(2016) 01 P&H CK 0285

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 9137 of 2015.

Des Raj Bhagat		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:
Constitution of India, 1950 — Article 226, 300A

Citation : (2016) 2 PLR 561

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : M.S. Bedi, Advocate, for the Appellant; Vaibhav Sharma, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. (Oral) - Mr. Vaibhav Sharma, learned DAG, Punjab, has filed a short reply by way of affidavit of Mr. Sukhjit Singh Bains, Director Rural Development and Panchayats, Punjab, on behalf of respondents No.1 to 3 in Court today. The treasury bill has been annexed with the affidavit as Annexure R-1 according sanction to payment of gratuity to the petitioner in a sum of Rs. 2,82,487/- withheld since mid 2011 for no justifiable reason. The payment is under Major Head "Pension and Other Financial Retirement Benefits". The same is taken on record. Copy supplied to opposite side. This brings the principal dispute to an end. The amount would now be credited in the pension account of the petitioner without further loss of time.

2. It may be reminded that gratuity is not a bounty. It is a right to property protected by Article 300-A of the Constitution of India payable to its rightful owner. The right accrues on attaining the age of retirement and is not a recurring right unlike pension is. If the right to gratuity has matured on the event of superannuation, the same has to be paid without demur even if a departmental inquiry is pending against the retiree where a charge sheet has been issued while he was in service. The position would depend on how the rule is structured, see

for instance State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210. In the present case, the facts are entirely different. The petitioner retired from service on July 31, 2011 and was charge sheeted on August 21, 2012.

3. In these circumstances, the act of withholding the gratuity is a culpable wrong committed on the petitioner withholding gratuity without an order in writing and for too long and therefore, in the admitted situation, the petitioner would be entitled to the highest rate of interest recognised when circumstances warrant as marked out in the Full Bench decision of this Court in A.S. Randhawa Supdg. Engineer (Retd.) v. State of Punjab, 1997(4) SLR 617 wherein in para. 9 it is held as follows:-

"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 retired 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. Padamnabhan 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. Again, as to what should be the rate of interest, it should, in our view, be generally 12% unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18%."

4. For precedents where 18% interest on illegally withheld pensionary benefits have been imposed reference may be to the Division Bench of this Court in Moti Ram Gupta v. State of Haryana and Anr., 1993 (1) RSJ 799 and the Supreme Court in R. Kapoor v. Director of Inspection, Income-Tax and another, (1994) 6 SCC 589 where Central Administrative Tribunal applied 12% which was enhanced in appeal to aggravated 18% applying the earlier ruling in State of Kerala and Ors v. M. Padmanabhan Nair, AIR 1985 SC 356: 1985 SCR (2) 476.

5. In view of the above facts and circumstances, the petition is allowed. Interest is directed to accrue @ 18% per annum on the principal amount sanctioned presently and be computed accordingly and paid from the period from the date of superannuation till the date of deposit in the pension account of the petitioner. Interest element will be recoverable from erring officers/officials who withheld the gratuity amount without any rhyme or reason and by showing scant respect for the property of a fellowman. If there is any dispute remaining as to amount of gratuity plus interest thereon as directed, it shall be settled bilaterally at a meeting called for the purpose.