

(1988) 12 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6085 of 1984

Bal Krishna Malik

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2(3)
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (1989) 1 AWC 424

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : K.C. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This petition is directed against the order dated 10-11-1983 passed by the U.P. Public Services Tribunal No. 1 Lucknow, rejecting a claim petition filed by the Petitioner for award of interest.

2. The relevant facts lie within a narrow compass. The Petitioner was dismissed from service. Aggrieved by that he filed a writ petition in this Court which was allowed by an order dated 31-10-75 as follows:

For the reasons given above, this writ petition is allowed with costs. The writ of certiorari shall issue quashing the impugned order dated 5-1-71 (annexure 27) and order dated 4-1-74 (annexure 29). The Petitioner shall be deemed to be in continuous service entitled to all benefits and the privileges of continuity of service.

Sd. P.N.B. 30-10-1975.

After reinstatement, the Petitioner was compulsorily retired whereupon he filed a claim petition challenging that order u/s 4 of the U.P. Public Services Tribunal Act. The reliefs Claimed in that petition were that the order of compulsory retirement

be declared null and void and that the Petitioner be granted the benefits and privileges of continuity of service. A general relief to the effect that any other suitable order which the Tribunal may deem fit and proper might also be awarded. This claim was disposed of by the Tribunal by its order dated 30-9-76 in the following terms:

The result is that we accept reference and quash the impugned order dated 31-12-75 retiring the Petitioner compulsorily with a declaration that the Petitioner continues in service with rights to full pay and allowances admissible to him.

In the circumstances of the case, we direct the opposite party to pay Rs. 100/- as costs of this reference to the Petitioner

Sd. A.K. Mustary Sd. H.A. Safwi Chairman Member 30-9-76 30-9-76.

3. In pursuance of this order, the Director of Education issued directions for the payment of the arrears of salary and allowances due to the Petitioner since his suspension. It is not disputed that the Petitioner was paid the arrears of salary and other monetary benefits admissible to him under the service rules.

4 Thereafter the present claim petition was filed by the Petitioner u/s 4 of the aforesaid Act asserting that he was entitled to interest on the amount of salary and allowances at the rate of 9.5% and compound interest at the rate of 12.5% in view of the fact that he had been wrongfully deprived of the amounts to which he was subsequently held lawfully entitled as a result of the setting aside of the orders of dismissal and compulsory retirement.

5. The Tribunal has rejected this claim by its order dated 10-11-83 on the ground that a fresh claim for interest is now not admissible, the same not having been pressed at the time when the Petitioner's writ petition and claim petition were allowed.

6. Sri. K.C. Sinha, for the Petitioner, submits that the Tribunal has illegally refused to exercise its jurisdiction in not entertaining the Petitioner's claim for interest. It was urged that the Petitioner was entitled in law to payment of interest in consequence of the Respondents' having wrongfully withheld payment of salary and allowances legitimately earned by him. Learned Counsel contended that the words "entitled to all the benefits and privileges..." in the order dated 30-10-75 are wide enough to include interest also.

7. I am unable to agree. The words "benefits and privileges" in the order dated 30-10-75 mean only such benefits and privileges as are admissible under the service rules and it is not disputed that under the service rules interest on salary was not payable. Further, relief for payment of interest, even if admissible in law, could have been asked for by the Petitioner in the previous writ petition and the claim petition in which he had asked for the substantive reliefs like reinstatement and salary. The relief for interest could have been asked for on the same cause of action on which the substantive relief for re-instatement was prayed for. In my

opinion, a relief to which an aggrieved party may be entitled to but omits to claim it in respect of a cause of action ought not to be entertained in a subsequent petition on the principle embodied in Order 2, Rule 2(3) of the Code of Civil Procedure. It cannot be disputed that the Petitioner could claim the relief for interest and establish his right to receive the same in both the previous petitions in respect of the causes of action on which the same were based. Having omitted to do so he cannot be permitted to ask for the same by a fresh petition. The Tribunal has, therefore, committed no error in rejecting the Petitioner's claim on the ground that the same was not admissible.

8. In the result, the petition fails and is dismissed. But I make no order as to costs.