
(1996) 09 BOM CK 0055

In the Bombay High Court

Case No : Suo Motu Petition No. 614 of 1996

Eurico Santana Da Silva

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 09 BOM CK 0055

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : R.V. Govilkar, Government Pleader and 3, S.M. Shah, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—A letter dated 15th March, 1995 was addressed by the Petitioner to the learned Chief Justice and was converted into a Suo Motu Writ Petition and assigned to this Court. The grievance made in the letter is with regard to delay in payment of the terminal dues of the Petitioner who retired on 10th May, 1995, after 38 years of meritorious service rendered to the judiciary.

2. The facts, shortly narrated, are :

(a) On 16th March, 1995 the Prothonotary and Senior Master of this Court forwarded the pension papers of the Petitioner to the 2nd Respondent pointing out that the Petitioner would retire from service with effect from 10th May, 1995 making a request that the pension case be decided at an early day. It was also specifically pointed out that the head quarters of the Petitioner were at Panaji, Goa Bench of this Court, and that further correspondence may be addressed to the Special Officer, High Court, Panaji Bench, Goa, under intimation to the Prothonotary and Senior Master. The letter was sent by hand delivery and received by the 2nd Respondent on the same day.

(b) On 30th June, 1995, a letter was addressed by the 2nd Respondent to the

3rd Respondent to arrange for the payment from the sub-treasury a sum of Rs. 1,00,000/- to the Prothonotary and Senior Master, Original Side, Bombay, towards the gratuity amount payable to the Petitioner. The said letter also advised the Pay and Accounts Officer that the Petitioner had been authorised pension at the rate of Rs. 48,000/- per annum with effect from 10th May, 1995 vide letter No. HCJ/7074595 00128. A copy of this letter was also simultaneously sent to the Prothonotary and Senior Master of this Court.

(c) On 18th September, 1995, after waiting for more than three months, the Prothonotary and Senior Master addressed a letter to the Chief Controller of Accounts (Pension), Ministry of Finance, New Delhi, stating that despite the petitioner having retired on 10th May, 1995 and the President of India having sanctioned a pension payment of Rs. 48,000 per annum to the petitioner and the petitioner's expressed desire to draw monthly pension through State Bank of India, Margao, Goa, Account No. 128026, the pension amount had not been received. The Prothonotary and Senior Master requested that the monthly pension of the Petitioner be paid without further delay and immediate necessary action in the matter would be highly appreciated.

(d) A further reminder was issued to the Chief Controller of Accounts (Pension), Ministry of Finance, New Delhi, by the Prothonotary and Senior Master of this Court, on 19th March, 1996 with a request, that the payment of pension and the commuted amount be immediately credited to the account of the Petitioner in State Bank of India, Margao, Goa.

(e) As a result of this lengthy correspondence, the Petitioner was paid a sum of Rs. 6,00,000/- from the General Provident Fund in October, 1995 and that too with interest only upto the end of August 1995 at the rate of 12%. The monthly pension of the petitioner was deposited in his Bank account at Margao, Goa only from December 1995, but the commuted value of pension amount of Rs. 2,19,600/- was not credited to the account.

(f) The Prothonotary and Senior Master of this Court again took up the matter with the Accountant General, Maharashtra-I, by his letter dated 10th January, 1996 and, finally, the Accountant General, Maharashtra-I, by his letter dated 22nd March, 1996 conveyed that a sum of Rs. 1,15,160/- was payable towards gratuity and a sum of Rs. 1,00,000/- towards death-cum-retirement gratuity needed no adjustment. The pension amount was indicated as authorised at Rupees 48,000/- per annum, as in the earlier letter.

(g) Pursuant to the receipt of the authorisation dated 22nd March, 1996 from the Accountant General, Maharashtra-I, the Prothonotary and Senior Master's office prepared a bill for disbursement of the amount of Rs. 1,15,160/- and lodged it with the Pay and Accounts Office on 29th March, 1996 and by the end of March 1996, the Petitioner was paid a sum of Rs. 5,658/- towards interest for delay in payment of the pension amount for the month of September, 1995. However, despite the express request made for payment of the amount payable to the

Petitioner's account in the State Bank of India, Margao, Goa, the Demand Draft was not made payable at Margao and the Petitioner had to bear a loss of about Rs. 6,000/- towards the commission deducted by the Margao Branch for encashment of the Draft.

(h) A sum of Rs. 1,15,160/- was paid to the Petitioner on 9th April, 1996 towards the outstanding balance due to the Petitioner towards death-cum-retirement gratuity. In this case also, the Draft, despite clear cut instructions, was made payable at Bombay instead of being payable at Margao, resulting in an additional deduction of about Rs. 1,200/- towards commission charges by the Margao Branch of the State Bank of India, apart from delay in encashment of about a month.

(i) The Petitioner had also applied for encashment of the cash equivalent of the unutilised leave for a period of eight months amounting to Rs. 1,11,360/- which was paid to the Petitioner by cheque dated 10th April, 1996.

3. Presently, the grievance about non-receipt of the benefits due upon retirement does not survive. However, the question is one of delay in payment and whether any of the respondents is liable to pay interest upon the due amounts for the delay in the processing of the papers and payment of the retirement dues to the petitioner.

4. This Court had directed all the Respondents to file detailed affidavit explaining each day's delay in the matter. There is an affidavit filed by the Principal Secretary to the Government of Maharashtra, Law and Judiciary Department, on behalf of the 1st Respondent, State of Maharashtra, on 14th June, 1996. The 1st Respondent states that it is not concerned with the processing of payments towards General Provident Fund, Pension and death-cum-retirement gratuity and that it was only concerned with encashment of unutilised leave. The affidavit points out that, though the Petitioner had retired on 10th May, 1995, only a personal letter was addressed to the Law and Judiciary Department only on 21st December, 1995 on the issue of encashment of leave. The letter was received on 27th December, 1995. The formal proposal for encashment of the unutilised leave was forwarded by the office of the Prothonotary and Senior Master to the Law and Judiciary Department only on 15th February, 1996. The Law and Judiciary Department called for a report from the Accountant General which was received on 14th February, 1996 and the necessary Government Resolution authorising encashment of unutilised leave was issued on 15th March, 1996. A perusal of this affidavit does not indicate that there was any undue delay on the part of the Government of Maharashtra in sanctioning the encashment of unutilised leave.

5. A perusal of the affidavit dated 14th June, 1996 filed by the Pay and Accounts Officer also does not disclose undue delay in the payment of the sum of Rs. 1,15,160/- towards balance amount of gratuity.

6. However, there appears to be unreasonable delay in the sanctioning and

payment of the amount of pension, commuted pension and the death-cum-retirement gratuity, by the Controller of Accounts (Pension), Ministry of Finance, New Delhi and the Accountant General (A & E)-I, Maharashtra.

7. The Deputy Controller of Accounts (Pension) Ministry of Finance, Central Pension Accounting Office, New Delhi, Tara Chand, has filed an affidavit dated 12th June, 1996 to explain the delay on the part of his Department. According to his affidavit, it appears that, for the first time, the Accountant General, Maharashtra-I, sent the pension papers on 27th June, 1995 which were received by the Central Pension Accounting Officer (hereinafter referred to as "CPAO") only on 11th July, 1995. He also points out that, in the accompanying letter dated 27th June, 1995, the Accountant General, Maharashtra-I, had requested the CPAO to authorise payment to the Treasury which was not the function of the office of the CPAO since it was the Accountant General, Maharashtra-I's office which could itself authorise payment to the Treasury. Hence, the papers were returned to the Accountant General, Maharashtra-I on 16th July, 1995 by the CPAO.

8. After about two months of "processing of the papers", the Accountant General's office returned the papers to the CPAO by the letter dated 27th September, 1995 (received by the CPAO on 9th October, 1995) instructing the CPAO that payment of pension was desired at the State Bank of India, Margao, Goa. The CPAO despatched the Special Seal Authority on 18th October, 1995 to the link Branch i.e. State Bank of India, Panaji Goa, with a copy to the Petitioner, authorising full monthly pension of Rs. 4,000/- per month. However, the commutation authority received from the Accountant General, Maharashtra-I was not in the prescribed form and was, therefore, returned to the Accountant General for forwarding it in the proper form, on 2nd June, 1996. After "processing" the matter, the Accountant General, Maharashtra-I, returned the papers on 19th April, 1996 which were received by the CPAO on 27th April, 1996. The CPAO again processed the papers and issued authorisation for payment of commuted value of the pension on 10th May, 1996 in the sum of Rs. 2,19,600/- being the commuted value and the reduced pension of Rupees 2,000/- per month to be paid through the State Bank of India, Margao, Goa.

9. Tara Chand states that after 9th October, 1995, the CPAO did not receive any communication from any source till the Rule issued by this Court was served on his office. He also states that the revised authority was received in the office of CPAO on 26th April, 1996 from the Accountant General (A & E)-I, Maharashtra, under cover of his letter dated 19th April, 1996 and the Special Seal Authority for releasing commuted pension as well as reduced pension after commutation was despatched to the Manager, State Bank of India, Panaji, Goa on 10th May, 1996 under cover of letter dated 6th May, 1996. In these circumstances, according to Tara Chand, the office of the Controller and Accounts (Pension) was not at fault as it had acted promptly in the matter.

10. Jaideep Kalia, Deputy Accountant General, Accountant General (A & E)-I,

Maharashtra, Mumbai has filed an affidavit dated 18th July, 19% to explain the delay on the part of his office. According to him, the circumstances are as under :?

(a) The pension papers of the Petitioner were received by the office of the Accountant General on 25th March, 1995. According to Jaideep Kalia, the pension papers ought to have been received six months in advance of the date of retirement.

(b) The sanction for pension of the Petitioner was called from the Government of India, Law and Judiciary Department, by the letter dated 21st April, 1995 written by the office of the Accountant General.

(c) The sanction from the Government of India was received in the office of the Accountant General on 3rd May, 1995.

(d) The pension/death-cum-retirement gratuity authorities were issued to the CPAO (Central Pension Accounting Office), New Delhi on 27th June, 1995, for payment on Goa Treasury.

(e) The pension order was received back by the office of the Accountant General from the CPAO on 31st July, 1995 with the remark that the pension cannot be issued on the Treasury.

(f) On 16th August, 1995, the Accountant General's office requested the Treasury to obtain the name of the Bank from which the Petitioner desired to draw the pension.

(g) On 13th September, 1995 the pension orders were resubmitted to the CPAO, New Delhi along with a letter dated 27th September, 1995.

11. There is a further affidavit dated 29th August, 1996 filed by Jaideep Kalia, Deputy Accountant General, which explains the further steps taken in his Department and contends that the time taken for processing the papers of the Petitioner and making payment was well within the normal period of time and could not be said to be unduly delayed.

12. After giving due consideration to the explanations given by the two authorities, namely, CPAO and the Accountant General (A & E)-I, Maharashtra, I am not satisfied that the delay in processing the papers and making payment of dues is satisfactorily explained. It must be remembered that pension payable to a Government servant or to a High Court Judge, under an Act of Parliament, is not a bounty but statutory entitlement of the citizen who has put in long and meritorious service as required under the Rules. Since it is the entitlement of the citizen, correspondingly, there is a legal obligation on the authorities concerned to ensure that the pension amount is paid to the citizen from the date he demits office. The usual excuse of delay due to "administrative processing of papers", is wholly unacceptable. It is for them to arrange their administration in such manner that the citizen gets the pension and other dues from the date he retires

from service. If the authorities are unable to arrange this for any reason, I see no reason why the citizen should not be compensated by payment of interest on the delayed payments. It is unfortunate that, despite tremendous advances made in information Technology, the processing of pension papers appears to be done in the same plodding manner as it was done, a hundred years ago, during British Raj. It is high time that the authorities concerned wake up from their slumber, shake off their lethargic attitude and process the papers promptly so that the citizen's dues are paid promptly when due. The case on hand fortuitously happens to be that of a retired Judge of a High Court who could afford to wait for payment of his dues without facing financial ruin. However, there are innumerable cases of retired Government servants, even of Class IV category, who receive no better or perhaps even worse, treatment at the hands of the authorities concerned. The wheels of the bureaucratic machinery do not appear to move at all unless well oiled. This is a distressing situation which calls for intervention by this Court in exercise of its extraordinary Writ Jurisdiction. The citizen is entitled to seek and demand his retirement dues within a reasonable time of his demitting the office, failing which he should be compensated for the delay in payment of his dues.

13. The Supreme Court pointed out in *State of Kerala and Others Vs. M. Padmanabhan Nair*, that in such matters it is the obligation of the State to reimburse the citizen for wrongful deprivation of his dues for beyond a period of two months.

14. In the facts and circumstances of this case, I am of the view that the delay in payment of the amounts due to the petitioner beyond a period of two months from the date of his retirement on 16th May, 1995, must be held to be unreasonable and the Union of India, is liable to pay interest upon the due amounts for the delay. The next question is the rate at which the interest should be paid. One rate which immediately comes to my mind is the rate of interest which the citizen is liable to pay for delayed Advance Tax payment under the Income Tax Act, 1961. The said rate of interest is two per cent per month. The reason why such interest is made payable is that the Government cannot function if the tax dues are not paid in time by the citizen. In my view, what is sauce for the goose should be sauce for the gander. The same reason holds good when the Government delays the payments which are due to the citizens. However, in the present case, I am not inclined to direct payment of interest at 24 per cent per annum (or 2 per cent per month). I think in the present case, the reasonable rate of interest which should be directed to be paid should be simple interest at the rate of 15 per cent per annum, which the petitioner would have earned had he invested the money in a fixed deposit.

15. Writ Petition is allowed. The 3rd Respondent is directed to compute the delay in the payment of the pension amount, the commutation amount of pension and death-cum-retirement gratuity beyond 16th July, 1995 and, for all such delayed payments, the Petitioner shall be paid by the 3rd Respondent simple interest at

the rate of 15 per cent per annum from 16th July, 1995 until the date of payment.

16. Rule is accordingly made absolute. No order as to costs.

17. This order is to be carried out within four weeks from today.

18. Issuance of certified copy of this judgment expedited.