(2020) 02 P&H CK 0259

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11330 Of 2017

Jaswinder Kaur APPELLANT

Vs

Punjab State Power Corporation Limited And Others RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(d)

Citation : (2020) 02 P&H CK 0259

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : O.P. Gabba, G.K. Mann

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the grievance which is being raised by the petitioner is that her pensionary benefits such as gratuity and leave encashment

have been delayed and, therefore, she is entitled for interest on the delayed release of pensionary benefits.

As per the facts mentioned in the writ petition, an FIR No. 87 dated 05.12.1997 under Sections 468/471 read with Section 120-B IPC and under

Section 13(1) (d) of the Prevention of Corruption Act, 1988 was registered against the petitioner while she was in service. In the said FIR, petitioner

was convicted by the competent Court of Law on 02.03.2007. On being convicted, petitioner was dismissed from service. After the conviction,

petitioner filed a Criminal Appeal No. 1514-SP of 2006, which was allowed by this Court on 23.02.2010.

As the petitioner was acquitted of the charges levelled against her, the order of dismissal from service was withdrawn and she was reinstated in

service on 15.07.2010. After being reinstated, petitioner filed a claim for treating the period, for which she remained out of service after being

dismissed from service, as a duty period, which request was declined by the respondents. Petitioner took voluntarily retirement on 31.03.2013. After

the voluntarily retirement, petitioner requested for the grant of benefits for which she became entitled for upon her retirement.

As the request of the petitioner for treating the period, for which she remained out of service, as a duty period, was declined by the respondents, the

petitioner approached this Court by filing CWP No. 26076 of 2013, which writ petition was allowed by this Court on 24.07.2015 (Annexure P-1),

whereby, petitioner was held entitled for the benefit of salary for the period she remained out of service. Keeping in view the said order, the benefits

for which the petitioner became entitled for after retirement, were required to be recalculated.

After the decision of CWP No. 26076 of 2013, petitioner moved two applications for clarification of the order and ultimately, a clarification order was

passed in her favour on 21.01.2016, whereby, the period for which petitioner remained out of service, she was held entitled for the full salary and

allowance. In pursuance to the said order, the respondents calculated the benefits for which the petitioner became entitled for and it is an admitted

case that the leave encashment amounting to `4.32 lacs was paid to the petitioner on 27.06.2016 and the gratuity amounting to `7,48, 342/- was

released on 18.09.2016. The claim of the petitioner is that as these benefits have been delayed by the respondents after her retirement, she becomes

entitled for interest on the said delayed payments.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents have stated that the claim of the petitioner could not be decided

as a litigation was pending in respect of the period, which was to be treated as a qualifying service for the grant of pensionary benefits and the said

judgment came in favour of the petitioner only in July, 2015, which was clarified again on 21.01.2016. Learned counsel for the respondents argues that

immediately after the said clarification, the computation of the benefits was done and the same were released to the petitioner and the delay after

21.01.2016 is only procedural, which would not entitle the petitioner the benefits of interest.

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

Learned counsel for the petitioner argues that though, the petitioner is claiming the benefit of interest from the date of her retirement but she will be

satisfied in case her claim is considered from 21.01.2016 i.e. the date on which, this Court allowed the benefit in her favour by treating the period, for

which she remained out of service, as a duty period and directed the release of all the consequential benefits. In my opinion, after January, 2016, there

was no impediment in the release of the pensionary benefits of the petitioner. Once the litigation came to an end, it was the duty of the respondents to

release the pensionary benefits within a reasonable time after the said order.

A Full Bench of this Court in A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 46 8has held that reasonable period within which the

retiral benefits should be released is after the retirement, in case, there is no impediment. The relevant portion of the said judgment is as under:-

â??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 retirer 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 front 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.â??

In the present case, the impediment for the release of the pensionary benefits was removed in January, 2016.Â Â Â Â Â Â Â Â Â

Thereafter, the respondents were under obligation to release the pensionary benefits within reasonable time but respondents took more than the

reasonable time as prescribed by the Full Bench of this Court in A.S. Randhawa's case (supra) and, therefore, petitioner becomes entitled for the

interest on the delayed release of pensionary benefits.

A Co-ordinate Bench of this Court in J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 35,5 has held that where the amount belonging to an

employee has been retained and used by the department, employee will be entitled for interest.Â The relevant portion of the said judgment is as

under:-

â??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.â??

The claim of the petitioner for the grant of interest is from 01.02.2016 till the actual date of payment of the leave encashment and the gratuity is

allowed. Petitioner is held entitled for interest @ 9% per annum.

Let the respondents calculate the interest for the said period within a period of two months from the date of receipt of certified copy of this order and

the interest so calculated, will be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.