(2019) 01 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10337 Of 2014

Ram Chander (Since Deceased) Through Lrs — APPELLANT

Vs

State Of Haryana And Others — RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Citation : (2019) 01 P&H CK 0172

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : R.D.Yadav, Safia Gupta

Final Decision : Allowed

Judgement

In the present writ petition, the challenge is to the order dated 07.11.2013 (Annexure P5) by which the claim of the petitioner for grant of interest on the delayed payment of the pensionary benefits has been declined.

As per the facts narrated in the writ petition, the petitioner was initially selected in the Indian Army on 12.12.1951 from where he retired on 23.07.1973. Thereafter, the petitioner was appointed as Chowkidar-cum-Mali-cum-Water Carrier on work-charge basis on 23.01.1976 with the Block Development and Panchayat Officer, Bawal, District Rewari, Haryana. The petitioner continued working on work charge basis till 01.06.1986 when his services were regularized. After his services were regularized, he was also promoted to the post of Peon and ultimately, he retired on attaining the age of superannuation on 31.12.1994.

Learned counsel for the petitioner states that the misery of the petitioner started after his retirement as the pensionary benefits for which, he was entitled for, were being declined on the ground that he had less than 10 years service to his credit after his regularization. Counsel further states that though it is a settled principle of law settled by this Full Bench of this Court in Kesar Chand vs. State of Punjab and others, reported as AIR 1988 Punjab, 265, that the work charge service rendered prior to the regularization, is to be computed as a qualifying service for the grant of pensionary benefit, still, the pension was not released to the petitioner. He further states that the petitioner approached this Court by filing CWP-19688-2012, which writ petition was disposed of by this Court on 03.10.2012 by giving direction to the respondent (s) to decide the legal notice dated 02.01.2012, which the petitioner had served upon the respondent(s) for the grant of pensionary benefits. Counsel states that while deciding the said legal notice, the claim of the petitioner for grant of pension and retiral benefits was accepted and ultimately, a sum of Rs.6,38,763/- was paid to the petitioner on 09.07.2013.

Learned counsel further states that as the petitioner retired on 31.12.1994 and the amount of his pensionary benefits were released after a delay of 19 years, the petitioner was entitled for interest on the delayed payment of retiral benefits.

As per the averments made in the writ petition, the petitioner served a legal notice upon the respondent(s) on 12.08.2013 (Annexure P4) seeking interest and the said legal notice was disposed of by the respondent(s) vide order dated 07.11.2013 (Annexure P5) declining the said request of the petitioner for grant of interest.

The said order is under challenge in the present writ petition. Upon notice of motion, reply has been filed by the respondent(s) admitting the facts which have been narrated hereinbefore.

Learned State counsels states that it was the Accountant General, Haryana, who had declined the benefit(s) for which the petitioner became entitled for after his retirement, on the ground that the petitioner has less than 10 years of regular service. But after a direction was issued by this Court on 03.10.2012, while disposing of Civil Writ Petition No. 19688-2012, the case was re-considered and the petitioner was found entitled for the benefit, which he was claiming for and, therefore, the delay cannot be attributable to the department but to the Office of the Accountant General, Haryana, who has declined to grant the benefits to the petitioner despite the recommendation by the Administrative Department and, therefore, the Administrative Department is not liable to pay the interest on the delayed payment as they are not at fault.

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

It has not been disputed by the respondent(s) that the petitioner was not entitled for the benefit after his retirement such as pension and other retiral benefits. The only objection taken is that though the Administrative Department recommended the case of the petitioner for the grant of the benefit, it was the Accountant General, Haryana, who declined to approve the same on the ground that the petitioner had less than 10 years of regular service to his credit when he superannuated on 31.12.1994. The said objection was not in consonance with the law and that is why, ultimately after reconsideration, the department released the benefits to the petitioner in July, 2013. Once, it is admitted by the respondent(s) that the petitioner was entitled for the benefits and have also released the same, the Administrative Department cannot escape from the liability of paying the interest on the delayed payment by stating that it was only due to the objection raised by the Accountant General, Haryana, the benefit was not released to the petitioner within a reasonable time after he superannuated on 31.12.1994. The petitioner cannot be prejudiced due to the objection taken by any of the Department of the State of Haryana by not granting the benefits for which the petitioner was entitled otherwise.

As per the settled principle of law settled by the Full Bench of this Court in A.S.Randhawa vs. State of Punjab, reported as 1997 (3) S.C.T.468, if the benefit to the employee is not released immediately and there is unjustified delay, the employee will be entitled for interest. The relevant paragraph of the 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 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 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."

Further, while deciding CWP-15867-2001, titled as J.S.Cheema vs. State of Haryana and others, reported as 2014 (13) R.C.R. (Civil) 355 on 20.11.2013, it has been held that once an amount has been retained by the Department, the same should be released with interest in case it is found that the retention of the amount was unjustified. The relevant paragraph of the said judgment 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 laying 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."

Keeping in view the facts of the present case, it is clear that even though the petitioner was entitled for the pensionary benefits immediately upon his retirement on 31.12.1994, the same were only released in July, 2013.

The case of the petitioner is squarely covered in his favour in view of the above mentioned settled principle of law.

The present writ petition is allowed. The respondent(s) are directed to calculate the interest on the amount which was paid to the petitioner on 09.07.2013 @ 9% per annum from the date it became due. Let the calculation of the interest be done by the respondent(s) within a period of two months from the receipt of certified copy of this order and the actual payment of the so calculated amount be released to the petitioner within a period of one month thereafter.

At this stage, learned counsel for the petitioner states that unfortunately the petitioner died on 20.10.2015 i.e. during the pendency of the writ petition and his LRs have been impleaded vide order dated 01.09.2016.

In view of the above, let the payment be released in favour of the LRs of the petitioner.

