

Before Harsimran Singh Sethi, J.

NIRMAL SINGH—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.26553 of 2016

August 21, 2019

Constitution of India, 1950—Arts. 226 and 227—Pensionary Benefits— Gratuity, Leave Encashment—Delayed Release—Interest—Two charge sheets pending against petitioner at the time of Superannuation—Penalty imposed, deposited—Provident fund released—Gratuity, Leave Encashment released after 6 months—No justification for delay— Interest to be awarded.

Held that, on 28.02.2015, when petitioner superannuated, there were two charge-sheets pending and those came to an end only on 06.09.2016, where in penalty was imposed upon him and the said penalty amount was deposited by the petitioner after September, 2016. From the reply, it is clear that the benefit of provident fund was released to the petitioner on 02.01.2017 and gratuity and leave encashment were released on 27.07.2017. The Full Bench of this Court is A.S Randhawa's case (supra) has held that the pensionary benefits are to be released within a reasonable time after an employee is retired or the hurdles in release of the pensionary benefits, are cleared. The Contributory Provident Fund was released within a period of reasonable time as the same was released on 02.01.2017 but the gratuity and leave encashment were released in July, 2017, through the proceedings, which were pending against the petitioner, due to which the benefits were being withheld, had come to an end on 06.09.2016. There is no justification given by the respondents in the reply as to why the benefit of leave encashment and gratuity were released in July, 2017 when the Provident Fund was released in January, 2017 itself. In the absence of any justification, it can be very well said that the delay, which has been caused by the respondents in releasing the leave encashment and gratuity, is not justifiable.

(Para 5)

Deepak Arora, Advocate
for the petitioner.

Sunint Kaur, A.A.G., Punjab.

Sanjeev Soni, Advocate
for respondents No. 2 to 4.

HARSIMRAN SINGH SETHI, J. (oral)

(1) In the present writ petition, the grievance which is being raised by the petitioner is that though he had retired on 28.02.2015, but his pensionary benefits such as gratuity, leave encashment and provident fund are not being released by the respondents, though, there is no valid justification, which would entitle the respondents to withhold the same. The present writ petition has been filed with a prayer that a direction be issued to the respondents to release the retiral benefits alongwith interest.

(2) Upon notice of motion, the respondents have filed reply and in the reply, respondents have stated that the petitioner has withheld the relevant facts from this Court as there were two charge-sheets pending against the petitioner on the day when petitioner superannuated on 28.02.2015 and vide order dated 06.09.2016, both the charge-sheets were decided and the petitioner was held guilty in both the charge-sheets and a penalty was imposed, which penalty amount was deposited by the petitioner and after the deposit of the penalty, the benefit accruing to the petitioner were released by the respondents. The details given in para 4 of the reply, are as under:-

“4. That the contents of Para no. 4 of the Civil Writ Petition are not correctly stated-it is submitted that in the year 2013, a charge-sheet bearing Memo No. 4724 dated 27.02.2013 was served to the petitioner for making excess payment of arrear to the tune of Rs.3,07,518/0 (three lacs seven thousand five hundred eighteen) to the employees and the regular enquiry of this charge-sheet was marked to Sh. R.K. Goel, Superintending Engineer who has submitted his report on 11.07.2014 vide which all the charges levelled against the petitioner was proved. The competent authority i.e. Chief Engineer (West) vide his order dated 06.09.2016 bearing Ends. No. 2012-15 has ordered to impose a penalty of Rs.9020 against the petitioner. The petitioner did not file any departmental appeal against the order of penalty imposed against him and has paid the penalty amount meaning thereby he has admitted his guilt. That another charge-sheet bearing No. 17913 dated 21.11.2014 was served upon the petitioner and regular inquiry was also

initiated in this case. A Retired Additional District and Session Judge was appointed as enquiry officer, who had submitted his report on 04.04.2016 and held the petitioner guilty of charge No. 2, 3 and 4 i.e. (2) wasteful expenditure and blocking the Govt. Funds, (3) causing bad name to Board, (4) negligence in performance of duty. However, the competent authority i.e. Chief Executive Officer has taken the lenient view due to the reason that the petitioner had already been retired from service and vide his order dated 06.09.2016 bearing Ends. No. PWSSB-2016/EG (A)/20813-821 has imposed penalty of Rs.5000/- upon the petitioner. The petitioner has paid the penalty amount on 15.09.2016 meaning thereby he has admitted his guilt. Thereafter, immediately the department concern has sent a Memo bearing No. 3973 dated 19.09.2016 for obtaining consolidated No Objection Certificate. After getting the No Objection Certificate from all the concerned department a consolidated No Objection Certificate was issued vide Memo No. PWSSB-16/EG/A1/25655 dated 01.11.2016.

True translated copy of the NOC is Annexure R-4/1. Thereafter, the retirement dues were paid to the petitioner, detail of which is tabulated below:-

| Sr. No. | Name and Designation | Amount Due | Amount Paid |
|----------------|---|--|---|
| 1 | Nirmal Singh Sub Division Engineer(CDC) | Contributory Provident fund Rs.2714826/- | Rs.2714826/- paid vide Cheque no. 158707 dated 02.01.2017 |
| 2 | | Gratuity Rs.993024/- | Rs.993024/- was paid vide Cheque No. 182581 dated 27.07.2017 |
| 3 | | Leave encashment Rs.619800/- | Rs.619800/- was paid vide Cheque No.183581 dated 27.07.2017 |

In view of the above, all the retirement dues have been paid to the petitioner and nothing is due towards the

department, therefore, the present writ petition has become infructuous.”

(3) Learned counsel for the petitioner on the other hand submits that once the charge-sheets had come to an end in September, 2016, petitioner is entitled for the benefit of release of the pensionary benefits immediately thereafter within a period of two to three months but the benefits were released to the petitioner starting from January, 2017 till July, 2017, which shows that there is an inordinate delay in release of the pensionary benefits thereby entitling the petitioner for interest on those delayed released of payment keeping in view the settled principle of law settled by the Full Bench of this Court in *A.S. Randhawa versus State of Punjab and others*¹.

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

(5) It is not disputed by the counsel for the petitioner that on 28.02.2015, when petitioner superannuated, there were two charge-sheets pending and those came to an end only on 06.09.2016, wherein the penalty was imposed upon him and the said penalty amount was deposited by the petitioner after September, 2016. From the reply, it is clear that the benefit of provident fund was released to the petitioner on 02.01.2017 and gratuity and leave encashment were released on 27.07.2017. The Full Bench of this Court in *A.S. Randhawa's* case (supra) has held that the pensionary benefits are to be released within a reasonable time after an employee is retired or the hurdles in release of the pensionary benefits, are cleared. The Contributory Provident Fund was released within a period of reasonable time as the same was released on 02.01.2017 but the gratuity and leave encashment were released in July, 2017, though the proceedings, which were pending against the petitioner, due to which the benefits were being withheld, had come to an end on 06.09.2016. There is no justification given by the respondents in the reply as to why the benefit of leave encashment and gratuity were released in July, 2017 when the Provident Fund was released in January, 2017 itself. In the absence of any justification, it can be very well said that the delay, which has been caused by the respondents in releasing the leave encashment and gratuity, is not justifiable.

(6) A Full Bench of this Court in *A.S. Randhawa's* case

¹ 1997(3) SCT 468.

(supra) has held that where there is an inordinate delay in releasing benefits and the delay is not justifiable, employee will be entitled for interest. The relevant paragraph of said judgment is as under:-

“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's* case (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.”

(7) Apart from this, a Coordinate Bench of this Court in of *J.S. Cheema* versus *State of Haryana*², had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. 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.”

(8) The case of the petitioner for the grant of interest on the delayed payment of leave encashment and gratuity is made out. Petitioner will be entitled for interest @ 9% per annum on these two

² 2014(13) RCR (Civil) 355

payments which were made on July, 2017 from 01.01.2017 onwards till the release of the said payments. Let the calculation of interest on these payments, as per this order be done within a period of two month from the date of receipt of certified copy of this order and the amount so calculated, be released to the petitioner within a period of one month thereafter.

(9) Writ petition is allowed in above terms.

Shubreet Kaur