(2021) 02 P&H CK 0414

In the Punjab And Haryana At Chandigarh

Case No : EA-23-2020 in Civil Writ Petition No. 12146 Of 2016

Tara Chand Tusamer APPELLANT

Vs

State Of Haryana & Another RESPONDENT

Date of Decision : 25-02-2021

Acts Referred:
Civil Services Rules Vol-II, 2016 — Rule 2.2, 11, 11.1(1)

Citation : (2021) 02 P&H CK 0414

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Raman B.Garg, Ashish Yadav

Final Decision : Allowed

Judgement

G.S. Sandhawalia , J. (Oral)

Execution Application has been filed for enforcement of the order dated 22.05.2019 (Annexure A-1) whereby the petitioner was held entitled for the

benefit of interest @ 9% per annum on the retiral dues from 01.03.2013. The calculation of the amount of interest was to be done within a period of

two months and released to the petitioner one month thereafter.

It is not disputed that interest element of Rs.1,50,876/- has already been paid to the petitioner vide order dated 26.12.2019 (Annexure R-1). The same

is on account of delay in release of the Leave Encashment and Gratuity which was paid to the petitioner on 11.03.2014 and 05.12.2014 since the

petitioner had retired on 28.02.2013.

The claim of the petitioner is for interest on account of the element of commutation of pension which was released to him on 05.12.2014, which has

not been paid to him. A perusal of the order dated 15.06.2020 (Annexure A-2) would go on to show that the reason to deny interest on the said

amount is that commutation is just like a loan given to the retired employee on the basis of 40% of the commutation balance and the same is to be

deducted from the pension over a period of prescribed years. Respondents have also filed reply placing reliance upon Rule 11.1(1) of the Civil

Services Rules Vol-II, 2016 to justify the denial of interest on the said amount of Rs.4,75,741/-. The said rule reads as under:

â??A Government employee,on superannuation/premature retirement, shall be entitled to commute for a lump sum payment a fraction not exceeding

40% (Fourty percent) of his pension. TheÂ fraction of pension so commuted on retirement i.e. superannuation/premature retirement shall, however,

be restored to him on completion of 15 years from the date of retirement or 15 years from the actual receipt of commutation value, whichever is

later).

Provided further that a Government employee against whom judicial or a departmental proceeding has been instituted or a pensioner against whom

any such proceeding has been instituted or continued under rule 2.2 (b) ibid, shall not be permitted to commute any part of his pension during the

pendency of such proceedings.â??

State Counsel has also pointed out that the contempt proceedings in COCP-3982-2019 were dropped on 23.07.2020 and therefore, the interest element

is not liable to be paid.

However, this Court is of the opinion that the contempt proceedings are only for enforcement of the order and the Co-ordinate Bench found that there

was a reason as such for refusal and therefore, did not find it proper to continue the contempt proceedings and liberty had been given to challenge the

correctness of the calculations, if so advised. Resultantly, the present execution application has been filed.

Coming to the merits of the case, this Court is of the opinion that in the judgment dated 22.05.2019 (Annexure A-1) specific finding was recorded that

three charge-sheets had been dropped against the petitioner on 25.07.2013, 18.03.2014 and 19.09.2014, which was the reason for holding up of release

of the retiral dues. Thereafter, finding was recorded that once the allegations have been found to be incorrect, there was no reason to withhold the interest element, while placing reliance upon the judgment of the Full Bench of this Court in A.S.Randhawa Vs. State of Punjab 1997 (3) SCT 468

and J.S.Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355. Relevant portion of the judgment reads as under:

â??Petitioner was issued three charge-sheets alleging various allegations on the last date of his service career i.e. 28.2.2013. After the process of

enquiry, respondents found that the allegations were incorrect and charge-sheets were dropped. Once, the allegations alleged against the petitioner

were found to be incorrect and could not be substantiated by the respondents, the pendency of the charge-sheets cannot cause prejudice to the

petitioner so as to utilize the amount for which he was entitled for immediately upon his retirement. In case the prayer of the respondents is to be

accepted, then, the petitioner will be prejudiced without there being any fault on his part. Furthermore, as the respondents made the allegations which

they failed to substantiate, the respondents should pay for the harassment and also for the fact that the petitioner was unable to utilize his benefits after

his retirement for a period of approximately 1 Â½ years.â??

It is on such account the petitioner has been held entitled for the interest element. The proviso of Rule 11, thus, would not help the respondents, in any

manner and would have only benefitted them, if the departmental proceedings had not been decided in favour of the petitioner. Similarly, the Learned

Single Judge would also have not granted benefit of interest as the principle of the Full Bench in A.S.Randhawa (supra) is that if there is no justifiable

explanation of delay on the part of the employer, the retiree must be compensated with interest on the amount paid late to him. Once the proceedings

have been dropped by the respondents themselves, the petitioner is entitled for interest from 01.03.2013 and denial of the same @ 9% interest is not

justified.

Accordingly, the present application is allowed and petitioner is held entitled for the benefit of the interest element from 01.03.2013 @ 9% per annum

on Rs.4,75,741/-, the commutation amount till 05.12.2014, till its payment. Needful be done within a period of 2 months from the receipt of certified

copy of this order.

