(2011) 08 P&H CK 0232

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 23315 of 2010

Subhash Chander Lekhi and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2013) 1 SLJ 146

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : G.S. Attariwala,A.A.G., Punjab, for the Appellant; Sameer Sachdeva, Advocate for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Daya Chaudhary , J.—This petition has been filed by the petitioners for issuing directions to the respondents to release the arrears of balance amount of gratuity and additional amount of leave encashment due to them on account of revision of pay scale w.e.f. 1.1.2006 and also the arrears towards salary on account of revision of pay scales w.e.f. 1.1.2006 till the date of their retirement as well as interest on the consequential benefits. The petitioners were working with respondent-College and joined their services during the period w.e.f. 1970 to 1976. Respondent-College has been receiving grant-in-aid from the State Government under the grant-in-aid scheme and all the petitioners were working against the post governed under that scheme. On their retirement they received an amount of Rs. 3,50,000/- each as gratuity as per then existing pay scales. The State of Punjab implemented the recommendations of Fifth Punjab Pay Commission regarding pension and other retiral benefits for those employees who retired on or after 1.1.2006 vide circular dated 17.8.2009. In September, 2009 again the pay-scales of teachers and equivalent cadres were revised by the State Government of the employees working in Universities and Colleges w.e.f. 1.1.2006 vide notification dated 2.9.2009. The petitioners were entitled for the benefits provided under Circular dated 17.8.2009 as well as notification dated

2.9.2009. A letter was written by the Punjab University to all Principals of Non-Government Colleges affiliated to it including the respondent-College with regard to decision of the State Government of increasing the maximum limit of retirement-cum-death gratuity from Rs. 3.5 lacs to Rs. 10 lacs vide letter dated 23.9.2009. The University vide its letter dated 14.10.2009 again clarified the said increase by stating that same is applicable in the case of teaching as well as non-teaching employees of Non-Government affiliated Colleges of Punjab University w.e.f. 1.1.2006. Representations were sent by the petitioners to respondent-College for release of balance amount of gratuity of Rs. 6.50 lacs but no reply of the representation has been given by the respondent-College.

2. Learned Counsel for the petitioner submits that stand of the respondent-College as mentioned in the letter dated 22.7.2010 was that the decision about the payment of arrears of revised gratuity was with regard to those employees who retired between 1.1.2006 and 31.7.2009. Learned Counsel further submits that subsequently in August, 2010, the Punjab Government vide letter dated 13.8.2010 conveyed its decision that the arrears of gratuity to those employees who retired between 1.1.2006 and 31.7.2009 be paid immediately but inspite of issuance of said letter, the petitioners were paid nothing. Learned Counsel also submits that subsequently also the petitioners filed representations to the respondent-College but the same has not been decided. It is also the argument of learned Counsel for the petitioners that similarly situated employees also approached this Court by way of filing C.W.P. No. 8774 of 2004 with regard to same relief and the same was allowed vide order dated 6.7.2010 in view of Division Bench judgment of this Court i Hindu College Vs. N.D. Malhotra and Another, The interest at the rate of 9% per annum was also allowed from the date when it became due till the date payment is made. The relevant portion of the judgment reads as under:--

Since there is no dispute regarding the admissibility of benefit of Contributory Provident Fund which is to be calculated at the rate of 10% of the salary which has been termed to include pay and all allowances except the house rent allowance in terms of para 12.3 of the Punjab University Calender Chapter VIII (E-Vol. 1, the Court is of the opinion that the writ petition deserves to succeed. The Court is also of the opinion that respondent No. 4 could not have withheld such a benefit from the petitioners on the ground of paucity of funds. It therefore directs respondent No. 4 to release the amount due to the petitioners by calculating it in accordance with terms of Rule 12.3 para 2 forthwith and release these benefits to the petitioners within a period of two months from today. The respondent-State of Punjab shall reimburse this amount after such a payment has been made within a period of three months from the time when a claim for such a reimbursement is lodged with them. There shall no deviation in making such payments by the respondents whether it is in the shape of payment to the petitioners in the first instance by respondent No. 4 or in the shape of reimbursement by respondents No. 1 to 4. The amount shall be released to the petitioners alongwith interest at the rate of 9% from the date when it became due. The other benefits such as leave encashment and gratuity which were released to the petitioners belatedly shall also carry interest at the rate of 9% p.a. from the date when they were due till the date when the payment was made. The liability to pay the same would be of respondent No. 4.

3. Learned Counsel for respondents No. 4 and 5 opposed the claim of the petitioners only on the ground that the payment of amount was to be made by the State Government and the Management cannot be forced to make payment at the first instance.

4. On the other hand, learned Counsel for the State submits that payment is to be made by the College at the first instance and the respondent-College is entitled for reimbursement of the amount to be paid to the employees. Reliance has been placed on the judgment titled as Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others,

5. Heard the arguments advanced by learned Counsel for the parties and have also gone through the other documents available on record. It is an admitted case by both the parties that the petitioners were entitled for enhanced amount of gratuity. Now the question for consideration before this Court is whether the amount is to be paid to the employees firstly by the College or by the State Government. As per stand of the respondent-College, the grant-in-aid is to be released firstly then the payment is to be made to the employees, whereas, as per stand of the State, the respondent-College is to make payment of the amount first and that amount is to be reimbursed later.

6. It appears from the stand taken by the respondent-College as well as respondent-State that the petitioners have been harassed unnecessarily and the amount has not been paid to them for which they are entitled. In view of the submissions made by learned Counsel for the parties and in view of the judgment of this Court in C.W.P. No. 8774 of 2004, I am of the opinion that respondent-College is the principal employer and it is the duty of the principal employer to make payment of the benefits to the employees and then get the same reimbursed from the state. Accordingly, the writ petition deserves to be allowed. Respondent-College is directed to release the arrears of the benefit to the petitioners after calculation as per their entitlement within a period of two months from the date of receipt of copy of the order. The State of Punjab is also directed to reimburse the amount after its payment to the employees within a period of three months thereafter. The petitions are also entitled for interest at the rate of 9% per annum from the date the amount of leave encashment and gratuity became due till the payment is made.

