

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CWP No. : 4519/2009

Decided on:29.5.2013

Tej Singh Thakur.

...Petitioner.

Versus

State of Himachal Pradesh and others.

...Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? Yes

For the Petitioner : Mr. Atul Jhingan, Advocate.

For the Respondents : Mr. Pramod Thakur and Ms. Meenakshi Sharma, Addl. A.Gs with Mr. Neeraj K. Sharma, Dy. A.G. for respondents No. 1 and 2.

None for respondent No.3.

Justice Rajiv Sharma, Judge (oral).

Petitioner's father Sh. Dola Ram remained posted as Principal in Government Senior Secondary School, Rohru with effect from 14.9.1992 to 31.3.1994. He superannuated on 31.3.1994. However, the DCRG was not paid. Petitioner was called upon to submit the legal heir certificate alongwith documents. The legal heir certificate alongwith documents were submitted by the petitioner. The DCRG has finally been released to the petitioner on 11.12.2008. However, the respondents have

not paid any interest on the amount of DCRG. The only ground assigned for non-payment of the amount of DCRG is that the clerk of the school had embezzled the amount. Petitioner's father was not involved in the embezzlement of the amount. The DCRG ought to have been released to the petitioner's father immediately after his retirement on 31.3.1994. Petitioner is entitled to interest under rule 68 of the Central Civil Services (Pension) Rules, 1972 read with instruction No.II appended thereto.

2. Their Lordships of the Hon'ble Supreme Court in ***Union of India*** versus ***Justice S.S. Sandhawalia (Retd.) and others***, (1994) 2 SCC 240 have held that once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the court. Their Lordships have held as under:

"3. From the foregoing discussion it becomes clear that the Union of India contested the writ petition in the High Court only in regard to the entitlement of the cash equivalent of the allowances including the benefit conferred by S. 22B of the 1954 Act and the cash benefit claimed for failure of the State of Bihar to provide the original petitioner with a staff car. The Union Government had conceded the demand for the grant of rupees one lakh by way of death-cum-retirement gratuity and had paid the balance of Rs. 51,000 to the original petitioner. Since this payment was delayed by a year or so, the original petitioner claimed interest on the balance amount at 12% per annum, which has been rightly allowed by the High Court. Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must

pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year. We uphold this part of the High Court's order.”

3. Their Lordships of the Hon'ble Supreme Court in ***R. Kapur*** versus ***Director of Inspection (Painting and Publication) Income Tax and another***, (1994) 6 SCC 589 have awarded interest @ 18% per annum instead of 10% interest awarded by the Tribunal. Their Lordships have held as under:

“11. The tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1/6/1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the Civil is allowed. However, there shall be no order as to costs.”

4. In the instant case also, the right to get the DCRG was not dependent on the outcome of the proceedings initiated against the Clerk where the petitioner's father was working as Principal.

5. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed.

Respondents No.1 and 2 are directed to pay the interest to the petitioner on the amount of DCRG, as prescribed under rule 68 of the Central Civil Services (Pension) Rules, 1972 read with instruction No.II appended thereto, within a period of four weeks from today, failing which, the respondents shall be liable to pay interest @ 18% per annum, till its payment. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

**(Justice Rajiv Sharma),
Judge.**

29.5.2013

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