(2005) 11 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : @Z_Civil Writ Petition No. 3864 of 2003

Kishan Singh Gupta — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 07-11-2005

Acts Referred:

Citation : (2006) 142 PLR 237

Hon'ble Judges : S.S. Nijjar, J;Nirmal Yadav, J

Bench : Division Bench

Advocate : P.S. Patwalia and T.P.S. Chawla, for the Appellant; Anil Rathee, Addl. A.G., Haryana for Respondent Nos. 1 and 2 and Atul Nehra, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner retired from the respondents-College as a Lecturer on 30.9.1999, after putting in 27 years of service. The respondents-College, however failed to release the terminal benefits of the petitioner, compelling him to file C.W.P. No. 15308 of 2002. The aforesaid writ petition was disposed of by order dated 23.9.2002. The respondents were directed to pass an appropriate speaking order on the representation which had been submitted by the petitioner within a period of two months of the receipt of a certified copy of the order. The representation alongwith the order dated 23.9.2002 was submitted to the respondents on 3.10.2002. On 17.2.2003, the respondents deposited a sum of Rs. 50,000/- in the account of the petitioner, without giving any intimation to him. Since the petitioner was dissatisfied with the amount deposited, he has been compelled to file the present writ petition, seeking the issuance of a writ in the nature of Mandamus, directing the respondents to pay the amount of gratuity, leave encashment and arrears of pay revision w.e.f. 1.1.1996, alongwith interest at the rate of 18% per annum for the delayed payment.

2. Notice of motion was issued in this writ petition on 10.3.2003. Thereafter, the matter has been adjourned on numerous occasions. Ultimately on 25.3.2004, the respondents were directed to pay the entire arrears of salary, including the

amount which may be due on account of revision of pay before the next hearing. The matter was adjourned to 23.7.2004. On 30.7.2004, when the writ petition was taken up for hearing, again it was brought to the notice of this Court by the Counsel for the respondents-College that an amount of Rs. 1,28,724/- had been paid to the petitioner. The respondents had, however, controverted the claim of the petitioner with regard leave encashment. On 26.7.2005, Mr. Patwalia brought to the notice of this Court that the petitioner was entitled to the benefit of Earned Leave on the basis of the provisions of Para 9 of Punjab University Calendar Volume III, Chapter X. The aforesaid paragraph provides as under:

9. Earned Leave.

Provisions of the Punjab CSR Volume I (Part 1) for Earned Leave to vacation department shall apply and be referred to wherever necessary.

Since the petitioner is entitled to the benefit of Earned Leave on the basis of the provisions of Punjab Civil Service Rules Vol.1 (Part I), in our opinion, the respondents would be duty bound to release the amount of Earned Leave. The claim of the petitioner is also justified in view of the law laid down by the Supreme Court in the case of Ajmer Singh v. The State of Punjab and Ors. 1996(2) S.L.R. 757. The aforesaid judgment has been followed by a Division Bench of this Court in the case of B.S. Pannu and Anr. v. State of Punjab and Ors. C.W.P. No. 9446 of 2002, decided on 18.9.2003. In spite of the legal proposition having been brought to the notice of the respondents, still the petitioner was not being granted the necessary relief.

3. The respondents have filed written statements, as also additional affidavit. A perusal thereof shows that out of the claim made by the petitioner, the respondents had admitted that a sum of Rs. 1,21,338/- was due and payable to the petitioner. During the proceedings, the respondents have admitted that a sum of Rs. 1,21,3.38/- was due and payable in a compilation which was handed over to the Bench. On 28.10.2005, the respondents were directed to pay the aforesaid amount by the next date either in cash or by way of a demand draft. In case of non-payment, the Principal of the College-respondent No. 4 was directed to be present in person in Court on the next date of hearing. In view of the aforesaid direction, the respondents have released the aforesaid amount to the petitioner. According to the petitioner, the various amounts to which the petitioner was entitled, have been paid on different dates which has been presented to this Bench in the form of a Table, in which the amounts paid, the due date and the date of payment have been mentioned which can be reproduced as under:

Arrears of Revised pay and gratuity paid as under: --- S. No. Amount Paid on Payment Due Delay paid Y M D --- 1. 11,202.00 24.07.2000 1.6.1999 1-1-23 2. 27,546.00 20.08.2000 1.6.1999

1-2-19 3. 25,044.00 04.09.2001 1.6.1999 2-3-3 4. 50,000.00 17.02.2003 1.10.1999 3-4-16 5. 2,35,835.00 23.05.2003 1.10.1999 3-7-22 6. 1,28,724.00 30.04.2004 1.6.1999 4.10.29 7. 1,21,338.00 29.10.2005 1.6.1999 6.4-28 ---

Even now, learned Senior Counsel appearing for the petitioner submits that the respondents have not released the entire amounts which are due and payable to the petitioner.

4. Learned Counsel for the respondents, however, submits that the exact amounts payable are still to be calculated by the respondents-College. Learned Counsel further submits that since the grant-in-aid has not been released by the Government, the respondents-College which is being run by a Trust would not be in a position to release the amount due to the petitioner. We are of the opinion that the aforesaid justification cannot be appreciated in view of the laid would by the Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, . In the aforesaid judgment, the Supreme Court has categorically laid down that it is the Institute which is responsible to make the payment of the salary of the teachers, irrespective of the fact whether any grant has been released by the State or not.

5. In view of the above, the Writ Petition is allowed. Respondents No. 3 and 4 are directed to release the arrears of the amounts due to the petitioner within a period of two months from the date of receipt of a certified copy of this order. The petitioner shall also be entitled to interest at the rate of 9% p.a. from the date of his retirement till the release of the entire amount. The petitioner is at liberty to make a detailed representation to the respondents setting out the entire amounts, still due.