(2012) 05 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 9529 of 2010

R.K. Ailawadhi APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:

Citation : (2012) 05 P&H CK 0125

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Deepak Thapar, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court praying for quashing of order dated 22.07.2009 (Annexure P-8), vide which petitioner has been denied the interest on the delayed payment of his retiral benefits after dropping of the charge-sheets, which were served on him. It is the contention of the counsel for the petitioner that at the time of the retirement of the petitioner, there were five charge-sheets pending against him. Out of these, three charge-sheets were enquired into and after submission of the report by the Enquiry Officer, the competent authority was pleased to drop the charge-sheets issued to the petitioner under Rule 7 of the Haryana Civil Services Rules. He has made reference to the orders dated 08.01.2007, 29.08.2006 and 19.09.2006, Annexures P-1 to P-3 respectively. As regards the other two charge-sheets, he contends that those were also dropped vide order dated 06.06.2007 and 23.01.2009, Annexure P-4 and P-5 respectively. After the dropping of the enquiries against the petitioner, the petitioner was made the payment of the retiral benefits within three months. He, however, contends that in the light of the Instructions dated 20.02.2002 (Annexure P-7), petitioner is entitled to interest on the delayed payment of retiral benefits.

2. Notice in this case was issued to the respondents and reply has been filed. The

stand taken by the respondents is that the proceedings initiated against the petitioner had not resulted in his clear exoneration in the enquiries but as a matter of fact, have been dropped because of the petitioner having retired from service. His claim would, therefore, be not covered by the Instructions dated 20.02.2002 in his favour rather as per paragraph No. 5, Clause (iii) thereof, he would not be entitled to interest as claimed by him.

3. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

4. The stand of the respondents denying the interest of the petitioner is not sustainable in the light of the Instructions dated 20.02.2002 (Annexure P-7). These Instructions deal with cases where the retiral dues are released to an employee after a delay. These Instructions spell out the situation where the interest has to be granted and where not to be granted. The claim of the petitioner would be covered by para 5 Clause (i) of the Instructions which reads as follows:

5. However, these instructions would not be applicable in cases where the payment of retiral benefits is withheld on account of disciplinary proceedings pending against the said employee at the time of his retirement. A further issue would also arise regarding payment of interest on the retiral benefits in case of such employees who are facing disciplinary proceedings at the time of their retirement/super-annuation from Government service. These cases should be decided in the following manner:(i) In the case of an employee against whom disciplinary proceedings are pending at the time of retirement and the employee is clearly exonerated and steered clear of all the charges during the process of disciplinary proceedings and proved innocent, the retiral benefits due to him should be paid along with interest from the date of retirement till the day of payment.

5. A perusal of the above would show that where the retiral benefits are withheld on account of disciplinary proceedings pending against an employee and if those proceedings end in exoneration of the charges and clear of all the charges during the process of departmental proceedings and he is proved innocent, the employee is held entitled to the interest. As is apparent from the orders dated 08.01.2007, 29.08.2006 and 19.09.2006, Annexures P-1 to P-3 respectively, in all the enquiry proceedings, the enquiry report has been considered by the competent authority and the charges have been dropped. As regards order dated 06.06.2007 and 23.01.2009, Annexure P-4 and P-5 respectively, the competent authority was pleased to drop the charges against the petitioner without holding an enquiry. This would amount to exoneration of an employee under para 5 Clause (i). The stand of the respondents is based upon Clause (iii) of Paragraph 5 of the Instructions, which reads as follows:

5 (iii) In case of an employee against whom disciplinary proceedings are dropped on account of lack of evidence (i.e. he is not proved innocent) or disciplinary

proceedings are dropped duly only on the ground that the employee has retired, no interest would be payable on the retiral benefits in his case till a period of three months from the date of final decision on the disciplinary proceedings. If the delay in these cases is beyond a period of 3 months of the date of decision on disciplinary proceedings and the employee concerned has completed the formalities on his part, interest on such dues from the date of decision of disciplinary proceedings till the date of payment may also be allowed.

6. This clause would not be applicable to the claim of the petitioner as the claim of the petitioner is covered by Clause (i) of Para 5, as has been referred to above. In view of the above, the present writ petition is allowed. The impugned order dated 22.07.2009 (Annexure P-8) is hereby quashed. Petitioner is held entitled to the rate of interest as per Paragraph No. 6 of the Instructions dated 20.02.2002 (Annexure P-7). The interest, as calculated on the delayed payment from the date of its accrual till the date of its disbursal, shall be released to the petitioner within a period of two months from the date of receipt of certified copy of this order.

