

(2015) 04 AHC CK 0173

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50775 of 2003

Bihari Lal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2015) 5 ADJ 358 : (2015) 5 ALJ 417 : (2015) 3 AWC 3124 : (2015) LabIC 3867 : (2015) 2 UPLBEC 1327

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : P.N. Tripathi, Brajesh Pratap Singh and V.K. Chaturvedi, for the Appellant

Final Decision : Allowed

Judgement

M.C. Tripathi, J—Heard learned Counsel for the petitioner and Shri Pankaj Rai, Additional Chief Standing Counsel for the respondents. By means of present writ petition, the petitioner has prayed for direction in the nature of mandamus commanding the respondents to make payment of retiral benefits admissible to him by making fixation of his salary in revised pay scale along with arrears with interest and to pay salary during suspension period in accordance with law.

2. Brief facts giving rise to the present writ petition are that the petitioner was serving as Assistant Development Officer (Panchayat) in Block Naugarh, District Chandauli in the year 1997. He retired after attaining the age of superannuation on 31.8.1997. While the petitioner was in service, a disciplinary enquiry was initiated against him on account of which he was placed under suspension. The pay scale of the petitioner was revised in the years 1986 and 1996 but his salary was not fixed in the revised pay scales. In this regard, the petitioner made a representation. On 14.10.1999 the Block Development Officer, Naugarh, District Chandauli wrote a letter to the Block Development Officer, Majhawa, Mirzapur for fixation of salary of the petitioner in the revised pay scale, which was admissible

to him from time to time in accordance with law. The petitioner made another representation on 27.3.2001 to the Block Development Officer, Naugarh, District Chandauli for payment of his GPF, revised pay scale, insurance money, gratuity and other retiral benefits admissible to him. All the aforesaid benefits were not paid to him merely on the ground that the disciplinary enquiry was pending against him. It is stated that in the disciplinary proceeding, which was pending against the petitioner, he has been exonerated vide order dated 15.2.2003 except deduction of Rs. 54,600/- from his retiral benefits. The petitioner did not prefer any appeal or revision against the order dated 15.2.2003. The petitioner requested the respondents for making final payment of retiral benefits after deducting an amount of Rs. 54,600/-. Again on 22.8.2003 the petitioner made representation before the respondent No. 4 for payment of all the retiral benefits after excluding Rs. 54,600/-.

3. On 10.7.2013 this Court passed following orders:-

Heard learned Counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner, who was posted as an Assistant Development Officer, reached his age of superannuation on 31.8.1997. He preferred this writ petition for a direction upon the respondents to make payment of his post retiral benefits.

At the time of moving of this Court, on 14.11.2003 this Court has issued certain directions, which read as under:

.... In view of these circumstances it is directed that respondent No. 3 will take a decision within two months of the date of production of certified copy of this order before him, after giving show cause notice regarding pay and allowances of suspension period.

If it is further directed that either respondent No. 3 will issue a direction after making payment of dues of post retirement benefit after deducting there from a sum of Rs. 54600/- within the same period of two months or he will pass a reasoned order why this is not being done. The decision so taken on both the issues will be annexed to the counter affidavit to be filed in this case within three weeks, after the 2 months period.

Learned Counsel for the petitioner states that the aforesaid order of this Court has not been complied with and no counter affidavit has been filed till date.

Pending consideration of this petition, the petitioner unfortunately died on 25.2.2010. Heirs and legal representatives of the petitioner have filed a substitution application, which has been allowed and the heirs and legal representatives of the petitioner have been impleaded as petitioners in the writ petition.

It is regrettable that order of this Court dated 14.11.2003 has not been complied with nor any counter affidavit has been filed. It is stated that in the disciplinary

proceeding, which was pending against the petitioner, he has been exonerated vide order dated 15.2.2003 except some deduction of amount, which is mentioned in the order itself.

In the facts and circumstances of this case and also in view of the law laid down by the Supreme Court in the cases of State of Kerala and Others Vs. M. Padmanabhan Nair, AIR 1985 SC 356 : (1985) LabIC 664 : (1985) 1 LLJ 530 : (1984) 2 SCALE 959 : (1985) 1 SCC 429 : (1985) 2 SCR 476 : (1985) 1 SLJ 106 : (1985) 17 UJ 764 , and Vijay L. Mehrotra Vs. State of U.P. and Others, (2000) AIR 3513(1) : (2000) 5 JT 171 : (2000) 2 LLJ 253 : (2001) 9 SCC 687 : (2000) 2 UPLBEC 1599 , which have consistently been followed by the Supreme Court and this Court in several decisions, an interim mandamus is issued to the respondent No. 2 to make payment of post retiral benefits and other dues of the petitioner (Late Bihari Lal) to his heirs and legal representatives along with 9% interest on the delayed payment within two months from this date or show cause within the same period.

List immediately thereafter.

4. Again on 5.2.2014 and 5.3.2014 the Court passed the following orders:

Order dated 5.2.2014

The petitioner filed this writ petition for claiming the arrears of post retiral benefit.

At the time of admission of the appeal this Court had issued following directions to the respondent:

In view of these circumstances it is directed that respondent No. 3, will take a decision within two months of the date of production of certified copy of this order before him, after giving show cause notice regarding pay and allowances of suspension period.

Learned Counsel for the petitioner submitted that inspite of specific direction of the Court respondents have not complied with the direction issued by this Court. Learned standing Counsel for the respondents submitted that they have sent so many letters inspite of that nobody has turned up to file counter affidavit on their behalf.

Learned Counsel for the respondents are directed to take a decision within two weeks in respect of pay and allowances of the suspension period of the petitioner (now deceased) on production of certified copy of this order. Respondents have further directed for making payment of the post retiral benefit after deducting any amount due from him within a period of two weeks. In case the order is not complied with the petitioner shall be at liberty to file contempt petition."

Order dated 5.3.2014

In the order dated 5.2.2014, inadvertently word "learned Counsel" added in the

last paragraph instead of word "respondent".

Petitioner will produce a copy of order dated 5.2.2014 along with the copy of this order before the respondents and the respondents will take a decision within two weeks in respect of pay and allowances of the suspension period of the petitioner and also further take a decision regarding the payment of post retiral benefits. In case the order is not complied with the petitioner shall be at liberty to file contempt petition.

List on 2.4.2014.

5. Learned Counsel for the petitioner submits that the respondents are under statutory duty to make payment of all the retiral benefits by making fixation of his salary in the revised pay scales, as it is admissible to him in accordance with law. He retired from the service on 31.8.1997 and more than six years have already been passed but he has not been paid his retiral benefits though disciplinary proceedings pending against him had already been finalised in February, 2003 in which he has been exonerated.

6. Learned Counsel for the petitioner has relied upon the judgments of the Supreme Court in State of Kerala and Others Vs. M. Padmanabhan Nair, AIR 1985 SC 356 : (1985) LabIC 664 : (1985) 1 LLJ 530 : (1984) 2 SCALE 959 : (1985) 1 SCC 429 : (1985) 2 SCR 476 : (1985) 1 SLJ 106 : (1985) 17 UJ 764 ; O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 ; R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, (1994) 6 JT 354 : (1995) 1 LLJ 884 : (1994) 4 SCALE 349 : (1994) 6 SCC 589 ; S.R. Bhanrale Vs. Union of India and others, (1996) 6 AD 195 : AIR 1997 SC 27 : (1996) LabIC 2576 : (1996) 5 SCALE 693 : (1996) 10 SCC 172 : (1996) 3 SCR 763 Supp : (1997) 1 SLJ 14 : (1996) AIRSCW 4176 : (1996) 6 Supreme 258 ; Dr. Uma Agrawal Vs. State of U.P. and Another, (1999) 1 LLJ 1335 : (1999) SCC(L&S) 742 ; Vijay L. Mehrotra Vs. State of U.P. and Others, (2000) AIR 3513(1) : (2000) 5 JT 171 : (2000) 2 LLJ 253 : (2001) 9 SCC 687 : (2000) 2 UPLBEC 1599 and Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, AIR 2001 SC 2433 : (2001) 91 FLR 166 : (2001) 6 JT 285 : (2001) LabIC 2821 : (2001) 5 SCALE 87 : (2001) 6 SCC 591 : (2001) SCC(L&S) 1032 : (2001) 3 SCT 1059 : (2001) 2 UJ 1523 : (2001) AIRSCW 2819 : (2001) 5 Supreme 798 ; S.K. Dua Vs. State of Haryana and Another, AIR 2008 SC 1077 : (2008) 1 CLT 701 : (2008) 116 FLR 636 : (2008) 1 JT 331 : (2008) 1 SCALE 284 : (2008) 3 SCC 44 : (2008) 1 SCC(L&S) 563 : (2008) 3 SLJ 104 : (2008) AIRSCW 689 : (2008) 1 Supreme 95 and the judgments of Punjab and Haryana High Court in A.S. Randhawa v. State of Punjab & Ors., 1998 (1) ESC 735 (P&H); the Division Bench judgment of this Court dated 11.8.2008 in Writ Petition No. 5667 of 2001, Smt. Kavita Kumar v. State of U.P. & Ors., in support of the submission that the High Court under Article 226 of the Constitution of India, has ample powers to be exercised in appropriate and deserving cases to award interest, in cases of inordinate delay,

attributable wholly to the employer in settling the retrial dues.

7. Shri Pankaj Rai, learned Additional Chief Standing Counsel, on the other hand, submits that the petitioner was suspended on 22.3.1994 and subsequently he was reinstated in service on 20.1.1997. He retired on attaining the age of superannuation on 31.8.1997. He filed the present writ petition in the year 2003, and at that time he was fully aware that he is not entitled for interest upto 2003 as before his retirement, the disciplinary proceeding was going on against him and the disciplinary proceedings had been concluded on 15.2.2003. The petitioner expired on 25.2.2010. The respondents have already paid the entire post retiral benefits, allowance of suspension period, amount of insurance and 90% of the GPF amount to the wife of the petitioner Smt. Mangra Devi. She has already been paid the interest of Rs. 98,886/- on account of delay in payment of gratuity and leave encashment. On 25.3.2014 final pension of the wife of the petitioner namely Smt. Mangra Devi has been forwarded to the Chief Treasury Officer, Mirzapur from the office of Director of Directorate Pension, U.P. Indira Bhawan, Lucknow. Due to inadvertent mistake in the pension papers submitted by the wife of the petitioner, the name of the wife of the petitioner has been mentioned as Smt. Bhangari Devi in place of Smt. Mangra Devi. In this regard, a letter dated 5.9.2014 has been forwarded by the Director of Directorate Pension, UP Lucknow to the Chief Treasury Officer, Mirzapur to carry out necessary correction in the pension paper and after carrying out the correction, the pension may be paid to the wife of the petitioner. As per letter dated 3.1.2004, the petitioner's pay was revised on the date of his retirement on 31.8.1997 at Rs. 5500/- per month. He submits that the purpose of filing the present writ petition has already been completed, as such the writ petition may be dismissed. The delay in making the payment of post retiral benefits to the petitioner is procedural in nature and it was not deliberate and intentional.

8. In the present case, the applicant retired from service on 31.8.1997. When he superannuated, the disciplinary enquiry was pending against him and the disciplinary proceeding was concluded by the respondent No. 3 vide order dated 15.2.2003 exonerating the petitioner with deduction of Rs. 54,600/-. Admittedly department deducted that amount from his gratuity, even though it is impermissible as per law, but petitioner has not challenged the said recovery, therefore, it has become final. The retrial benefits thus became due on the date of retirement. Even if the retrial dues could not be paid in view of the fact that the disciplinary proceeding was pending, nonetheless the retrial dues ought to have been paid within reasonable time. The delay in this regard is not attributable to the petitioner. The respondents are not right in their contention that the delay is attributable to the petitioner. The petitioner had made representations for payment of retiral benefits in the years 1999, 2001 and 2003. If the respondents had not taken timely action on the representations made by the petitioner, the delay is attributable on the part of respondents' failure not to take action on petitioner's request.

9. The plight of the deceased employee is apparent from the arbitrary, wrong and delayed fixation made by the department. The chart, which has been supplied by Shri Pankaj Rai, Additional Chief Standing Counsel, is reproduced hereinafter:-

10. The calculation, which has been made by the department and alleged interest, which has been shown through supplementary affidavit, is absolutely incorrect, false and as such, fixation of interest is contrary to the face of the record itself, and is accordingly rejected.

11. Even in his last representation dated 22.8.2003, the petitioner had categorically apprised to the authority concerned for making payment of all the retiral benefits after excluding Rs. 54,600/-. They had not materialized the retiral benefits within reasonable time and took almost 12 years in finalizing the retiral benefits. This also shows negligence on the part of the respondents.

12. By the order dated 10.7.2013, the Court directed the respondent No. 2 to make payment of post retiral benefits and other dues of the petitioner (Late Bihari Lal) to his heirs and legal representatives along with 9% interest on the delayed payment within two months from the date of order. In para-18 of the supplementary affidavit, filed on 6.4.2015, it is stated that in compliance with the order of this Court, an amount of Rs. 98,886/- has been paid and credited in the account of Smt. Mangara Devi-wife of the deceased petitioner on 25.6.2014 towards 9% interest on the delayed payment.

13. In the case of State of Kerala and Others Vs. M. Padmanabhan Nair, AIR 1985 SC 356 : (1985) LabIC 664 : (1985) 1 LLJ 530 : (1984) 2 SCALE 959 : (1985) 1 SCC 429 : (1985) 2 SCR 476 : (1985) 1 SLJ 106 : (1985) 17 UJ 764 , the Supreme Court held as follows:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

14. In a more recent decision in D.D. Tewari Vs. Uttar Haryana Bijli Vitran Nigam Ltd., AIR 2014 SC 2861 : (2014) AIRSCW 4511 : (2014) LLR 964 : (2014) 9 SCALE 78 : (2014) 8 SCC 894 , the Supreme Court observed that any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest. Hence, interest @ 9% on delayed payment was awarded to be paid within six weeks, failing which interest @ 18% p.a. would need to be paid. An erroneous withholding of gratuity amount to which the employee is legally entitled, entails penalty on the delayed payment.

15. Since the date of retirement is known to the respondents well in advance, there is no reason for the respondents not to make arrangement for payment of retiral benefits to the employee well in advance so that as soon as he retires, his retiral benefits are paid on the date of retirement or within reasonable time

thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues.

16. In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained and it is a fit case where the writ petition is liable to be allowed.

17. Normally this Court in exercise of its equitable discretion does not settle the State with civil liability unless the Court is satisfied that the helpless employee had been compelled to litigate for his survival for more than 12 years i.e. after finalization order dated 15.2.2003 and the action of the respondent State Government and its officers is found to be wholly arbitrary, unreasonable and malicious in non finalization of the retiral benefits to the petitioner in time, even department failed to decide the claim in his life time.

18. The Court may add here that after serving the qualifying period of service, the employee does not ordinarily have any other means of livelihood, when he needs them more other than his dues. It is extremely unjust and harsh to allow a retired employee to wait to receive the dues, and to depend upon his friends, relatives and children. The right to receive retiral dues/terminal dues is closely linked to his right of self-respect, and human dignity, which is included in right to life guaranteed by Article 21 of the Constitution of India.

19. In view of the above observations, absence of statutory rules providing interest on the delayed payment of retrial dues would not be an impediment in granting interest for the delayed payments. As a matter of fact, such interest is in the nature of indemnification for the loss suffered by a Government servant on account of wrongful deprivation of legitimate dues, even though temporarily. Awarding of interest in such cases would be justifiable to make good the loss caused by the respondents inaction in making payments in time.

20. In view of the administrative instructions providing interest on the delayed payment of gratuity as. well as delayed payment of other retrial dues and the order of this Court dated 10.7.2013, I am inclined to award interest @ 9% from the date of order dated 15.2.2003 exonerating the petitioner from the disciplinary proceeding upto the date of payment. In the aforesaid facts and circumstances, I allow this writ petition by directing the respondents to pay interest @ 9% on the delayed payment of gratuity and other retiral benefits from the date of order dated 15.2.2003 upto the date, when the amount due to the deceased petitioner has actually been paid, after adjusting Rs. 98,886/- which has been paid to the wife of the deceased petitioner on 25.6.2014 in pursuance to the interim order dated 10.7.2013. These directions shall be complied within a period of three months from the date of receipt of a certified copy of this order. No order as to costs.