(1997) 05 AHC CK 0189

In the Allahabad High Court

Case No : C.M.W.P. No. 11619 of 1989

C.M. Wahal (Decd.) through L.Rs. APPELLANT

Vs

Divisional Manager, L.I.C. of India and Another RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Citation : (1997) AWC 204 Supp

Hon'ble Judges : R.A. Sharma, J;N.S. Gupta, J

Bench : Division Bench

Advocate : J.K. Srivastava and Sidheshwari Prasad, for the Appellant; R.P. Goel, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—The Petitioner who was Branch Manager, Life Insurance Corporation of India (for short L.I.C.) retired from service on January 23. 1985. At the time of his retirement, the following dues were payable to him:

Statement of dues (1) Salary (Difference of salary) Rs. 20,074.66 (2) Leave Encashment dues Rs. 4,383.00 (3) Difference of gratuity Rs. 18.875.00

Total Amount due Rs. 43.332,66

2. As the aforesaid dues were neither paid to him at the time of his retirement nor were they paid immediately thereafter, the Petitioner made representations dated 31.10.1985, 18.11.1985 and 9.11.1985 to the Divisional Manager, L.1.C, Varanasi for payment. Not having heard anything from the Divisional Manager, the Petitioner made representations dated 21.1.1986 and 24.2.1986 to the Chairman L.I.C., Bombay. Inspite of several representations and complaint, the payment was not made to the Petitioner. He. therefore, filed Writ Petition No. 6530 of 1987 before this Court for writ of mandamus directing the Respondents to pay the entire outstanding dues to him. The aforesaid writ petition was disposed of by a Division Bench of this Court on 30.11.1988 directing the Respondents therein to dispose of the Petitioner''s representation within a period

of two months from the date a certified copy of this Court''s judgment is produced before them. Thereafter, the Petitioner was paid a sum of Rs. 43,875 but no interest was paid on the delayed payment. The Petitioner, therefore, made representation dated 27.3.1989 for interest, but his prayer was rejected, vide order dated 10.4.1989. The Petitioner has, thereafter, filed this writ petition for getting the said order dated 10.4.1989 quashed. Prayer for writ of mandamus directing the Respondents to pay the interest on the delayed payment, has also been made.

3. The Respondents have filed counter-affidavit and the Petitioner filed rejoinder-affidavit in reply thereto. We have heard Sri Sidheshwari Prasad, learned Senior Counsel for the Petitioner and Sri. R. P. Goel, learned Senior Counsel for the Respondents.

4. Interest is the compensation for retention of the money belonging to another person. In Life Insurance Corporation of India and another Vs. Gangadhar Vishwanath Ranade (Dead) by LRs., , the Supreme Court held that the L.I.C. is liable to pay the interest on the payment made after the date of maturity of the Insurance Policy, because the assignee of the policy is entitled to receive the amount due thereunder on the date of its maturity and in the event of delay in payment, he/she is entitled to be compensated by the L.I.C. Supreme Court accordingly declared that "performance of this statutory obligation by the L.I.C., in the present case, being after inordinate delay, award of interest to the assignee of the policies to whom the payment thereunder has to be made even according to the stand of the L.I.C. is, therefore, clearly justified". In Union of India v. Justice S. S. Sandhawalia. 1994 (1) SLR 343. the Supreme Court has held as under:

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 the rate considered reasonable by the Court.

In State of Kerala and Others Vs. M. Padmanabhan Nair, , the Supreme Court declared that an employee is entitled to interest at the current market rate on delayed payment of pension and gratuity. Relevant extract from the said judgment of Supreme Court is reproduced below:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employee 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.

Supreme Court rejected the explanation given by the Government for delay in payment by holding as under:

Since the date of retirement of every Government servant is very much known in advance, we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be overemphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

In R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and Anr. 1995 UPLBEC 89, Supreme Court awarded the interest at the rate of 18 per cent per annum on the delayed payment of gratuity. In Smt. Aruna Dhose v. State of U.P. 1996 (3) AWC 1525 : 1996 ACJ 1065, a Division Bench of this Court awarded the interest at the rate of 18 per cent per annum on the unpaid amount for the period from the date of retirement to the date of payment. In Dr. P. C. Khalsa v. State of U.P. and Ors. Writ Petition No. 14299 of 1988, decided on 7.8.1995, a Division Bench of this Court declared that an employee is entitled to the interest on the delayed payment of pension and other benefits.

5. In the instant case, there is culpable delay in making the payment of outstanding dues to the Petitioner. In paragraphs 8 and 9 of the counter-affidavit filed on behalf of the Respondents, it has been stated that since certain enquiries were pending against the Petitioner, therefore, the payment of his outstanding dues was withheld. But neither the nature of such enquiry has been disclosed, nor is there anything on the record to establish the pendency of the enquiry against the Petitioner. Only vague allegations have been made about it. It is admitted that no disciplinary enquiry was initiated against the Petitioner either before or after his retirement and no such enquiry was pending at the time of his retirement. Therefore, there was no justification to withhold the payment of the outstanding dues of the Petitioner for a period of about four years. The Respondents did not take any effective step for payment of the dues to the Petitioner inspite of his repeated representations and reminders to various functionaries of the L.I.C. The Petitioner ultimately had to file the writ petition and in view of the order of this Court directing, the L.I.C. to decide the representations regarding non-payment of the dues, the payment was made in 1989. Under law, the Respondents were bound to make the payment to the Petitioner his all outstanding dues at the time of retirement or in any case immediately thereafter. But they have failed to discharge their legal obligation. Therefore, they have to pay the interest to compensate the Petitioner for retention of the amount belonging to him,

6. This writ petition is accordingly allowed with costs. The order dated 10.4.1989 is quashed. The Respondents are directed to pay the interest at the rate of twelve per cent per annum on the sum of Rs. 43,875.00 from the date of his retirement to the date of payment, i.e., from 24.1.1985 to 11.4.1989. The

payment shall be made to the Petitioner within a period of two months from the date of production of certified copy of this judgment before the Respondents.

