
(1991) 12 BOM CK 0027
In the Bombay High Court
Case No : Writ Petition No. 603 of 1991

Bhalchandra Chintaman Gadgil

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

All India Services (Leave) Rules, 1955 — Rule 20

Constitution of India, 1950 — Article 226

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 4

Citation : AIR 1992 Bom 431 : (1992) 2 BomCR 503 : (1992) 1 MhLj 171

Hon'ble Judges : P.D. Desai, C.J.;V.P. Tipnis, J

Bench : Division Bench

Advocate : Y.S. Jahagirdar, for the Appellant; R.M. Agarwal, W.S. Devnani and R.D. Soni, Asstt. Govt. Pleader, for the Respondent

Judgement

Tipnis, J.—This petition under Article 226 of the Constitution of India is filed by a retired Judge of this Court seeking directions to the respondents to pay interest at 18 per cent on delayed payment of cash equivalent of leave salary. Respondent No. 1 is the Union of India, respondent No. 2 is the State of Maharashtra, respondent No. 3 is the Accountant General Maharashtra-1, Bombay, and respondents No. 4 and 5 are the Prothonotary & Senior Master and Registrar, respectively, of this Court.

2. The petitioner retired as a Judge of this Court on 2nd November, 1985. On the date of retirement, he had to his credit leave with full allowances -- 4 months and one day (121 days) and leave with half allowance -- 2 years, 2 months and one day. According to the petitioner, under rule 20B of the All India Services (Leave) Rules, 1955, he was entitled to cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement, subject to a maximum of 180 days. The petitioner stated that the Supreme Court, in several judgments, has clearly interpreted the said rule in its application to the Judges of the High Courts and, therefore, there could not be any ambiguity about the matter. In spite of the clear position, by letter dated 4th July, 1986 i.e. after

about seven months of the date of retirement of the petitioner, he received a letter from the Under Secretary to the Government of Maharashtra, Law & Judiciary Department, informing the petitioner that according to the letter dated 19th April, 1984 from the Deputy Secretary, Government of India, Ministry of Law, Justice & Company Affairs, New Delhi, the petitioner is eligible to encash his leave of 4 months and one day. Thereafter, on 14th August, 1986 the petitioner received a cheque for Rs. 25,611.60 towards encashment of leave of four months and one day (121 days). The petitioner pointed out to the State Government that the sanction for encashment of only 121 days was improper and incorrect and he was entitled to encashment of leave upto 180 days. Ultimately, by letter dated 9th May, 1988, the State Government informed the petitioner that the question of implementing the Supreme Court judgment has been taken up with the Union of India and necessary decision would be taken up on conclusion of the consultation and the petitioner would be informed in the matter as soon as the final reply is received from the Government of India. After waiting for a reasonable time, the petitioner wrote a letter dated 24th October, 1989 to the Secretary, Law and Judiciary Department, Government of Maharashtra, again reminding the authorities and demanding proper payment. The petitioner received a reply intimating that information about leave was being called from the Pay & Accounts Office and the decision and appropriate orders would be issued after the information is received. Ultimately, by order dated 11th December, 1989 the claim of the petitioner for encashment of leave salary for a total of 180 days was accepted and it was ordered that after deducting the amount already paid, the balance should be paid to the petitioner. The said communication was not sent to the petitioner, but it was sent to the Prothonotary & Senior Master of this Court. The office of the Prothonotary and Senior Master also did not care to inform the petitioner, but after a long delay, a bill was sent to the petitioner for his signature under a forwarding letter dated 27th July, 1990. The petitioner returned the said bill duly signed to the office of the Prothonotary & Senior Master of this Court and it was received by the Prothonotary on 6th August, 1990. Ultimately, a cheque for Rs. 12,488/- towards encashment of leave for 59 days was credited to the account of the petitioner on 23rd August, 1990. Thus, the petitioner got the encashment of leave for 59 days after nearly five years from the date of his retirement. The petitioner has averred that the aforesaid facts clearly show that the respondents are guilty of culpable negligence in the discharge of their duty, viz., payment of terminal benefits to him. On these basis, the petitioner, as stated earlier, has claimed interest on delayed payment.

3. Affidavit of Section Officer, Law and Judiciary Department, has been filed in reply to the petition on behalf of the State of Maharashtra. So far as the dates and other factual aspects of the matter are concerned, not only there is no dispute, but in fact the same is accepted in the affidavit and apart from the chronological statement of events, there is no explanation whatsoever in the said affidavit as to why the delay was caused. Affidavit of Master (Admn.) on the

Original Side of this Court is also filed on behalf of respondent No. 4. It is stated in the affidavit that due to administrative problem such as transfer of staff in the concerned department, the bill for encashment of the petitioner could not be prepared within a reasonable time which caused delay of about seven months on the part of respondent No. 4 in preparing the bill for encashment of the petitioner. As stated earlier, so far as the State Government is concerned, there is hardly any explanation and so far as the office of the Prothonotary & Senior Master of this Court is concerned, the explanation is not at all satisfactory. So far as the Union of India is concerned, no affidavit-in-reply has been filed. However, we have heard the arguments on behalf of the Union of India through its counsel. We have heard Mr. Jahagirdar, learned counsel for the petitioner, Mr. Devnani for respondents No. 2 to 5 and Mr. Agarwal for respondent No. 1. We have gone through the correspondence attached to the petition.

4. The Supreme Court by its judgment dated 7th February, 1984 in Writ Petn. No. 8991 of 1983 (reported in Shiv Dayal Shrivastava Vs. Union of India(UOI), observed that it in the case of Union of India (UOI) Vs. Gurnam Singh, decided that under the High Court Judges (Conditions of Service) Act, 1954, Judges were entitled to cash equivalent of leave salary in respect of the period of earned leave at their credit on the date of retirement as provided in Rule 20B of the All India Services (Leave) Rules, 1955. The Supreme Court also observed that it is manifest that in view of the enunciation of law by it in the said judgment, the principles governing the cash equivalent of leave would apply not only to the petitioner but also to judges who have already retired or who may retire thereafter, from the date from which this facility was made available to the members of the Central Services holding the rank of Secretary to the Government of India or its equivalent.

5. The apex Court by its judgment dated 30th July, 1987 in Writ Petn. (Civil) No. 764 of 1987 Satish Chandra v. Union of India observed that it has already been clarified in Shiv Dayal Shrivastava Vs. Union of India(UOI), that in calculating the leave at the credit of a Judge, the provisions of S. 4 alone were relevant and not those of S. 5 of the High Court Judges (Conditions of Service) Act. Since the leave account is maintained in terms of leave on half allowances, the leave is first to be converted to leave on full allowances by dividing by 2 the total amount of leave on half allowances standing to the credit of the Judges in the leave account. After this is done, the Judge is entitled to be paid the cash equivalent up to a maximum of 180 days in case of a Judge who has retired on or before 30-6-1986 and 240 days in the case of a Judge who has retired on or after 1-7-1986. The Supreme Court also issued a direction to the Union of India to calculate the amount of cash equivalent of leave to be paid to the petitioner before it in accordance with the said formula.

6. The aforesaid settled position leaves no manner of doubt that the petitioner was clearly entitled to encashment of leave in respect of the period of earned leave at his credit on the date of his retirement for 180 days and there was no

justification whatsoever in denying the petitioner his rightful dues for a considerable period of time. We find it absolutely expedient and in the interest of justice to direct the respondents to compensate the petitioner for the unjust and unreasonable delay in payment of his terminal benefits by payment of reasonable interest for the period for which the payment was delayed.

7. That brings us to the question of apportionment of such compensation. So far as the payment of Rs. 25,611.60 is concerned, it is the Government of Maharashtra who is responsible for the delayed payment. The petitioner retired on 2nd November, 1985. Granting a period of about three months as the reasonable period for settling the dues of the petitioners, the amount ought to have been paid on 1st February, 1986 whereas the amount was, in fact, paid on 14th August, 1986 i.e. after a delay of about six-and-a-half months. We direct the State of Maharashtra to pay to the petitioner an amount of Rs. 1,664.74 by way of interest at 12 per cent per annum on Rs. 25,611.60 for the aforesaid period of six-and-a-half months.

8. So far as the amount of encashment of leave on half allowances is concerned, the liability will have to be shared by the Union of India, the State of Maharashtra and the Prothonotary & Senior Master of this Court. So far as the Union of India is concerned, we feel that at least after the judgment of the apex Court in *Satish Chandra v. Union of India* 1987 (4) JT 673, there should have been no justification whatsoever for entertaining any feeling of ambiguity about the matter. The said judgment was delivered on 30th July, 1987 (reported in (1987) 4 JT 673. After affording reasonable time of three months for implementing the same, the Union of India is liable for compensating the petitioner for the delay caused from 1st November, 1987 to December 1988, as the Union of India gave specific instructions in that behalf to the State of Maharashtra by its letter dated 16th December, 1988. Thus, the Union of India shall be liable to pay to the petitioner an amount of Rs. 1,748.32 by way of interest at 12 per cent per annum on the amount of Rs. 12,488/- for a period of one year and two months. On the basis of the facts already stated, the State of Maharashtra is liable to compensate the petitioner for a period of eleven months from January 1989 to November 1989. It shall pay to the petitioner an amount of Rs. 1,373.68 by way of interest at 12 per cent per annum for eleven months on 12,488/-. So far as the Prothonotary & Senior Master of this Court is concerned, the said office must be held liable for payment to the petitioner for the period from 1st January 1990 till the end of July 1990 i.e. about seven months. The office of the Prothonotary & Senior Master of this Court is, therefore, directed to make payment of Rs. 874.16 to the petitioner by way of interest at 12 per cent per annum for seven months on Rs. 12,488/-.

9. It is directed that the aforesaid payments shall be made by the Union of India, the State of Maharashtra and the Prothonotary & Senior Master of this Court on or before 31st January, 1992. The petitioner shall also be entitled to costs of Rs. 500/- from each of respondents Nos. 1 and 2 i.e. the Union of India and the State

of Maharashtra. The rule is made absolute in the aforesaid terms.

10. Order accordingly.