(2004) 06 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9709 of 2003

Dayashankar Vyas APPELLANT

Vs

Shri Mathur, Secretary Govt. of M.P. and Another RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Citation : (2004) 2 MPJR 354

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.C. Tiwari, for the Appellant; Rahul Jain, PL, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner entered into Government service as Food Inspector on 13-4-1965. He was promoted to the post of Assistant Food Officer on 4-11-1985. He attained the age of superannuation in June, 1993 and according to the policy of the State Government he retired with effect from 30-6-1993. It is urged in the petition that though he stood retired on the aforesaid date he was not paid the retiral dues till the date he visited the M.P. Administrative Tribunal in the year 1995. It has been stated that though no departmental proceeding was initiated against him, he was not paid full pension and only a sum of Rs. 950/- per month towards the anticipatory pension was paid to him.

According to the writ petitioner, while he was in service he was harassed by many an officer as he did not dance to their tune and after retirement the similar treatment continued. It has also been putforth that payment of pension is not a bounty as an employee has the right to get the same but unfortunately for no apparent reason the same has been denied to the petitioner. It is also submitted that the respondent No.2, Director, Food and Civil Supply issued a letter dated 7-5-1992 to the Collector, Jabalpur stating that the petitioner would be retired with effect from 30-6-1993 and accordingly the relevant service records should be verified as per the Government orders. The aforesaid letter was not paid heed to and the competent authority commenced the verification when there were a few months to go for retirement but did not finalise the claims, The reminders sent by the authorities fell in deaf ears. Eventually the Collector vide his endorsement No. 1406/Estt/94 dated 25-6-94 stated that there was objection in regard to revised pay fixation and same should be done at the level of the respondent No.2 but the said objection was replied to by the respondent No.2 but the said objection was replied to by the respondent no. 3 requiring the Collector to take a decision at his own level. It is putforth that the respondent No.3, the Accountant General of M.P. paid Rs. 89,443/- on 8-8-1995. The aforesaid amount is not the correct sum as the GPF has not been properly computed and the defect has cropped up as the petitioner was transferred quite frequently. Reference has been made to a chart including the subscription for the period from 1967 to 1983. It is also putforth that there is difference between the passbook and the chart relating to GPF and the same was sent to the respondent No.3 indicating the correct figures and also highlighting the reasons for less payment. It is canvassed that in case of missing credits the same has to be verified as the records are under the custody of the respondent No.2 as well as the Collector, Jabalpur. It is putforth that the GPF which has been paid after three years of his retirement should carry interest at the rate of 18% per annum. It is submitted in the petition that the petitioner is entitled to grant of cash payment in lieu of unutilized earned leave. There is 240 day''s leave in the account of the petitioner. It is also putforth that the leave accounts have been prepared erroneously by which the petitioner''s benefit have been affected. The further grievance of the petitioner is that he was paid the salary as per the Tarachand Pay Commission only upto 4-5-1988 and not paid the total benefits and pay fixation was wrongly done. There is also an assail to financial loss in relation to various allowances. It is putforth that he has not been given Pandey Pay Scale and Choudhary Pay Scale. The petitioner has criticized the pay scale given on 4-5-1988 as certain increments were not taken into consideration while fixing the pay. It is also urged that the time bound benefit to which the petitioner was entitled to get on 4-5-1988 was also not extended to him. It is contended that the increments which were ordinarily due under FR-26 could not be withheld at the whim and fancy of the higher authority. He has prayed for grant of interest on the said sum. A stand has been taken in the petition that he has been deprived of the commutation of pension as a consequence of which he suffered immensely. The petitioner has also putforth that for no acceptable reason for not granting family benefit fund and group insurance amount for last six years. On the basis of the aforesaid factual score the petitioner has prayed for issue of a command to the respondents to release the various retiral benefits and pay the interest thereon at exemplary rate and to pass such order as is warranted in law.

A counter affidavit has been filed by the respondents 2 and 3 contending, inter alia, that there was some dues with respect of leave period from 12-8-1983 to 13-2-1984, 17-9-1984 to 13-1-1985 and 29-10-1990 to 25-11-1990 as a consequence of which the entire dues of the petitioner could not be finalised. It is putforth that the disputed period of the petitioner has been decided by the competent authority by order dated 18-10-1999 whereby the applications of the petitioner have been rejected vide Annexres R-1 and R-2. Subsequent to the aforesaid orders another order dated 17-12-1999 has been passed treating the aforesaid period of absence of the petitioner as leave without pay. It is also putforth that by order dated 17-12-1999, Annexure R-5 the petitioner has been granted leave encashment of 240 days. In the return it has been submitted that after settlement of the disputed period of absence, action has been taken to finalise the entire retiral dues. It is put forth that pension and its commutation has been forwarded to the Joint Director, Treasury, Pension and Accounts by letter dated 17-12-1999 bearing No. 1907/Food/Estt/99, Jabalpur. It is also putforth that 90% of the gratuity has been paid to the petitioner on 5-1-1999 and remaining 10% would be paid after finalization of pension and its commutation; the leave encashment of 240 days has been sanctioned vide bill No. 137 dated 20-12-1999; that amount of Rs. 89,443/- which included interest upto July, 1995 has been paid to the petitioner; and that Rs. 16494/- has been sanctioned vide bill No. 113 dated 21-10-1999. It is also putforth that the petitioner joined the Department of Food and Civil Supply in the year 1965 and prior to that he was working in the Department of Land Records and, therefore, the respondents are not in a position to state about the missing credit but efforts have been made to collect the factual position from the respective district where the applicant was posted during his service in the Food Department.

A return has been filed by the respondent No.3, the Accountant General of MP stating that certain steps are being taken to find out the missing credits and when the requisite details would be received the same shall be properly dealt with.

A rejoinder affidavit has been filed by the petitioner reiterating the stand and agitating his grievance.

An additional return has been filed contending that on receipt of the requisite details and missing credits of the petitioner the case of petitioner has been reviewed and a sum of Rs. 16,494/- being residual balance including interest has been authorized to be paid to the petitioner under intimation to him and, therefore, nothing is due to the petitioner.

I have heard Mr. R.C. Tiwari, learned counsel for the petitioner and Mr. Rahul Jain, learned counsel for the State.

The factual score as has been depicted shown how the petitioner was entitled to certain retiral dues and how it has been made good. To appreciate the same it is apposite to produce the chart filed by the petitioner:

S.N.

Particular

Amount paid

Date of payment

I.

G.P.F.

00

8-8-95

G.P.F.

00

Dec. 99

G.P.F.

00

June 2000

II.

Gratuity on (1980)

00

2.99

Gratuity on (1990)

00

5.2000

Gratuity on (2090)

00

Outstanding

III.

Encashment of Leave (1990)

00

2.2002

Encashment of Leave

00

Outstanding

(2090)

IV.

Commutation (1990)

00

5.2000

Commutation (1990 diff)

00

Outstanding

(2090 difference)

Commutation

00

disputed

Taking Age 64 in state of

59 Rule 5 applied.

V

GIS

00

Sept. 2001

Family Benefit

00

Oct. 2001

VI.

Detained amount

38

2.2000

Arrears of Pension

(920-990)

?

VII.

Arrears of Pay

00

Outstanding

(1840-2090)

Approx.

Due Date 15.5.83

VIII.

Arrears of Pension

00

Outstanding

(990-1040)

Due Date 30.6.93

In addition to the aforesaid, the petitioner has also claimed certain dues by filling additional statement which relates to some portion of the gratuity, pension, encashment of the leaves, arrears of salary and grant of payscale.

At this juncture, I think it appropriate to refer to certain decisions in the field as the learned counsel for the petitioner has submitted that a senior citizen has unnecessarily been harassed. In the case of AIR 2000 SC 3513a the Apex Court expressed the view as under:

3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e. 31st August, 1997 till the date of payments.

In the instant case the picture frescoed does not state a happy note. It is patent that the petitioner has been given a raw deal and his claims have been dealt with in an absolutely lackadaisical and languorous manner. The claim of the petitioner have been settled upto major extent but the same has been done after he knocked at the doors of the M.P. Administrative Tribunal. True it is, he still has grievance in regard to fixation of pay-scale and certain other factors which cannot be decided straightway in this petition but indubitably it is tell tell that his dues have been settled after a long gap of time. Justification has been given in the return and additional return showing no substratum. An employee who retires has expectation that his retiral dues be paid to him in time so that he can live with dignity. The matter is different when a disciplinary proceeding has been initiated or something come to the knowledge of the employer to initiate a disciplinary proceeding on certain grounds. Though finalisation of credit, missing credits and such other matters are to be dealt with expeditiously, in the present case the same has been done when the petitioner reached the fag end of his career. No person should be treated as unperson. There might be cavil at some point of time between employee and employer or higher authorities but it would not be condign to deal with the matter of his retiral dues in a lackadaisical and recalcitrant manner. This attitude is neither permissible in law nor ethically expected. The authorities who are in helm of affairs should remember their role and keep in mind that everyone has to be governed by Rule of Law. No deviancy is allowable. No authority should harbour a notion that the settlement of pension can be done leisurely and other retiral dues can be paid at their pleasure. If such a notion has entered into marrows, better it is shown the path of evaporation at the earliest. Getting embedded to those kind of proclivity is likely to cause damages to their own career. Sooner they realize, better for the officers who deal with these spectrums.

In the present case I am convinced that there is delay on the part of the respondents. In view of this, it is directed that the petitioner should be paid interest at the rate of 9% per annum for a period of four years on the sum which has been paid belatedly. The said sum be computed and paid to the petitioner within a period of two months from the date of receipt of the order passed today. As far as the GPF is concerned, it is directed that the same be finalised by obtaining proper documents within a period of three months from the date of receipt of the order passed today. The petitioner''s grievance with regard to the fixation of pay may be dealt with within the said period. I may hasten to add that I have issued the last direction as the petitioner time and again putforth the said claim in the petition and there is no reason to reject it summarily. The authorities have a duty to deal with and decide the claim of employees if he has genuine grievance. The question of delay and laches is not to be taken note of as the respondents themselves have been dealing with the matter in an extremely apathetic manner.

The writ petition is allowed to the extent indicated above without any order as to costs.

