
(2015) 03 AHC CK 0049

In the Allahabad High Court

Case No : C.M. Delay Condonation Application No. 99791 of 2015 and Special Appeal Defective No. 242 of 2015

Gajraj Dohre

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 ADJ 106 : (2015) 5 ALJ 485 : (2015) 110 ALR 834 : (2015) 3 AWC 2854 : (2015) 146 FLR 1005 : (2015) 2 UPLBEC 1530

Hon'ble Judges : D.Y. Chandrachud, C.J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Prashant Kumar Srivastava and Shashi Ranjan Srivastava, for the Appellant

Final Decision : Allowed

Judgement

1. The dismissal of a writ petition filed by the appellant seeking interest on the delayed payment of gratuity has resulted in a special appeal.
2. The appellant was a Tax Clerk in the Nagar Palika Parishad at Jalaun. During his tenure of service, an order for recovery was issued on 22 March, 2002 by the Commissioner, Jhansi Division. The order was challenged by the appellant by instituting writ proceedings under Article 226 of the Constitution (Writ-A No. 21352 of 2002). During the pendency of those proceedings, the appellant retired from service on 31 August, 2007 on attaining the age of superannuation. The writ petition filed by the appellant was allowed by a learned Single Judge of this Court on 18 November, 2013 and the order for recovery was set aside. The appellant was paid his dues on account of gratuity in the amount of Rs. 2,03,049/- on 30 May 2014. The appellant claimed the payment of interest on the basis of a Government Order dated 30 October, 2002 which states that a delay in the payment of gratuity beyond a period of three months would attract simple interest at the rate payable on the General Provident Fund.

3. The learned Single Judge dismissed the writ petition on the ground that it was only on 18 November 2013 that the order for recovery was set aside by a learned Single Judge of this Court and that no relief was claimed in the earlier writ petition for the payment of retiral dues including gratuity. Moreover, the learned Single Judge noted that sanction was given by the District Magistrate and the Executive Officer, Nagar Palika Parishad in the months of April and May 2014 following which the gratuity was paid within a period of approximately six months.

4. From the record before the Court what emerges is that the Commissioner, Jhansi Division had ordered a recovery from the salary of the appellant on 22 March, 2002. The appellant had challenged that order by filing writ proceedings in this Court and, eventually, succeeded upon the order of the learned Single Judge setting aside the recovery. Consequently, once the order for recovery was quashed and set aside, the withholding of gratuity must necessarily be treated as having taken place in pursuance of an unlawful and unsustainable order for recovery. Even if the gratuity was withheld because of the order of recovery, it is a well settled principle of law that the payment of gratuity can be adjusted or withheld only in a manner known to law and after following a statutory provision enabling such action in the first place. But, once the order for recovery was in any event quashed and set aside, the order for recovery would stand obliterated and would be of no consequence whatsoever. The appellant had been deprived of his gratuity for no fault of his. Gratuity is not an act of bounty or charity but a rightful entitlement of an employee. The appellant retired on attaining the age of superannuation on 31 August, 2007 whereas his gratuity was paid to him only on 30 May 2014. The appellant is justified in law in seeking to be compensated for the delay on the part of the State by claiming simple interest in accordance with the terms of the Government Order dated 30 October, 2002.

5. The learned Single Judge was in error in holding that the appellant was not entitled to interest on the ground of the order for recovery which held the field since 22 March 2002. Once the order for recovery was set aside by the learned Single Judge of this Court, it would have no consequence in law whatsoever with the resultant position that the appellant was entitled to the payment of his gratuity on the date of his superannuation. Having been deprived of his rightful entitlement, the appellant would be entitled to the payment of interest.

6. We, accordingly, allow the special appeal by directing that the appellant would be paid simple interest at the rate of 8% per annum with effect from 1 December, 2007 until the actual payment of gratuity was effected. The amount of interest shall be paid to the appellant within a period of three months from the date of receipt of a certified copy of this order.

7. The special appeal is, accordingly, allowed and the judgment and order of the learned Single Judge is set aside. There shall be no order as to costs.

8. The delay of 95 days in filing the special appeal has been satisfactorily explained in the affidavit in support of the delay condonation application and is

hence condoned.

9. The application stands, accordingly, disposed of.