(2011) 07 JH CK 0138

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2489 of 2009

Gadadhar Rano APPELLANT

Vs

Fertilizer Corporation of India Ltd. and Another RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Gratuity Act, 1972 — Section 7(3A)

Citation : (2011) 4 JCR 277

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The Petitioner, who was under the employment of Respondent No. 1, Fertilizer Corporation of India Limited got retired on 28.2.1989 on his superannuation from the post of Deputy Chief Chemist. On his retirement, when the retiral dues were not paid in spite of several request being made, the Petitioner continued to retain the quarter which had been allotted to him during his service period. However, quarter was vacated on 30.1.1999. Thereupon a sum of Rs. 25,975/- was paid after deducting a sum of Rs. 99,891/- from the retiral dues towards penal rent and other charges. The Petitioner challenged it in C.W.J.C. No. 3848 of 1999 (R). The said writ application was disposed of on 21.7.2000 directing the Respondent to pay retiral dues after deducting usual rent which was being paid by the Petitioner during his service period. That order was challenged by the Respondent in L.P.A No. 284 of 2000. However, during pendency of the said L.P.A, a sum of Rs. 88,754/- was paid towards retiral dues after adjusting usual rent, other charges and the amount paid earlier but the interest was not paid on the amount of Rs. 1,25,866/- which according to the Petitioner was payable to the Petitioner as retiral dues and that apart, other claims were also not paid and in that eventuality, the Petitioner has moved this application for following claims.

(i) Travelling allowance bill of Rs. 10,000/- submitted by the Petitioner on

7.7.1999 for shifting his luggage and household articles to his native place from Sindri along with interest at the rate of 18% per annum.

(ii) Arrear balance payment of 15 days salary for the month of April, 1987 due to implementation of pay revision along with interest at the rate of 18% per annum.

(iii) Interest at the rate of 18% per annum from March, 1989 to November, 2000, i.e. for 11 years 8 months on Rs. 1,25,866/- being the retirement benefits due to the Petitioner on 1.3.1989 but was actually paid in November,2000.

2. A counter affidavit has been filed on behalf of the Respondent wherein it has been stated that claim of the travelling allowance is never admissible to the Petitioner as he continued to stay in the quarter of the Company unauthorizedly even after his superannuation whereas, as per the rule, one is entitled to the said benefits of travelling to his home town or place of settlement on retirement within the permitted grace period of three months of the retirement but the Petitioner never put forth any claim nor he moved to his home town after retirement and that it is wrong on the part of the Petitioner to say that said claim had been made, vide application dated 7.7.1999.

3. With respect to other claims, it has been stated that the payment of arrears of 15 days towards leave salary on revised pay has already been paid to the Petitioner amounting to Rs. 20,112/- but at that time, the Petitioner did not put forth any claim of interest over it, rather after 12 years of accepting the money has come forward to put forth the claim of interest.

4. It has been further stated that since the Petitioner continued to retain the quarter of the Company unauthorizedly after his retirement and as such, no interest is payable for the period during which he was in unauthorized occupation of the quarter and under this situation, the Petitioner is not entitled to any relief claimed in this writ application.

5. Mr. Modi, learned Counsel appearing for the Petitioner submits that the Petitioner does have statutory right under the payment of Gratuity Act, 1972 (hereinafter referred to as ''the Act'') to have interest on account of delayed payment of the amount of gratuity in terms of provision as contained in Section 7(3A) of the Act.

6. The payment of the amount of gratuity cannot be withheld on the ground of employee occupying quarter even after superannuation and as such, even if the Petitioner continued to occupy the quarter, the Petitioner is entitled to have interest @18% from the date when the amount was due to be paid till the amount was paid.

7. Learned Counsel in support of his submission has referred to cases rendered in a case of R. Kapur v. Director of Inspection 1995 (1) PLJR (SC) 33 and also in a case of Bimalendu Kumar Chatterjee v. Regional Labour Commissioner (Central) Dhanbad and Ors. 2009 (4) JCR 359 (Jhr.).

8. Thus, it was submitted that the Petitioner is entitled to have interest on the amount on account of delayed payment of the retiral dues from the date which was due to be paid till it was actually paid, i.e. from 1.3.1989 to November, 2000.

9. Having heard learned Counsel appearing for the Petitioner and on perusal of the record, I do find that when the retiral dues on vacating quarter was paid in the year 1999 to the Petitioner, a sum of Rs. 99,144/- was deducted from the retiral dues payable to the Petitioner as penal rent and also on account of other charges. The Petitioner being aggrieved with the said action, moved to this Court, vide C.W.J.C No. 3848 of 1999 (R) challenging the order by which aforesaid amount had been deducted towards penal rent and also for a prayer to direct the Respondent to make payment of the retiral dues. But there does not seem to be any prayer with respect to payment of interest. However, this Court while observing deduction of amount by charging penal rent being illegal directed the authorities to pay admitted dues legally payable to the Petitioner after making adjustment of the usual rent. In the aforesaid terms, the writ application was disposed of, vide order dated 21.7.2000. Pursuant to that order, payment of retiral dues were made to the Petitioner on 16.11.2000 but the Petitioner did not raise any objection until 2009 when this writ application was filed. Thus, this application suffers from delay and laches for which no explanation what to talk of reasonable explanation has been given and on that ground alone, this writ application is fit to be dismissed.

10. Nevertheless, since other legal points have been raised, that needs to be adjudicated. Submission which has been advanced on behalf of the Petitioner is that since there had been delayed payment of the retiral dues, particularly of gratuity, the Petitioner would be entitled to have interest in terms of the provision as contained in Section 7(3A) of the Act. The said provision of Section 7(3A) of the Act reads as follows:

If the amount of gratuity payable under Sub-section (3) is not paid by the employer within the period specified in Sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify.

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

11. Under the aforesaid provision, one is entitled to have interest on account of delayed payment of the amount of gratuity but at the same time it is qualified with a condition that if there has been delay in payment due to fault of employee, then one would not be entitled to have interest. The stand of the Respondent is that since the Petitioner had not vacated the quarter even after his retirement, payment of gratuity was withheld until he vacated the quarter but

this stand, according to learned Counsel appearing for the Petitioner, is not tenable in view of the decision rendered in a case of R. Kapur v. Director of Inspection (supra) wherein it has been held that death-cum-retirement gratuity (DCRG) could not be withheld merely because the employee had not vacated the allotted premises during the course of his employment. The said decision was laid down on the fact of the case that the Petitioner of that case while was working in Delhi, had occupied a pooled Central Government accommodation. In course of time, the Appellant was transferred out of Delhi but he continued to retain official residence in spite of the fact that the allotment had been cancelled. The Estate Officer on account of quarter being retained unauthorizedly levied damages against the Petitioner. The said order by which damages were levied was challenged before the District Judge. The District Judge reduced the amount of damage from Rs. 1070/- to Rs. 176/-. While the matter was pending before the District Judge, the writ application was filed before the High Court of Delhi challenging the recovery from him for the period 1.1.1976 to August, 1979. The High Court disposed of the application directing the Appellant to approach the department concerned, as the amount had already been reduced by the District Judge to the extent of Rs. 176/- per month. Pursuant to that order, a request was made to refund the amount and to issue "no demand certificate" but it was not issued, as a result of which, the gratuity could not be paid to the Petitioner and therefore, the Petitioner of that case moved before the Administrative Tribunal. The Tribunal upon considering the facts and circumstances did hold that death-cum-retirement gratuity could not be withheld merely because the employee had not vacated the allotted premises.

12. The Hon''ble Supreme Court by placing reliance on the ratio laid down in a case of State of Kerala and Others Vs. M. Padmanabhan Nair, affirmed the view of the Tribunal and held that death-cum-retirement gratuity (DCRG) cannot be withheld merely because the claim for damages for unauthorized occupation is pending and hence, the Petitioner is entitled to interest @18%.

13. From the facts noted above, it is quite apparent that in spite of the order of the District Judge, neither the refund was made nor "no dues certificate" was granted and as such, payment of death-cum-retirement gratuity could not be made to the Petitioner which can certainly be considered as deliberate act.

14. The Hon''ble Supreme Court taking into account this aspect of the matter and the ratio laid down by the Supreme Court in earlier case of State of Kerala v. M. Padmanabhan Nair (supra) passed an order directing the authority to pay interest @18%.

15. The Hon''ble Supreme Court in a case of State of Kerala v. M. Padmanabhan Nair (supra) has been pleased to lay down following proposition:

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

16. Thus, the ratio which has been laid down in the aforesaid two cases is that where there has been culpable delay in making payment of the amount of gratuity, the authority be saddled with the penalty to pay interest.

17. Here in the instant case, there does not appear to be culpable delay on the part of the authority in not making payment of the gratuity as admittedly, the Petitioner did not vacate the quarter for about a decade and as soon a the quarter was vacated, the payment was made. The authority seems to have been harboring impression that the Petitioner was not entitled to have gratuity as he had not vacated the quarter. It''s impression may be erroneous but certainly it does not appear to be a case of culpable delay for the reason that as soon as the quarter was vacated, the payment was made.

18. The other case of Bimalendu Kumar Chatterjee v. Regional Labour Commissioner (Central) Dhanbad and Ors. (supra) on which reliance was placed by the learned Counsel appearing for the Petitioner also appears to be a case of culpable delay as in that case, in spite of the payment of penal rent on account of retention of the quarter, gratuity was not paid, whereas in the present case, as soon as the quarter was vacated, the payment of gratuity was made. Therefore, the Petitioner cannot draw any strength from the ratio laid down in the aforesaid cases.

19. For the reasons as stated above and also on account of the fact that the application suffers from laches, I do not find any merit in this application. Hence, this application stands dismissed.