
(1952) 11 MP CK 0003
In the Madhya Pradesh High Court
Case No : M. P. No. 1106 of 1990 (I)

Dr. Yogendranath

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-11-1952

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3(q)

Citation : (1993) 1 MPJR 281

Hon'ble Judges : V. D. Gyani, J;A. R. Tiwari, J

Bench : Division Bench

Advocate : D.R. Upadhyay, for the Appellant; S. K. Nigam, G. A., for the Respondent

Final Decision : Allowed

Judgement

Hon. A. R. Tiwari, J.

This is a petition filed under Article 226 of the Constitution of India.

Briefly stated, the facts leading to the filing of this petition are that the Dr. (Smt) Satyawati Monge, the wife of the petitioner, was in the service of the State Government of M. P. as Professor of Pathology in Gajra Raja Medical College at Gwalior at the time of her death on 14-12-1986. She expired before reaching superannuation which had to fall on 1-9-1987. She had nominated the petitioner as the person entitled to receive all amounts due to her in the event of her death. It is pleaded that the amount was payable by the respondents within 15 days from the date of retirement or death as the case may be and as such, the respondents were under obligation to pay the amount by 1-1-1987. It is averred that a part amount was paid on 6-2-1988 and the remaining amount was paid on 25-2-1988 without interest. The petitioner, as nominee of the aforesaid deceased Government servant, has claimed interest. His another grievance is that late Dr. (Smt) Satyawati Monge was covered under the Family Insurance Scheme, 1985 whereby a sum of Rs 80,000/- was payable on death, but the respondents had

paid only Rs. 30,000/- in March, 1987. The petitioner, contended that in the absence of option, exercisable within the limit prescribed, it had to be assumed that the beneficiary was covered by the new scheme fetching payment of Rs. 80,000/- The petitioner has thus, prayed that the respondents be directed to pay a) the interest and b) the difference of Rs. 50,000- as noted above. The petitioner has annexed with the petition Annexure A-1 (providing for interest in case of delay on administrative grounds), Annexure A-2 (highlighting the need for following guide-line.), Annexure-B (notice demanding justice) and Annexure-D (Reply to earlier letter).

The respondents have filed the return controverting material allegations and opposing the claim. It is asserted that the delay occurred due to pay-fixation and other procedural steps. As far as the attractibility of new Scheme was concerned it was pleaded that the Dr. (Smt.) Satyawati Monge did not opt to become member of the new scheme and as such, the difference, as asserted was not payable The respondents have placed reliance on Annexure R/1 to R-5, annexed with the return. The petitioner has filed the rejoinder to the return.

We have heard Shri D. R. Upadhyay, learned counsel for the petitioner and Shri S. K. Nigam learned Government Advocate for the respondents.

The hearing was concluded on 17-10-92 and the case was closed for the judgment. This Court, however, desired to hear the question of jurisdiction as well in the face of the Administrative Tribunals Act 1985 (hereinafter referred to as "the Act") despite the fact that the respondents had not raised such a plea either in the return or in oral submissions. This is how the case was reopened and parties were heard on the aforesaid question as well.

Before going into finer aspects, it may be observed that the petitioner specifically pleaded in the petition that he "has no other equally efficacious remedy against the injustice being done to him". But the respondents did not choose to controvert this. They have not incorporated any plea about lack of jurisdiction in the return even after specific query from the Court and reopening of the case suo-motu

It is not disputed that the Administrative Tribunal for the State empowered to hear and decide "Service Matters" has been established under the Act. The essential question, however, is whether the reliefs claimed herein are embraced by the expression "Service Matters" as defined by the Act. It is thus, necessary to examine this aspect. Section 3 (q) of the Act defines the Service Matters as under;--

3. Definitions--.....

(q) "Service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other, authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation (or

society) owned or controlled by the Government, as respects--

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation:
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;

The bare perusal of the aforesaid definition indicates that the topics particularised above are categorised as service matters of an individual in connection with the affairs of the State. The respondents could not indicate any particular category in which the grievances urged in the petition could fall. The last topic in the definition saying "any other matter whatsoever" is too vague to suggest the exclusion of the jurisdiction of this Court. Precisely this seems to be the sole reason as to why the respondents had not disputed the jurisdiction in their return. It is obvious that the petitioner has not claimed anything by way of remuneration, allowance, pension or other retirement benefits. The linchpin of the claim, as urged, is about the interest resting on delay in payment, and grant of incontestable benefit of new scheme in accordance with Annexure R-5 itself.

On our anxious consideration, we find that the Faint and Frail challenge, strummed and striven only when questioned by the Court in order to satisfy itself in terms of Section 28 of the Act, lacked lustre and overlooked the scheme of the Act. We proceed to demonstrate this by citing the relevant provisions of the Act and rules made there under. Section 28 provides as under : --

28. Exclusion of jurisdiction of Courts except the Supreme Court :--

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, (no court except.--

- (a) the Supreme Court; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

shall have), or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters,

The question of jurisdiction is thus linked with recruitment and matters concerning recruitment or service matters concerning member of any Service or

person appointed to Service or post. Section 3 (q) has enumerated Service Matters. Section 14 of the Act speaks about the jurisdiction, powers and authority of the Tribunal established under the Act. Section 19 of the Act permits filing of an application by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal--Rules have been framed in exercise of the powers conferred by clauses (d) (c) and (f) of Subsection (2) of Section 35 of the Act. Rule 4 says that an application shall be presented in Form 1 annexed to these rules u/s 19 of the Act. Particulars of the applicant are required to be furnished as per this Form 1 and one of the particulars to be given is "designation and office in which employed". What emerges from the scheme of the Act/rules is that the applicant ought to be the present or ex-member or person so employed. In other words a nominee, like the petitioner, cannot approach the Tribunal. The essence of the survey of this scheme is that--

(a) Petitioner is not the person entitled to invoke the jurisdiction of the Tribunal in terms of Section 19 of the Act read with rule 4 and Form 1 as prescribed.

(b) Petitioner is not the person aggrieved by any order pertaining to service matters as envisaged by Section 14/19 of the Act.

(c) The reliefs urged in the petition are not within the domain of the service matters as defined by Section 3 (q) of the Act. Since compensation by way of interest on account of delay in settlement/ disbursement of dues and conferral of benefit of a particular Insurance Scheme are not such matters.

(d) Section 28 of the Act is consequently not attracted in the present case. The petitioner as well as the subject-matter/cause of action are beyond its periphery.

The logical conclusion of this discussion is that the reliefs covered in the petition are not embraced by Section 14/19 of the Act and no application is tenable at the instance of the nominee. There is evidently no "service matter" in dispute as such. On the other hand, it is a pure and simple question of interest and implementation of the Insurance Scheme. The petitioner is not aggrieved by any order as such which alone can be the cause of action in terms of Section 19 of the Act. In the ultimate analysis, after bestowing our attention perspicaciously we have no hesitation in holding that there is no jurisdictional impedance. In the circumstances, the petition is held to be tenable.

Now, coming to merits of the matter, it can at once be said that the retirement benefits like Pension etc. are no longer any bounty but are valuable rights not liable to be trampled down or overlooked. The matter cannot be permitted to hibernate to the disadvantage of the claimant entitled to receive the benefits in terms of money. In disputedly, the culpable delay in settlement and disbursement must be visited with the penalty of payment of interest at the current market rate till actual payment. This liability cannot be shirked or avoided on the pretext of pay fixation or any other ground. It must be borne in mind that such procedural wrangle tends to erode faith in the system and causes harm and hardship to the beneficiary. The answer in impugnation is imbecile. The

delay is *ex facie* irremissibly. There was no justifiable ground to delay the payment. The delay in pay fixation tent-amounts to the lapse on the part of the authority concerned. It was obligatory on the part of the respondents to see that nothing oppilated the settlement. The law cannot stay petrified in case of fastidious attitude. This rendered the respondents liable to pay interest. Similarly the petitioner as a nominee was clearly entitled to receive the benefit of new scheme. Annexure R/4 dated 23-5-81 is no answer against the claim raised in the petition because the new scheme was enforced from 27-3-85. No option was, thus exercised. Employees who were members of the old Family Benefit Fund Scheme were to become the members of the New Scheme compulsorily. This benefit is thus, not deniable This right is available even on the basis of the stand taken by the respondents. Absent option, as the case was, Dr. (Smt.) Monge ipso facto became the member of new scheme.

In State of Kerala and Others Vs. M. Padmanabhan Nair, it is held as under :--

Unfortunately such claim for interest that was allowed in respondent's favor by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it would not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined grant.

In the circumstances aforesaid, we hold that the petitioner is entitled to receive the benefit in terms of the New Scheme (See Para 3 (d) of Annexure R/5) and is also entitled to receive interest at the rate of 18 per cent per annum (which level is admittedly less than the current market rate) computable from the expiry of two months from the date of death i.e. 14-12-1986 till actual payment. The quantification shall be done by the respondents.

Ex-consequenti, the respondents are directed to pay the aforesaid dues (difference as per New Scheme plus interest as above) to the petitioner within a period of two months from today.

Let a WRIT in the nature of mandamus be issued in the aforesaid terms.

The petition, thus, succeeds and stands allowed as above. The respondents shall bear their own costs and also pay the costs of the petitioner quantified at Rs. 500/-.

The security cost is directed to be refunded to the petitioner after necessary verification.