(2023) 09 OHC CK 0244

In the Orissa High Court

Case No : Writ Petition (C) No. 9786 Of 2022

Dr. (Retd.) Ashok Kumar Panda APPELLANT

Vs

State Of Odisha And Others RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2023) 09 OHC CK 0244

Hon'ble Judges : Sibo Sankar Mishra, J

Bench : Single Bench

Advocate : S.K.Mishra, J.Pradhan, P.S.Mohanty, S.K.Sethi, H.M.Dhal

Final Decision : Allowed

Judgement

Sibo Sankar Mishra

1. In the present Writ Petition, Petitioner is seeking mandate to the Opposite Parties for payment of his retiremental dues along with interest @12% per annum for the delay so caused in making good the payment of pension and gratuity dues within time.

2. On 24.11.1975, the Petitioner was appointed as Leave Training Reserved Medical Officer (ATRMO) in the rank of Assistant Surgeon after undergoing the rigors of recruitment process conducted by the Odisha Public Service Commission (OPSC). He continued in different positions during the span of his unblemished career. Eventually after retaining the age of superannuation he demitted office on 31.01.2012.

3. After the Petitioner retired from the service on 31.01.2012 he has been running from the pillar to post to get his retiremental dues.

However, Petitioner’s file has been shuttling from one authority to other without any positive yield. It appears, due to the confusion in the name of the Petitioner with another Medical Officer, the payment appears to be delayed. A letter dated

07.04.2016 addressed by the Opposite Party No.4 to 5, it is admitted that one Ashok Kumar Panda son of Upendra Chandra Panda having GPF Account No. 19377PH(O) has indeed availed house building advance. He has been confused with the Petitioner and therefore, an amount to the tune of Rs.1,32,298/- sought to be realized from the Petitioner as an advance availed towards house building loans during his service. That is the reason cited for not making the dues good.

4. Despite flagging the apparent error of confusion of name and the GPG Account number, the Petitioner was not paid the dues and was forced to run from one Office to another. Therefore, the Petitioner had filed the Writ Petition being W.P.(C) No.17954 of 2019, which was disposed of by this Court vide its order dated 17.10.2019. Learned Single Judge of this Court directed the Opposite Party to hear out the Petitioner and addressed his grievances within a period of two months.

5. Pursuance to the direction of this Court although the Petitioner was paid the dues but had to again shuttle between the Office of the Opposite Parties and the Treasury for real remittance.

6. On the conspectus of the aforementioned facts scenario, the counsel appearing for both the Parties have made the statement before this Court that the payment dues to the Petitioner has already been made good.

7. Heard Mr. S.K.Mishra, learned Senior Counsel for the Petitioner and Mr.H.M. Dhal, learned Additional Government Advocate.

8. Mr. Mishra, learned Senior Counsel for the Petitioner submits that the delay in the payment of retiremental dues is admittedly attributable to the Opposite Parties alone. Therefore, the Petitioner is entitled to interest on the delayed payment.

9. To buttress his argument, he relies upon the judgment of the apex Court reported in (2014) 8 SCC 894 in the case of D.D.Tewari (dead) through legal representatives versus Uttar Haryana Bijli Vitran Nigam Limited and Others. In the said case the Hon'ble apex Court owing to the delayed payment of retiremental benefit awarded interest at 9%. The relevant part of the said judgment reads as follows:-

"6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent."

10. Similarly Mr. Mishra, learned Senior Counsel for the Petitioner also relied upon another judgment reported in (2022) 4 SCC 627 in the case of Dr. A. Selvaraj versus C.B.M. College and others. The facts of that case is also similar to the effect that delayed payment was attributable to the Opposite Parties, therefore, it would bear interest as such interest was award. The relevant part of the judgment reads as under:-

"10. Having heard the learned counsel for the respective parties, we are of the opinion that as there was a delay in making the payment of retirement benefits and settling the dues for which the appellant employee is not at all responsible, he is entitled to the interest on the delayed payment. Even the Division Bench of the High Court has also observed in the impugned judgment and order that the appellant is entitled to the interest on the delayed payment. However, there is an inter se dispute between the Secretary, Management and the Government as to who is responsible for the delay in making the payment to the appellant and therefore, he has been denied the interest on delayed payment though entitled to.

13. In view of the above discussion and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the Division Bench of the High Court and that of the learned Single Judge denying the interest on delayed payment of retirement benefits to the appellant is hereby quashed and set aside. The Management/Trustees/College are hereby directed to pay the interest on the delayed payment of retirement benefits to the appellant, from the date of retirement till the actual payment was made, subject to the final decision that may be taken by the Government on the objections to the enquiry report that may be filed by the former Secretary and/or the College/Management/ Trustees to recover the same from the person, who, ultimately is held to be responsible for the delay."

11. From the contour of the aforementioned judgment and facts of the case, it is clear that the Petitioner is entitled for interest on the delayed payment. In this case the Petitioner was made to suffer for more than a decade under the bureaucratic rigmarole. This is an apparent case of mistaken identity being created at the end of Opposite Parties. One Dr. Askok Kumar Panda son of Upendra Chandra Panda MS(ENT) having G.P.F. Account No. 19377PH(O) has been confused with the present Petitioner, who is also named Dr. Ashok Kumar Panda son of late Purna Chandra Panda, who has G.P.F. Account No.26711MJ(O). Admittedly dues to this confusion being created in the department, the Petitioner has been denied the retiremental dues.

12. Mr. Dhal, learned Additional Government Advocate submits that after the confusion being sorted out, the payments due to him has been remitted to the

Petitioner, however no interest is liable to be paid as the mistake was bona fide and no mala fide could be imputed.

13. Mr. Mishra, learned Senior Counsel for the Petitioner however contended that his prayer regarding the payment of interest on the delay has not been addressed.

14. Therefore, the limited grievance of the Petitioner regarding his entitlement to the interest accrued on the delayed payment to the retiremental dues deserves to be allowed in the light of the judgment cited (supra).

15. Accordingly, the Writ Petition is allowed with a direction to the Opposite Parties to pay interest @6% within one month on the delayed payment of retiremental dues. The Petitioner is directed to calculate the dues within a week and submit the same to the Opposite Parties. The Petitioner is entitled to the interest on the delayed payment from the date of his entitlement to the retiremental benefit till the date of real payment is made. If the payment of interest as directed by this order is not made within one month from the date of submission of calculation by the Petitioner. However, the interest shall accrued @12% on the default amount from the expiry of one month granted to the Opposite Parties to make good the payment.

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