
(2019) 05 P&H CK 0263

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22712 Of 2016

Vinod Kumari Sharma

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 28-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2019) 05 P&H CK 0263

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Yogesh Kumar Aneja, Mehardeep Singh, Athar Ahmed

Final Decision : Allowed

Judgement

In the present writ petition, the grievance which is being raised by the petitioner is that she retired on attaining the age of superannuation while working as Inspector from Municipal Council, Abohar on 31.10.2011 and all the benefits for which she was entitled upon her retirement, were not released immediately and the same were delayed by the respondents without any valid justification and the last amount of Rs.4 lacs was paid to the petitioner in March 2016, which is approximately 5 years after her retirement and, therefore, petitioner is entitled for interest on the said delayed payments keeping in view the judgment of the Full Bench of this Court in A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468.

The facts mentioned in the writ petition are that petitioner while working as Inspector in Municipal Council, Abohar, retired on 31.10.2011.

After the retirement, out of the total amount, a sum of Rs.6,76,000/- was released to her but the remaining amount under the heading of gratuity and leave encashment was not paid to her immediately. As the amount was not being paid to the petitioner, she approached this Court by filing CWP No. 20854 of 2015 seeking the release of all the pensionary benefits and the said writ petition was disposed of by this Court by giving a direction to the respondents to release the

benefits for which the petitioner was entitled after her retirement by passing appropriate speaking order.

In pursuance to the direction given by this Court, respondents passed an order on 12.01.2016 (Annexure P-1) whereby, respondents admitted that due to the paucity of the funds, all the benefits could not be released to the petitioner and even on the date of passing of the order i.e. 12.01.2016, a sum of approximately Rs.5 lacs was still due to the petitioner. In the order, it was mentioned that the gratuity amount was released to the petitioner on two occasions i.e. one lac on 21.11.2012 and 3 lacs on 08.07.2014 and still a balance of Rs.1,65,719/- was due to be paid to the petitioner. Leave encashment amounting to Rs.3,42,860/- was still not paid. By the order dated 12.01.2016 (Annexure P-1), respondent-Municipal Council decided that the amount, which is still pending towards the petitioner as retiral benefits, will be paid in six monthly installments.

Learned counsel for the petitioner argues that all the dues of the petitioner were released on 14.03.2016 by the respondents i.e. approximately after a period of 5 years of her retirement and, therefore, petitioner is entitled for interest on the said delayed payments.

Upon notice of motion, reply has been filed by the respondents and the factum that all the payments for which the petitioner was entitled, upon her retirement in the year 2011, were not released to her immediately, has been admitted. The justification which has come forward from the respondents is that due to the financial instability, the payments could not be made to the petitioner after her retirement and, therefore, justification given by the respondents in the delayed release of the pensionary benefits is financial constraints, which according to counsel for respondent No. 4 is a valid justification for not releasing the benefits. In respect of the claim of interest, counsel for respondent No. 4 states that once the respondent-Council was in financial difficulty, that was a valid justification to deny the petitioner the interest on the delayed release of the payments.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

A bare perusal of the above facts would show that petitioner was not released her benefits immediately after her retirement in October, 2011 and the same were only released in installments upto 14.03.2016. The reason assigned for the same by the respondents is the financial constraints. This aspect has already been considered by the Division Bench of this Court in Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, 2005(3) PLR 580, wherein Division Bench of this Court has already held that financial difficulty is not a valid ground to withhold the pensionary benefits of an employee as the only source of livelihood for a retired employee is the benefit, which he/she receives after his/her retirement in order to live a dignified life. The ground so given by the respondent in the present case is not a valid ground keeping in view the settled principle of law as mentioned above. The relevant portion of the said

judgment 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, medical care and shelter. These are basic human rights known to any civilised society.

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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 4 of 7 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....."

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 Wadhwa 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 are 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."

We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it."

As the reason, which has been given by the respondents for withholding the pensionary benefits, is not a valid justification, the case of the petitioner will be covered for the grant of interest keeping in view the decision of the Full Bench of this Court in A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468, wherein it has been held that where there is no valid justification to withhold the pensionary benefits, employee will be entitled for interest. The relevant paragraph of the said judgment is as under :-

"Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of the money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on

the date of his retirement."

Not only this, a Coordinate Bench of this Court in the case of J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355, has held that where an amount for which an employee was entitled for after his/her retirement and has been withheld and used by the respondents, the employee will be entitled for interest. The relevant paragraph of the judgment reads 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."

The case of the petitioner is squarely covered by the above said judgments in her favour for the grant of interest and the petitioner is held entitled for interest @ 9% per annum from the date, the amount became due i.e. 01.11.2011 till the same are released in her favour. Let calculation of the interest be done by the respondents within a period of two months from the receipt of certified copy of this order and the amount so calculated by the respondents, shall be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.