(2019) 01 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18704 Of 2015

Satpal APPELLANT

Vs

Uco Bank And Another RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 7, 7(1), 7(2), 7(3)

Citation : (2019) 01 P&H CK 0173

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Parveen Gupta, Aseem Rai

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the prayer is for the release of the leave encashment to the petitioner with effect from the date he was compulsorily retired. In this regard, a challenge has been made to the order dated 20.08.2013 (Annexur P-7), by which, the said benefit was declined to the petitioner. A further prayer has been made by the petitioner that even though he stood compulsorily retired w.e.f. 25.07.2005, the gratuity was only paid on 18.04.2013, therefore, he is entitled for interest on the said payment as well.

The facts which have been pleaded are that the petitioner joined the respondents-Bank as a Clerk on 22.04.1981. Thereafter, he got promotion to the officer cadre Scale-II. On the basis of various acts of omissions and commissions, which were alleged against the petitioner, vide order dated 25.07.2005 (Annexure P-1), he was compulsorily retired by imposing penalty and the appeal filed against the said order was rejected by the competent authority on 09.11.2005. Even the legal recourse taken by the petitioner in respect of the said order of compulsorily retirement dated 25.07.2005 (Annexure P-1) did not bring any relief to his cause as the prayers for declaring the said order as illegal stood rejected by the competent Court of law.

The grievance which has been made by the petitioner is that once he was compulsorily retired by the respondents on 25.07.2005, the benefits for which he became entitled for such as gratuity and leave encashment should have been released to him immediately, but as per the facts, the gratuity was released to him in three installments i.e. in March, April and July, 2013. In respect of leave encashment, the same was paid on 07.05.2016 and therefore, by relying upon a judgment of Full Bench of this Court in A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468, counsel for the petitioner states that the petitioner is entitled for the interest on the delayed payments.

Upon notice of motion, the respondents-Bank has put in appearance and has contested the claim of the petitioner to the effect that the petitioner is not entitled for interest on the delayed payments.

Counsel for the respondents states that it is only the petitioner, who is responsible for the delay, in releasing of the benefits mentioned above. The respondents claimed that even though the petitioner was retired on 25.07.2005, it was only on 13.10.2010, the petitioner completed the claim papers for settlement of the terminal benefits and therefore, the delay cannot be attributable to the Bank and the said claim for interest is liable to be rejected.

Counsel for the petitioner states that a bald statement has been made that the petitioner submitted the claim papers for the settlement of terminal benefits only on 13.10.2010, rather, no duty was casted upon the petitioner to supply any documents in respect of claiming of release of the gratuity and the leave encashment. Further, it was only the respondent(s)-Bank, who was to prepare the case for the settlement and have to forward to the competent authority for approval and therefore, the act of completion of claim papers for the settlement of the terminal dues, which is being attributed to the petitioner, is not at all correct.

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

It is an admitted fact that the petitioner was compulsorily retired on 25.07.2005. On the said date, the petitioner became entitled for the benefits, as an employee, who has compulsorily retired, is entitled for. It is not disputed that the petitioner was entitled for the gratuity as well as the leave encashment. The only ground taken by the respondents-Bank for the delayed release of both the dues is that the petitioner did not complete the papers in time, due to which, the delay has occurred. Counsel for the respondents in respect of the leave encashment has stated that initially the Bank was of the view that leave encashment is not admissible to an employee who has compulsorily retired and thereafter, in view of the clarification received by the Bank, the said benefit was released and therefore, till the clarification came, the delay cannot be attributable to the Bank.

Before proceeding further, it is noticed that this Court on 21.03.2017, during the pendency of this writ petition, had directed the Bank to file an affidavit as to what are the rules regarding the requirement of an employee to submit the claim papers for the release of the gratuity and the leave encashment.

In pursuance to the said direction, an affidavit of Sh. A.K. Kanthwal, Zonal Manager, UCO Bank, Jalandhar, on behalf of respondents No.1 and 2, was filed on 25.07.2017.

In the said affidavit, certain circulars had been attached to show that how the settlement of provident fund and gratuity is to be undertaken. Further, Annexure R-2 dated 06.08.1996 has been attached which deals with the settlement of terminal benefits.

Counsel for the respondents failed to point out any specific provision in the documents, which cast a duty upon a retiree to fulfill particular requirement before the terminal benefits are to be settled. In the absence of any particular provision, under which an employee was to submit the required documents, the duty of settlement of terminal benefits cannot be fastened upon an employee. Furthermore, there is not even a single letter which has been written by the Bank to the petitioner under these instructions asking him to submit any particular documents, which the employee was required to submit. Therefore, the stand which has been taken by the respondents that it was the petitioner, who was responsible for the delay and release of the terminal benefits, cannot be accepted. Once there is no provision in the circulars asking an employee to submit particular documents and there is no letter written by the Bank asking submission of any particular document, the claim being made by the Bank that the delay is to be attributed the petitioner is rejected.

Further, the benefits which the petitioner became entitled for were gratuity and leave encashment. In respect of the gratuity, nothing has been pointed out as to what act was to be performed by the petitioner so as to become entitled for the said benefit. In this regard, Section 7 of The Payment of Gratuity Act is very clear. As per Section 7(1), a person who is entitled for the gratuity under this Act, has to send a written application to the employer for the release of the payment; Section 7(2) casts a duty upon the employer irrespective of the receipt of the said application, to determine the amount of gratuity; and Clause 7(3) enshrines the duty upon the employer to release the same, that too within 30 days.

Keeping in view the Sections 7(2) and 7(3) referred hereinabove, it becomes the duty of the employer to release the gratuity and that too within a period of 30 days. Further, counsel for the respondents is unable to dispute this position of law in view the provisions of the Act, which the respondents are liable to follow under all circumstances. Therefore, in respect of the gratuity, keeping in view the provisions of Section 7(2) of the Payment of Gratuity Act, the petitioner was entitled for the same immediately upon his retirement on 25.07.2005. Therefore, as there is unexplained and undue delay in the release of the same, the petitioner became entitled for the interest on the said amount, which has been released by the respondents as gratuity.

With respect to leave encashment, counsel for the respondents states that the Bank was under impression that an employee, who is compulsorily retired, is not entitled for the leave encashment. In this regard, a clarification was sought from the competent authority of the Bank and upon the receipt of the clarification, it was found that even the compulsorily retired employees is entitled for the leave encashment. He prays that till the clarification is received, the employee was not entitled for the release of the leave encashment and therefore, no interest can be claimed upon the same. This argument cannot be accepted for the reason that the Bank authorities have found the petitioner entitled for the leave encashment. No rule or regulation, much less valid rule or regulation, has been pointed out by the respondents that an employee who has been compulsorily retired is not entitled for the leave encashment. Further, the clarification was an internal correspondence by the Bank. Nothing stopped the Bank for seeking such clarification immediately upon the compulsorily retirement of the petitioner in July, 2005. Leave encashment has only released to the petitioner on 07.05.2016 i.e. after a period of eleven years. Furthermore, the reply is totally silent as to when the clarification was sought by the Bank and when the said clarification was received by them. In the absence of any pleadings to this regard, the said argument cannot be accepted. Furthermore, once the leave encashment has been paid, the entitlement will relate back to the date when the petitioner retired i.e. 25.07.2005.

Keeping in view the above, as no justification has been given by the Bank and so-called justification given by the Bank are not according to law, the respondent(s)-Bank is held liable to pay the interest to the petitioner on the delayed payments of gratuity as well as the leave encashment. The petitioner is entitled for interest @ 9% per annum from the date when the amount became due till the same was released to him.

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

Present writ petition stands allowed in the above terms.

