(2018) 12 P&H CK 0226

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4617 Of 2017

Subhash Chander Chabra And Others APPELLANT

Vs

State Of Punjab And Others RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2018) 12 P&H CK 0226

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Harpal Singh, Peeush Gagneja, Mehardeep Singh, Tarun Seth, Sumit Jain

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present case, the petitioners are challenging the orders (P-2 to P-6) by which their request for the grant of interest on the delayed payments has been declined.

As per the averments made in the present writ petition, the petitioners retired from service of Municipal Council, Abohar. Petitioner No.1 retired on 31.10.2012 from the post of Inspector, petitioner No.2 retired as Inspector on 31.05.2012, husband of petitioner No.3 died on 21.03.2009 while working on the post of Safai Sewak, petitioner No.4 retired as a Clerk on 30.04.2009 and petitioner No.5 retired as a Chowkidar on 31.07.2013.

Counsel for the petitioners contends that the payments of retiral benefits were released to the petitioners after undue delay which has not been explained by the respondents.

As per the chart given, though petitioner No.1 was entitled for the release of the benefits immediately on the retirement or within a reasonable period thereafter, but actual payments were released to him starting from 20.08.2013 till 25.11.2013 and there was a delay of approximately one year. Similarly, the case in respect of petitioner No.2, who retired on 31.05.2012, the payments were released in May, 2013, after a period of one year. In respect of petitioner No.3, whose husband had died on 21.03.2009 while in service, the payments were released to her after a period of five years on 22.03.2013. In respect of petitioner No.4, who retired on 30.04.2009, but the payments were released only on 16.03.2010, after a delay of 11 months. In respect of petitioner No.5, who retired on 30.07.2013, the payments were released only in January, 2014 after a delay of six months.

Petitioners filed a writ petition i.e. CWP No.10525 of 2014 before this Court seeking the benefits of interest, which writ petition was disposed of by this Court on 27.05.2014 with a direction to the respondents to decide the representation.

While deciding the said writ petition, the respondents have passed an order on 19.08.2014 rejecting the claim of the petitioners for the grant of interest on the ground that there is no order by this Court to grant the same and the petitioners have already been paid all their retiral benefits.

These orders attached as Annexures P-2 to P-6 have been impugned in the present petition.

In the reply, the respondents have not given any justification for delay in releasing of the retiral benefits in respect of petitioners No.1, 2, 4 and 5. Further, husband of petitioner No.3 died on 21.03.2009, whereas the actual benefits were released to her only on 22.03.2013, after a period of four years. No explanation has been given in this regard as well. The only reason cited for not paying the amount is the financial crisis.

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

The only objection which has been taken by the respondents to deny the interest on the delayed payments is the weak financial status of the Municipal Council. No record has been produced, except a bald statement that the financial status of the respondents-Council was weak so as to not to make the retiral benefits payments to its employees. In the absence of any data, the statement cannot be taken on the face of it.

Even otherwise, a Division Bench of this Court in Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, 2005(4) S.C.T. 438, has already 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.

Keeping in view above, as there is a delay, a Full Bench of this Court in A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468 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."

Keeping in view 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 three months from the date of receipt of a certified copy of this order and the actual payment shall be released to the petitioners one month thereafter.