



2024:PHHC:134069



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision : 14.10.2024

Tilok Kumar

.....Petitioner

V/S

The Punjab State Cooperative Supply & Marketing
Federation Limited

....Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Shiv Kumar, Advocate for the petitioner.

Mr. Rishabh Gupta, Advocate for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India, seeking a writ in the nature of mandamus, directing the respondents to release the interest @ 18% per annum on the delayed payment of retiral dues of the petitioner and to consider the case of the petitioner for promotion to the post of Senior Branch Officer w.e.f. the date his juniors were promoted.

2. Briefly stated, the facts of the case are that the petitioner joined the Punjab State Cooperative Supply and Marketing Federation Limited (hereinafter referred to as 'Markfed') as Field Sub Inspector on 10.12.1975. Thereafter, he was promoted as Field Officer and retired as such on attaining the age of superannuation on 30.06.2012 after rendering service of more than 36 years and 06 months. While the petitioner was in service, various persons junior to him were promoted



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w.e.f. 11.09.2008 vide order dated 19.09.2008 (Annexure P-9), however, the case of the petitioner for promotion was not considered due to pendency of charge-sheets dated 18.07.2003 and 20.06.2008 and also due to registration of FIR No.71 dated 31.07.2007. The grievance of the petitioner in the present writ petition is that since the charge-sheet dated 18.07.2003 has been withdrawn vide order dated 20.12.2012; charge-sheet dated 20.06.2008 has been dropped vide order dated 09.03.2020 and in the criminal case arising out of FIR No.71 dated 31.07.2007, he has been acquitted vide judgment dated 17.05.2014 passed by the Court of learned Judicial Magistrate First Class, Rajpura, therefore, the petitioner is entitled for notional promotion to the post of Senior Branch Officer and since the retiral dues of the petitioner have been released in the year 2020, therefore, he is also entitled for interest on the delayed payment of retiral dues.

3. On issuance of notice of motion, written statement on behalf of the respondent-Markfed has been filed through Sh. Amandeep Singh, Law Officer, Markfed, Punjab, wherein it has been stated as under :-

“xx xx xx xx xx

5. *That the contents of Para No.5 of the writ petition are a matter of record. It is submitted here that Sh. Tilok Kumar, Field Officer (Code No.1558) retired from Markfed service on 30.06.2012. His retiral dues were not released at the relevant time as he was facing following charge sheets/criminal case :-*

Sr. No.	Details of Charge Sheets/Criminal Case
1.	<i>Charge sheeted vide memo No.EST/EAI-1/2003/2377 dated 18.07.2003 for causing loss of Rs.68,64,849/- as</i>



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	<p><i>per miller failed to deliver 7033.49.20 quintals of rice to FCI in Markfed account.</i></p> <p><i>Status : Charge sheet withdrawn vide order No.EOI/EAI-4/2012/141 dated 20.12.2012.</i></p>
2.	<p><i>Charge sheeted vide memo No.EST/EAI-6/08/1245 dated 20.06.2008 on account of guilty of committing fraud and misappropriation of the old/damaged fertilizer stocks and tarnishing the image of Marfked.</i></p> <p><i>Status : Charge sheet dropped vide order No.EOI/EAI-1/2020/43 dated 09.03.2020.</i></p>
3.	<p><i>A criminal case was registered with PS Banur vide FIR No.71 dated 31.07.2007.</i></p> <p><i>Status : The accused have been acquitted from the charges framed against them by giving them benefit of doubt vide orders dated 17.05.2014 passed by Smt. Daljit Kaur, PCS, Judl. Magistrate 1st Class, Rajpura.</i></p>

xx xx xx xx xx

9. That the contents of Para No.9 of the writ petition are admitted to the extent that the retiral dues i.e. amount of gratuity, leave encashment, security and all other amounts which were due to the petitioner were granted to him vide order dated 04.05.2020. The answering respondent has released the retiral benefits of the petitioner immediately after the decision of the charge sheet on 04.05.2020 and the retiral benefits were released as follows:-

Sr. No.	Payment made on account of	Amount (in Rs.)	Dated
1.	Gratuity and Leave Encashment	11,00,433/-	11.05.2020
2.	Withheld payment of Gratuity and Leave Encashment	1,15,399/-	02.07.2020
3.	Increment Arrears	9,703/-	04.06.2020
4.	Suspension Arrears	36,077/-	09.07.2020

xx xx xx xx xx''

4. Learned counsel for the petitioner submits that the persons junior to the petitioner were promoted vide order dated 19.09.2008 w.e.f. 11.09.2008 and the claim of the petitioner for promotion was not

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considered only due to pendency of two charge-sheets and a criminal case. Since both the charge-sheets have been withdrawn/dropped vide orders dated 20.12.2012 and 09.03.2020 and in the criminal case, the petitioner already stood acquitted vide judgment dated 17.05.2014 passed by learned Judicial Magistrate First Class, Rajpura, therefore, the petitioner is entitled for notional promotion to the post of Senior Branch Officer w.e.f. the date persons junior to him have been promoted. He further submits that the petitioner is also entitled for interest on the delayed payment of retiral dues as the same have been released after a period of 08 years from the date of retirement.

5. Per contra, learned counsel for the respondent submits that since two charge-sheets were pending against the petitioner and he was also involved in a criminal case, while he was in service, therefore, his case could not be considered for promotion and on dropping of the charge-sheets and acquittal in the criminal case, all his retiral dues have been released immediately and since the petitioner has already retired from service in 2012, therefore, his case has not been considered for promotion thereafter. Therefore, the petitioner is not entitled for any relief as claimed in the present petition.

6. I have heard learned counsel for the parties and have gone through the relevant documents.

7. Admittedly, the petitioner has retired from service on attaining the age of superannuation on 30.06.2012 and during his service various persons junior to him were promoted vide order dated 19.09.2008 w.e.f. 11.09.2008 and since two charge-sheets and one



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criminal case were pending against the petitioner, his case for promotion was not considered. Having been acquitted in the criminal case vide judgment dated 17.05.2014 passed by learned Judicial Magistrate First Class, Rajpura and the charge-sheets having been withdrawn/dropped vide orders dated 20.12.2012 and 09.03.2020, the claim of the petitioner for notional promotion to the post of Senior Branch Officer was required to be considered by the respondent-Markfed.

8. The Hon'ble Supreme Court in ***C.O. Arumurgam and others Vs. The State of Tamil Nadu and others : 1990 (1) SLR 288***, has held as under:-

“5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charges have been framed in the disciplinary proceedings or chargesheet has been filed in the criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their Juniors were promoted.”

9. The Hon'ble Supreme Court in yet another case in ***State of Punjab and others Vs. Chaman Lal Goyal : (1995)2 SCC 570***, has held as under:-

*“12. The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in **A.R. Antulay v. R.S.Nayak & Anr. (1992 (1) S.C.C.225)**. Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In*



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paragraph 86 of the judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of Justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case."

10. In ***Union of India and Others V. Sangram Keshari Nayak : 2007 (6) SCC 704***, the Hon'ble Supreme Court has noticed as under:-

"7. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor....."

8. xx xx xx xx xx

9. xx xx xx xx xx

"Cases where 'Sealed Cover Procedure' applicable.-

At the time of consideration of the cases of government servants for promotion, details under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

(i) Government servants under suspension;

(ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;

(iii) Government servants in respect of whom prosecution for a criminal charge is pending or a sanction for prosecution



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has been issued or a decision has been taken to accord sanction for prosecution;

(iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise.”

(Emphasis supplied)

11. So far as the claim of the petitioner for grant of interest on the delayed payment of retiral dues is concerned, since the charge-sheets pending against the petitioner have been withdrawn/dropped and in the criminal case, the petitioner has been acquitted, therefore he is also held entitled for interest on the delayed payment of retiral dues as there is a considerable delay in released the same.

12. A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others : 1997(3) S.C.T. 468*** has held that where there is an inordinate delay in releasing benefits and the delay is not justifiable, employee will be entitled for interest. The relevant paragraph of 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 his 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.”



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13. Apart from this, in *J.S. Cheema Vs. State of Haryana : 2014(13) RCR (Civil) 355* this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of the said judgment 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.”

14. In view of the above factual position and settled principles of law, the present petition is allowed and the respondent-Markfed is directed to consider the case of the petitioner for notional promotion to the post of Senior Branch Officer w.e.f. 11.09.2008 with all consequential benefits and to pay interest @ 6% per annum to the petitioner, on the delayed payment of retiral dues, w.e.f. 01.10.2012 (i.e. after three months of his retirement) till the actual date of payment, within a period of 03 months from the date of receipt of certified copy of this order.

14.10.2024*kothiyal***(NAMIT KUMAR)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No