(2011) 07 GUJ CK 0120

In the Gujarat High Court

Case No : Special Civil Application No. 9288 of 2004

Jivanlal Ramjibhai Parmar APPELLANT

Vs

Additional Chief Secretary RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0120

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : K.D. Vasavada, for the Appellant; Jirga Jhaveri, Asst. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. M. Sahai, J.—Board has been revised. Mr. K.D. Vasavda, learned Counsel for the Petitioner is not present to press this petition.

2. This writ petition has been filed by the Petitioner challenging the judgment of the Central Administrative Tribunal dated 09.03.2004 passed in O.A. No. 257 of 2003 by which the Tribunal has allowed the claim petition partly.

3. The Petitioner claims that all the amount claimed by him under the O.A. be directed to be released to him and the order of the Tribunal may be modified to that extent. The Petitioner retired in the year 2000. The Tribunal has partly allowed the petition and has directed for refund of interest amount of Rs. 13,035. Other claims of the Petitioner has not been accepted.

4. The order of the Tribunal is clear. Instead of repeating the facts stated by the Tribunal, we deem it proper to extract the paras:2 to 10 of the order of the Tribunal as under:

2. The brief fact of the case is that the applicant retired from service, on 31-7-2000. Though, PPO dated 10-8-2000 was issued, the amount was not credited to the applicant''s account. The claim is that all the retiral benefits

became due with effect from 01st August, 2000, but were paid to the applicant on 5-1-2001 i.e. after 160 days.

3. Respondents'' case is that one enquiry involving the applicant and some other officers was pending which involved grave charges, hence "No Event Certificate" was not issued to the applicant so the amount was not paid. "No Event Certificate" was issued on 06-1-2001 and thereafter the payments were released.

4. There is nothing on record to show that the applicant was served with major penalty charge memo. If no criminal or departmental proceedings was pending against the applicant, the retiral benefits could not have been withheld merely on the ground that "No Event Certificate" was not issued. Admittedly, the PPO dated 10-8-2000 was issued to the applicant. Consequently, as per the PPO, amount should have been released and credited to the applicant''s account. A plea has been taken in the reply that the applicant is not entitled to interest on retiral benefits for 90 days from the date of retirement. In support of this plea, copy of resolution No. NVN-1079-2091-P, dated 14th August 1979 issued by Finance Department of Government of Gujarat has been produced. A reading of contents of this shows that it no where provides for non-payment of interest for three months. It only provides that interest would be payable beyond three months, if payment of gratuity is delayed due to administrative lapse. If the due amount was with the department, then the department is liable to pay interest thereon. In the present case, as has been mentioned earlier when the PPO had been issued on 10-8-2000 the amount could not have been withheld, thereafter. In view thereof, the applicant is entitled to interest @ 9% per annum with effect from 01st August 2000 till 04-1-2001 on pension amount, the commuted value of pension, and DCRG, but on leave encashment, interest would be payable up to 29-9-2000 only.

5. Learned Counsel for the applicant submitted that as the applicant failed to utilize the House Building Advance for period from October''83 to Feburary''84 i.e. for five month only, the Respondents have deducted Rs. 6358/- instead of Rs. 546/- only.

6. Learned Counsel for the Respondents, Shri Doctor, however, submitted that the applicant''s was granted HBA which was to be utilized within prescribed time limit and applicant was also required to submit the mortgage deed and insurance policy within stipulated period. The applicant was granted time up to 31-10-83, but the applicant failed to submit the documents, so a penal interest @ of 2.75% till the submission of mortgage deed was imposed upon the applicant. The learned Counsel has placed reliance on the Financial Department''s GR No. 21/AG/91, dated 20-8-91 of Gujarat Financial Rules. According to which, the penal interest on HBA amounting to Rs. 6358/- was recovered from the applicant. The submission is that penal interest is not only because of non utilisation of HBA amount within prescribed time, but also because of non submission of mortgage deed.

7. Copy of the mortgage deed is on record, which shows that it was submitted on 28-12-1988. Beside this, the amount of Rs. 6358/- was deducted in the year 1997-98 and the applicant has now come to the Tribunal after a long gap i.e. in 2003 after he retired in 2000. The claim for such an amount is not made out on merit and it is also to be rejected due to laches.

8. The other claim is of Rs. 13035/-. According to the Respondents in the light of Fifth Central Pay Commission under Revision of Pay Rules, 1998, the difference of pay amount of Rs. 47,959/- was paid to the applicant twice, so the applicant was instructed to pay back the amount of Rs. 47959/- with interest. The applicant repaid the amount on 06-6-2000 and paid Rs. 9462/- as interest on 17-7-2000. Total interest recovered from the applicant was in tune of Rs. 13035/- on the amount of Rs. 47959/-.

9. Learned Counsel for the applicant admitted that an amount of Rs. 47,959/- was paid to the applicant, by mistake, of the department. The department vide its letter dated 23-6-2000 informed the applicant about this mistake and asked for return of the said amount. The applicant, consequently, deposited the said amount of Rs. 47959 on 06-7-2000. When this amount was second time paid tot eh applicant by the department, is not on record. However, for retention of Rs. 47959/-, the department recovered Rs. 9462/- and Rs. 3573/-, total Rs. 13035/- as interest. The mistake of double payment was by the department. The applicant had not drawn the said amount, but the department had released the said amount. Thereafter, the amount was paid back to the department. The applicant cannot be blamed for the said amount nor a motive can be alleged for retention of the said amount. The department were themselves to be blamed for double payment and hence they cannot recover interest of Rs. 9462/- and Rs. 3573/- total amount of Rs. 13035/- from the applicant. The applicant is therefore entitled for refund of interest amount of Rs. 13035/-.

10. In view of discussion made above, the OA is partly allowed and the Respondents are directed to calculate and pay the amount of interest as in para 04 and the amount as directed in para 09 to the applicant within a period of two months from the date of receipt of a copy of this order. In case, the said amount is not paid to the applicant within aforesaid period of two months, the applicant shall be paid interest on the due amount @ 9% per annum w.e.f. The date the two months period expires till the date of payment. Cost easy.

5. We find that the Tribunal has given cogent reasons for accepting the claim of the Petitioner and for rejecting other claims. We do not find any illegality or mistake in the order of the Tribunal. This petition is devoid of any merits and is accordingly dismissed. Rule is discharged.