initially appointed as a regular employee with respondent No.3-BFUHS, Faridkot, an autonomous body of the State of Punjab, on a pensionable post where he worked w.e.f. 01.07.1999 to 19.03.2009. Respondent No.2-NIPER, Mohali, an autonomous body of Central Government, following the CCS Rules for its employees, had advertised a post of Section Officer (Administration), reserved for OBC category, on 13.09.2008. In response thereto, the petitioner had applied for that post through proper channel. Later on, the petitioner was selected and

2025:PHHC:001074



he joined as Section Officer on 20.3.2009 after getting himself relieved from respondent No.3/BFUHS on 19.03.2009 and the technical resignation of the petitioner was also accepted under the rules. The petitioner accordingly stood permanently absorbed, on the date of his joining with respondent No.2-NIPER i.e. 20.03.2009. A request was hence made by the petitioner to the respondent No.3-BFUHS to transfer his pro-rata retiral benefits to his new employer as per applicable rules dated 14.05.1986 of Punjab Government. Respondent No.2-NIPER also addressed a communication to respondent No.3-BFUHS on 13.04.2010 for transferring of the pro-rata retirement benefits of the petitioner. A sanction was accordingly granted by the respondent No.3-BFUHS on 28.02.2012 and 30.09.2013 for transferring the pro-rata retirement benefits of the petitioner to respondent No.2-NIPER. Vide its letter dated 09.04.2014, respondent No.3-BFUHS enquired from NIPER as to whether the post of the petitioner in NIPER was a pensionable or non-pensionable post. However, respondent No.2-NIPER, vide their letter dated 23.06.2014, gave a totally evasive and vague reply to respondent No.3-BFUHS to the effect that the petitioner has been relieved. Consequently, respondent No.3-BFUHS vide letter dated 10.03.2015 stopped the transfer of pro rata benefits of the petitioner to NIPER though the same had already been sanctioned by the Vice Chancellor of the respondent No.3-BFUHS i.e. the competent authority. Respondent No.3-BFUHS hence could not transfer the pro-rata retirement benefits of the petitioner to respondent No.2-NIPER and as such respondent

2025:PHHC:001074



No.2-NIPER did not count the past pensionable service rendered by the petitioner from 01.07.1999 to 19.03.2009 i.e. 09 years, 08 months and 19 days with respondent No.3-BFUHS.

3 The petitioner thus preferred CWP-9624 of 2016, for seeking his dues which such petition was disposed of by this Court on 28.03.2019 directing respondent No.3-BFUHS to release the petitioner's benefits to respondent No.2-NIPER within a period of three months. Respondent No.3-BFUHS complied with the above said order passed by this Court and transferred the pro-rata retirement benefits of the petitioner amounting to Rs. 3,91,426/- on 19.09.2019 to respondent No.2-NIPER. After receiving pro-rata retirement benefits of the petitioner, respondent No.2-NIPER directed the petitioner on 14.10.2019 to submit requisite forms for processing his retirement benefits which were also duly submitted by the petitioner but respondent No.2-NIPER did not release the retiral benefits to the petitioner.

4 He contends that during the same time, respondent No.4-National Institute of Open Schooling (hereinafter referred to as 'NIOS') had also advertised a vacancy for the post of Assistant Director and that the petitioner had applied for the said post through proper channel with due permission from respondent No.2. He got selected by the respondent No.4-NIOS and was offered the post of Assistant Director on 18.02.2014 which he accepted. The petitioner, after acceptance of his technical resignation from the post of Section Officer in NIPER, was relieved by NIPER to

2025:PHHC:001074



enable him to join respondent No.4-NIOS. The petitioner opted for New Pension Scheme with the NIOS. Thus, the service of the petitioner remained as pensionable service with respondent No.2-NIPER w.e.f. 20.3.2009 to 17.04.2014 against the post of Section officer. Notwithstanding that no request had been submitted by the petitioner for transfer of his fund, the respondent No.2-NIPER on 18.06.2020 transferred pro-rata retirement benefits of the petitioner, received from respondent No.3-BFUHS as well as their own contributions to the respondent No.4-NIOS. The same was however not accepted by respondent No.4-NIOS and the same was remitted to respondent No.2-NIPER on 19.08.2020.

5 The petitioner again requested respondent No.2-NIPER on 22.06.2020 for the release of his retiral and other service benefits, however, the same was not done. Accordingly, petitioner filed another CWP No. 16080 of 2020 before this Court for the release of his retiral benefits along with interest by respondent No.2-NIPER. The same was withdrawn on 01.10.2020 with liberty to the petitioner to move an appropriate application for clarification/modification of order dated 28.03.2019 passed in CWP No. 9624 of 2016. Thereafter, the petitioner moved C.M. No.11320-CWP-2020 in CWP 9624 of 2016 for clarification/ modification of order dated 28.03.2019 which was disposed of vide order dated 21.09.2023 granting liberty to the petitioner to separately challenge the impugned order issued by the respondent No.2-NIPER before the competent Court/Authority in accordance with law. Accordingly, a representation was submitted by the

2025:PHHC:001074



petitioner on 17.09.2022 to respondent No.2-NIPER for the release of his pensionary and other benefits with interest, however, respondent No.2-NIPER did not release the same. The representation dated 17.09.2022 of the petitioner was responded to by respondent No.2-NIPER vide letter dated 03.03.2023 denying the entitlement of the petitioner to release of retiral benefits to the petitioner on the following arbitrary and illegal grounds: (a) the petitioner does not fulfil the requirement of being permanently absorbed in respondent No.2-NIPER and (b) the petitioner joined the service of NIPER as Section officer (Administration) on contract for a period of 05 years. Hence, the petitioner has approached this Court yet again by filing the instant writ petition.

6 He submits that during the pendency of the writ petition, respondent No.2-NIPER, on 14.11.2024, sanctioned and released the pensionary and other retiral benefits like pension, Gratuity, GPF, Group insurance to the petitioner along with arrears of pension including for the period of his pensionable service from 01.07.1999 to 17.04.2014 i.e. 14 years, 09 months and 18 days. He argues that the respondents have released the above said pension benefits along with the admissible arrears in compliance to the NIOS letter dated 11.08.2014 conveying the permanent absorption of the petitioner at NIOS w.e.f. 17.04.2014 and in terms of Government of India, Department of Pension and Pensioners' Welfare office order dated 10.12.2009. He contends that even though the subsequent objections of the petitioner have not yet been answered by any other

2025:PHHC:001074



authority, yet, the decision to release the pensionary benefits has been taken in light of the earlier orders that were already in the knowledge of the NIPER itself and there has been no change of circumstances. Hence, the admissible dues were wrongly withheld by the respondents by a deliberate misreading of the statutory provisions along with Rule 37 of the CCS (Pension) Rules, 1972. He has argued that the respondents have thus unnecessarily withheld the admissible dues notwithstanding that similar dues have earlier been released to the other employees and that under the given circumstances, once the pensionary benefits have been wrongly retained, the petitioner would be entitled to interest in view of Rule 65 of the CCS (Pension) Rules, 2021.

7 Reliance has also been placed by the counsel for the petitioner on the judgment in the matter of **Vijay L. Mehrotra Vs. State of Uttar Pradesh, reported as 2000 AIR (SC) 3513** wherein the Hon'ble Supreme Court directed the payment of interest when there was no reason or justification for not making the payments for months together. Similarly in the matter of **Alok Shanker Pandey Vs. Union of India reported as 2007 (2) RCR (Civil) 783**, the Hon'ble Supreme Court had awarded interest @ 12% per annum on the delayed release of the admissible dues. Reliance is also placed on the judgment of Patna High Court in the matter of **Ram Bilash Singh Vs The State of Bihar reported as 2021 (1) SLJ 261**, providing interest for wrongful withholding of the retiral dues.

2025:PHHC:001074



8 Learned counsel for contesting respondent No.2-NIPER, on the other hand, contends that there has been no lapse or negligence on the part of the said respondent in the release of the pensionary dues of the petitioner. While it is not in dispute that the petitioner had joined with respondent No.2-NIPER as Section Officer after applying for the same through proper channel, it is stated that the petitioner had joined on contractual service for a period of 05 years and had been relieved from the services of the Institute on 17.04.2014. Hence, the petitioner was not entitled to be absorbed and that the petitioner moved to NIOS before getting an absorption with the respondent No.2-NIPER. He contends that the absorption is not automatic but subject to approval of the competent authority and after completion of the formalities as mandated in Rule 37 of the CCS (Pension) Rules, 1972 and since the same was not done by the petitioner, despite he being on the post of Section Officer, the interest liability cannot be fastened upon respondent No.2-NIPER. He further argues that the respondent No.3 had transferred the pro rata pensionary benefits of the petitioner vide its letter dated 10.03.2015, after the petitioner had left the job with the respondent No.2-NIPER, and that the petitioner was never absorbed in the service of respondent No.2-NIPER. He refers to a communication dated 13.04.2010 as per which they had communicated to respondent No.3 to transfer the service benefits to the Institute along with record and service book and that the same having not been done by respondent No.3, no lapse can be attributed to respondent No.2-NIPER. He contends that pursuant to the order passed

2025:PHHC:001074



by this Court on 28.03.2019 in CWP-9624-2016 and immediately on receipt of the said pro rata pension benefits, respondent No.2 submitted a letter to the petitioner to complete the formalities so that the requisite benefits could be released. It is contended that the said benefits were even transferred to NIOS on 18.06.2020 forthwith and without any further delay but the same were remitted by the NIOS on 19.08.2020. On receipt of the request from the petitioner, the representation submitted by him was sent for seeking certain clarification and on finding that the petitioner did not fulfil the requisite terms and conditions, an order was accordingly passed. The admissible dues have since then been released by the respondent No.2 without any undue delay and that valid and sufficient grounds existed which led to delay in disbursement. He contends that an order was passed by this Court on 09.11.2023 to release all the retiral benefits that were transferred from NIOS and the same have been received by the petitioner and that order dated 14.11.2024 has been passed in compliance thereto.

9 I have gone through the arguments advanced by the respective counsel and have also gone through the documents available on record.

10 It is evident from a perusal of the order of release of the pensionary benefits dated 14.11.2024 that the benefits have been released by the respondent No.2 by relying on the NIOS letter dated 11.08.2014 conveying the permanent absorption of the petitioner at NIOS w.e.f. 17.04.2014 and in terms of Government of India, Department of Pension and Pensioners' Welfare office order dated 10.12.2009 that had been issued

2025:PHHC:001074



by the competent authority. The objection with respect to the absorption of the petitioner by making a reference to the Rule 37 of the CCS (Pension) Rules, 1972, has not been raised by the respondents. Even though an argument has been advanced by the respondent No.2 that the appointment of the petitioner was a contractual appointment in the year 2009 for a period of 05 years and that the contract period had not come to an end, however, their own communication of 2010 defeats the argument since they have themselves addressed a communication to respondent No.3-BFUHS requesting transfer of the pro rata pensionary dues of the petitioner. Once, the respondents were seeking the transfer of pro rata pensionary dues of the petitioner, it would not lie in the mouth of respondent No.2 to contend that the services of the petitioner with the said respondent was not pensionable and that there was no deemed absorption.

11 Even otherwise, a prima facie reading of Rule 37 of the CCS (Pension) Rules, 1972 along with the explanation shows that where the employee joins on absorption basis, he would be deemed to be absorbed w.e.f. the date of his joining. Counsel for respondent No.2 has failed to refer to any law as to how the case of the petitioner does not fall under the said explanation.

12 Further, it is also not in dispute that the petitioner had applied for the post of Section Officer advertised by respondent No.2-NIPER through a proper channel and that having been appointed to the said subsequent post, Rule 37 of the CCS (Pension) Rules, 1972, mandates an

2025:PHHC:001074



absorption to take effect from the date when the person joins. Any clause incorporated in the letter of appointment which wholly forfeits the benefit of the Rules cannot over-ride the Rules. Strangely, even though the case set up by respondents before this Court is that the nature of appointment of the petitioner was contractual, however, at the same time, they do contend that they were taking effective steps for transfer of pro rata pensionary dues of the petitioner but the respondent No.3 denied transfer of the same in the year 2015. The contrary stand does not advance the case of respondent No.2-NIPER. It is also not in dispute that the denial to transfer the funds by respondent No.3 pertaining to the pro rata pensionary dues was on account of communication by respondent No.2-NIPER to the effect that the petitioner already stood relieved. The query raised by the respondent No.3 in its communication was with respect to the nature of the engagement of the petitioner with respondent No.2-NIPER and as to whether it was a pensionable or non-pensionable service, however, the respondent NIPER responded to the same by merely conveying that the petitioner already stood relieved and hence, there was no occasion for respondent No.3-BFUHS to transfer the funds once the query specifically posed remained unanswered. The delay in transfer of the pro rata pensionary dues was thus on account of the vague response on behalf of the respondent No.2-NIPER. Further, it is also not in dispute that the queries that were put forth while declining the representation of the petitioner for release of the pensionary benefits do not find any mention in the order whereby the pension has now been granted by

2025:PHHC:001074



the respondents. Hence, the objections raised were seemingly fallacious and were acknowledged to be not borne out of any meaningful and harmonious construction of the provisions of the CCS (Pension) Rules, 1972.

13 Under the given circumstances, I find that the petitioner herein was wrongly deprived of his pensionary benefits for a period of nearly 10 years and that the petitioner cannot be faulted for such a delay. It was the bounden duty of the employer to take effective measures for ensuring an expeditious release of the admissible pensionary benefits to an employee upon his retirement. However, the respondent authorities chose mechanical and bureaucratic objections instead of addressing the core issue and redressing the hardship being faced by the employee-petitioner. Such an act hence needs to be deprecated.

14 Without going any further into the issue and taking into consideration that Rule 65 of the CCS (Pension) Rules, 2021, mandates that in the event of an unsatisfactory inordinate delay in the release of the pensionary dues, the employee can be suitably compensated by payment of interest, I deem it appropriate to balance the equities. Undisputedly, the respondents were in retention of the admissible dues to the petitioner for a period of more than 10 years i.e. a decade. Having benefitted from the wrongful retention of the admissible dues to the petitioner, the interest on delayed release of the same to the petitioner cannot be denied. The respondents are hence held liable to pay the interest on delayed disbursement of the dues.

2025:PHHC:001074



15 The present writ petition is accordingly allowed. Respondent No.2-NIPER, is directed at the first instance to pay interest @ 9% per annum from the date of admissible pensionary dues within a period of 02 months from the date of receipt of a certified copy of this order. The said respondent No.2-NIPER, however, will be at liberty to seek claim against respondent No.3-BFUHS, if so advised and if so tenable in law, and without prejudice to the inter-se objection of BFUHS.

16 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

January 08, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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