(2023) 10 SHI CK 0068

In the High Court Of Himachal Pradesh

Case No : Execution Petition (T) No. 1 Of 2018

Asha Sisodia And Another APPELLANT

Vs

State Of H.P. And Another RESPONDENT

Date of Decision : 30-10-2023

Acts Referred:

Citation : (2023) 10 SHI CK 0068

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : M.L. Sharma, Anup Rattan, Rakesh Dhaulta, Pranay Pratap Singh, Sidharth Jalta, Arsh Rattan, Tara Chand Chauhan

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. The original writ petitioner despite remaining successful in his legal pursuit right till the Hon’ble Apex Court, could not reap the fruits of the judgment passed in his favour on 19.03.2012. After his demise, his torch of instant execution petition was carried forward by his legal heirs (wife & son). Pursuant to innumerable orders passed in this petition, the respondents have now released all benefits due and admissible under the judgment. The surviving claim of the petitioners in the instant Execution Petition is regarding the interest on account of delayed compliance of the judgment and consequently delayed payment of monetary benefits flowing under that judgment.

2. We may summarize the events leading to petitioners’ claim of interest :-

2(i) The original petitioner was appointed as Law Officer in the office of Advocate General on 04.08.1992. He joined as such on 06.08.1992 and continued to discharge his duties till his superannuation on 30.04.2008.

2(ii) CWP(T) No. 2 of 2011 instituted by the petitioner was allowed on 19.03.2012 by the learned Single Judge of this Court holding that the petitioner shall be deemed to have been appointed on regular basis from date of his initial appointment i.e. 06.08.1992 with further directions that all consequential benefits be paid to him within a period of 10 weeks.

2(iii) Letters Patent Appeal No.454 of 2012 preferred by the State against the aforesaid judgment was dismissed by the Division Bench on 13.03.2013. Special Leave to Appeal (C) No.3285 of 2014 filed by the State was dismissed by the Hon'ble Supreme Court on 19.01.2015 leaving questions of law open.

2(v) In February 2015, petitioner represented to the respondents seeking implementation of the judgment dated 19.03.2012. The representation was followed by further reminders/representations seeking compliance of the judgment. Hearing no response from the respondents, petitioner was constrained to institute this Execution Petition.

2(v) The order dated 26.03.2018 passed in this Execution Petition inter-alia records the assurance given by the learned Additional Advocate General for the respondents-State that the judgment in question would be implemented by the next date of hearing. Judgment, however, was not implemented. Umpteen number of orders were passed in this Execution Petition from time to time for getting the judgment implemented from the respondents. The respondents released some monetary benefits due and admissible to the petitioner in terms of the judgment in piece-meal on different dates, that too pursuant to several orders passed by the Court in the instant execution petition.

2(vi) The original petitioner died during the pendency of the Execution Petition without reaping the fruits flowing from the judgment during his life-time. His legal representatives viz. his wife and son were brought on record of the case on 04.11.2020.

2(vii) The orders passed in this execution petition and pleadings of the parties are stark pointers to the fact that the judgment was not implemented by the respondents in time and monetary benefits due & admissible to the petitioners (legal heirs of original petitioner) under various heads, be it arrears of pay, pension, revised pay arrears, revised pension, gratuity, revised gratuity, leave encashment etc. all were released in piece-meal manner. So much so, that even the pay of the petitioner on account of his retrospective promotion to the post of Deputy Advocate General in the given pay scale of Rs. 37,400-67300 + 8600 G.P. (minimum of initial start of pay Rs. 37400 + 8600 G.P. = 46,000/-) was incorrectly calculated by the respondents and fixed at Rs. 41,710 instead of Rs. 46,000. The petitioners (legal heirs of original petitioner) had to litigate for the monetary benefits due to them under the judgment.

3. The petitioners on 19.08.2023 had furnished following statement of payments made to them by the office of Advocate General/District Treasury Officer alongwith the dates of such payments :-

"Payment made by the Office of Advocate General

Sr. No.

Date of

Payment

Nature of Payment

Amount Rs.

1.

29-10-2015

Salary arrears

5,27,537-00

2.

21-12-2015

DCRG

2,02,849-00

3.

01-03-2016

Leave Encashment

2,61,740-00

4.

24-07-2019

Gratuity

1,59,193-00

5.

08-07-2020

Difference of Leave Encashment

2,05,410-.00

6.

19-06-2023

Salary Arrears

41,486-00

7.

19-06-2023

Difference Leave Encashment

48,050-00

Payment made by the District Treasury Office, Shimla

Sr. No.

Date of

Payment

Nature of Payment

Amount Rs.

1.

01-01-2015

Pension Arrears

15,12,310-00

2.

01-01-2015

Gratuity

2,37,556-00

3.

01-08-2019

Pension Arrears

22,02,699-00

4.

01-08-2019

Gratuity Arrears

1,86,422-00

5.

-

Arrears of Revised Pension as per order

dated 19.07.2023

Yet to be paid by DTO Shimla

6.

-

Arrears of Revised

Gratuity as per order dated 19.07.2023

Yet to be paid by DTO Shimla

”

On 16.10.2023, the respondents placed on record following tabulation provided by the District Treasury Officer Shimla on account of arrears paid to the petitioners :-

“

Sr.

No.

Period of Arrear Paid

Amount

Date of Payment

1.

01/05/2008 to 30/09/2009

Rs. 43,606/-

11-10-2023

2.

01/10/2009 to 31/12/2015

0101/2022 to 31/08/2023

Rs. 3,53,114/-

(Income Tax Rs. 35,200/-

was deducted out of it)

29-09-2023

3.

01/01/2016 to 31/01/2022

Rs. 50,000/-

01-10-2022

Total Arrear Paid (Statement Enclosed)

Rs. 4,46,720/-

"

4. From the case record, it is writ large that the judgment dated 19.03.2012, which was directed to be implemented within a period of 10 weeks, was not implemented in letter & spirit by the respondents for over a period of 10 years. The petitioners have now claimed interest on account of delayed payment of monetary benefits given to them flowing from the judgment. We have heard both sides. Learned Advocate General's only defence is that the respondents had assailed the aforesaid judgment first before the Division Bench and thereafter before the Apex Court and, therefore, the interest is not payable to the petitioners.

Even if the plea of learned Advocate General is to be accepted, then also the SLP preferred by the State was dismissed by the Apex Court on 19.01.2015. The judgment dated 19.03.2012 attained finality on 19.01.2015. The respondents still did not implement the judgment. Firstly the original writ petitioner and thereafter his legal heirs (present petitioners) were denied their legitimate dues even after remaining successful in the litigation. There has been culpable delay in disbursement of financial benefits to the petitioners. There had been no lapse either on part of the original writ petitioner or his legal heirs. There was no reason with the respondents to withhold the payable benefits. Even in this Execution Petition, it was only after passing of one order after the other, one adjournment after the another sought by the respondents in a period of about five years, that the respondents have now paid all the monetary benefits due to the petitioners under the judgment. The petitioners are certainly entitled to interest on the monetary benefits flowing to them under the judgment dated 19.03.2012 which were admissible to them on that date at least from the date the aforesaid judgment attained finality i.e. 19.01.2015. For the other financial benefits which became admissible to the petitioners subsequently i.e. pursuant to subsequent revision of pay scale etc., the petitioners are entitled to interest from the date those benefits became due to them in law till the date of release. We, therefore, dispose of this Execution Petition by directing the respondents as under :-

(a) The respondents are directed to pay interest @ 6% per annum to the petitioners on the monetary benefits which were due and admissible to them on the date of pronouncement of judgment dated 19.03.2012 w.e.f. 19.01.2015 till the date of payment.

(b) The respondents are further directed to pay interest @ 6% per annum on the remaining monetary benefits released to the petitioners in compliance to the judgment dated 19.03.2012 w.e.f. the date they actually fell due till the date of payment.

The interest, as aforesaid under both the components be paid to the petitioners within a period of four weeks from today, failing which the rate of interest under both the above components (a) & (b) shall become 7% per annum.

The pending applications, if any, also stand disposed of.