(2019) 01 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15135 Of 2016

Kulwant Singh And Others — APPELLANT

Vs

State Of Punjab And Others — RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2019) 01 P&H CK 0165

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Rishav Jain, Mehardeep Singh, Vinish Singla

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the claim of the petitioners is for the grant of interest on the delayed release of their retiral benefits.

As per the pleaded facts in the writ petition, petitioner No.1 retired on 30.06.2015 after rendering 35 years of service; petitioner No.2 retired on 31.03.2016 after rendering 36 years of service; and petitioner No.3 retired on 30.04.2016 after rendering 36 years of service.

Counsel for the petitioners states that though the petitioners retired in June, 2015, March, 2016 and April, 2016, respectively, but the pensionary benefits were released to them after much delay and that too without any valid justification.

Counsel for the petitioners further states that in view of the settled principle of law settled by a Full Bench of this Court in A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468, the petitioners are entitled for the interest on the delayed release of the pensionary benefits.

Upon notice of motion, the respondents have put in appearance and have filed their respective replies.

In the reply of respondent No.4, the details of the payments made to the petitioners have been depicted. It is admitted that the payments have been delayed, but the only reason given during the course of hearing is that the financial position of the Nagar Panchayat, Shahkot was not sound/stable and for this reason i.e. financial constraints, there was delay in releasing of the amount.

I have heard counsel for the parties and gone through the record.

The facts mentioned above in respect of the service rendered by the petitioners and delayed release of the amount have been admitted

by the respondents. A chart, which respondent No.4 themselves have attached with the reply, is reproduced hereinbelow: -

Sr. No.

Name of petitioner and Sr. No.on which petitioner exist/Date of retirement

Amount payable as per retiral dues

Amount paid vide Cheque No/Date

1

2

3

4

1.

Kulwant Singh D.O.R. 30.06.2015

1161840/-

394192 Dt. 30.06.2015 = 100000/- 189412 Dt. 15.10.2016 = 200000/- 189608 Dt. 13.07.2016 = 300000/- 183087 Dt. 06.05.2016 = 100000/- 540772 Dt. 08.02.2017 = 200000/- 565177 Dt. 03.08.2017 = 261840/- Total = 1161840/

2.

Ram Lubhaya D.O.R. 31.03.2016

995870/-

626757 Dt. 31.03.2016 = 200000/- 189611 Dt. 13.07.2017 = 300000/- 189407 Dt. 14.10.2016 = 100000/- 540774 Dt. 08.02.2017 = 200000/- 565178 Dt. 03.08.2017 = 195870/- Total = 995870/

3.

Ramesh Kumar D.O.R. 31.04.2016

944738

189177 Dt. 02.05.2016 = 100000/- 189612 Dt. 13.07.2016 = 300000/- 189408 Dt. 14.10.2016 = 100000/- 540773 Dt. 08.02.2017 = 200000/- 565179 Dt. 03.08.2017 = 244738/- Total = 944738/

A bare perusal of the above chart would show that there was a delay in releasing the payments. The payments were released upto August, 2017, which is much after the retirement of the petitioners. The reason, which has been given by the respondents for delayed payment i.e. the financial constraints is not a valid ground keeping in view the law laid down by this Court in Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, 2005(4) S.C.T. 438, wherein, it has already been held that the weak financial position is no ground to withhold the payments in respect of the retiral benefits. The relevant paragraph of the said is as under: -

"8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the arguments advanced by the learned Counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many facts thereof. It means that something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of Chameli Singh v. State of U.P. 1996(2) SCC 549 has held as under:-

"In any organised society right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designated to achieve this object. Right to live guaranteed in any civilised society implies to right to food, water, decent environment, education,medial care and shelter. These are basic human rights known to any civilised society.

xx xx xx xx Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, Municipal Council, Ratlam, (1980)4 S.C.C. 163, B.L Wadhera v. Union of India, All India Imam Organisation and Ors. v. Union of India and Ors., Kapila Hingorani v. State of Bihar, 2003 (3) R.S.J. 42. As far as back as in the year 1993, the Apex Court in All India Organisation's case (supra) observed as under:-

"6... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they arc being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."

A Division Bench while deciding the above-said case categorically held that the plea of weak financial position is no ground to withhold the pensionary benefits, therefore, the ground which has been taken by the respondents to withhold the pensionary benefits is contrary to the law laid down by the Division Bench and cannot be taken into consideration.

From the above, it is clear that there is a delay in the release of the pension and a Full Bench of this Court while deciding the question about the grant of interest on the delayed payments in A.S. Randhawa's case (supra), has already held that the employees will be entitled for the interest on the delayed payments. The said judgment of Full Bench has been followed by this Court in J.S. Cheema Vs. State of Haryana, 2014 (13) RCR (Civil) 355, wherein it has been held that if the respondents have retained the amount with themselves for which the petitioner was entitled, the petitioner is entitled for the interest as well. 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."

In view of the above, the present writ petition is allowed. The respondents are directed to calculate the interest @ 9% per annum on the delayed payments, which have been made to the petitioners. The interest shall be calculated from the day when the petitioners became entitled for the release of the amount till the actual payment.

Let the calculation be done within a period of two months from the date of receipt of a certified copy of this order and the actual payment shall be released to the petitioners within a period of one month thereafter.