(2018) 08 CAT CK 0063

In the Central Administrative Tribunal

Case No : Original Application No. 2427 Of 2017

Kalu Prasad APPELLANT

Vs

Delhi Transport Corporation RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Citation : (2018) 08 CAT CK 0063

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Ravinder S. Garia, Rajeev Kumar

Final Decision : Allowed

Judgement

1. Heard the learned counsel for applicant and the learned counsel for respondents.

2. The applicant pleads that in compliance to the decision dated 29.01.2005 by the Labour Court in ID-379/98, he was reinstated in service w.e.f. 13.07.2005. The respondents, however, preferred to challenge this reinstatement order in Hon'ble High Court of Delhi vide WP (C) no.3759/2010. Neither has Labour Court order been set aside nor a stay has been granted. This matter is presently sub-judice in the Hon'ble High Court.

Meanwhile, applicant had retired from service on 31.05.2017.

However, on the reasoning that the reinstatement order is under challenge in Hon'ble High Court of Delhi, the respondents have neither paid him gratuity nor paid any pension so far. The applicant is thus facing great difficulty and this is the cause of the present OA-2427/2017.

3. Since there was delay in the decision on the instant OA-2427/2017 in the Tribunal, the applicant had preferred a writ petition no.4966/2018 in Hon'ble High Court of Delhi wherein following orders were passed on 09.05.2018:

"9. Keeping the aforesaid facts into consideration, we are of the view that in case after hearing the parties and examining the pleadings of W.P.(C) No.3759/2010 the Tribunal is of the view that the OA cannot be heard, in that case the Tribunal shall hear the application seeking interim relief, which shall be restricted to provisional pension on the date fixed as we are informed that pleadings are complete. No adjournment will be granted to either of the parties. This order is being passed keeping in view the fact that the petitioner is facing acute financial hardship as the petitioner has retired and has to look after himself and his wife. We are also informed that children of the petitioner are married and are staying separately and not supporting the petitioner."

3.1 Thereafter, RA No.98/2018 in OA No.2427/2017 was heard by Tribunal on 11.07.2018 when following orders were passed:

"The current review application has been filed by the applicant for review of Tribunal's order dated 02.07.2018 in OA-2427/2017.

2. In the review application, the applicant has submitted that in the said order, the Tribunal has wrongly mentioned the date of the order as "02.06.2018" instead of "02.07.2018". It is further submitted that the Tribunal has failed to consider the directions of the Hon'ble High Court of Delhi in its order dated 09.05.2018 in WP(C)-4966/2018 whereby the following directions were passed:-

"9. Keeping the aforesaid facts into consideration, we are of the view that in case after hearing the parties and examining the pleadings of W.P.(C).3759/2010 the Tribunal is of the view that the OA cannot be heard, in that case the Tribunal shall hear the application seeking interim relief, which shall be restricted to provisional pension on the date fixed as we are informed that pleadings are complete. No adjournment will be granted to either of the parties. This order is being passed keeping in view the fact that the petitioner is facing acute financial hardship as the petitioner has retired and has to look after himself and his wife. We are also informed that children of the petitioner are married and are staying separately and not supporting the petitioner."

3. The review applicant has, therefore, submitted that as per the aforesaid order of the Hon'ble High Court, the order under review may be recalled and the current review application be allowed.

4. I have gone through the review application. In so far as the correction in the date of the order is concerned, registry is directed to correct the date of the order from "02.06.2018" to "02.07.2018" and issue corrected copy of the order to both the parties.

4.1 The next ground raised by the review applicant is that the Tribunal while deciding the O.A. on 02.07.2018 has not considered the directions of the Hon'ble High Court dated 09.05.2018 in WP(C)-4966/2018. I have perused the said order of the Hon'ble High Court and I find that as per the said directions of the Hon'ble High Court, the O.A. was to be decided. Accordingly, I allow the review application in circulation. The order of the Tribunal dated 02.07.2018 is recalled. The O.A. is restored to its original position.

5. List the O.A. for hearing on 02.08.2018 after issuing notice to both the parties."

4. The applicant has now pleaded that the instant OA No.2427/2017 may now finally be decided for final pension as the same has since been allowed by the Hon'ble High Court. Now since the OA No.2427/2017 is being heard by the Tribunal, the applicant brought out that in reference to the decision by Hon'ble Supreme Court in State of Jharkahand & ors. vs. Jitendra Kumar Srivastava & anr., CA No.6770/2013 in SLP (Civil) no.1427/2009 wherein judgment was delivered on 14.08.2013, following directions were passed:

"15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

16. We, accordingly, find that there is no merit in the instant appeals as the impugned order of the High Court is without blemish. Accordingly, these appeals are dismissed with costs quantified at Rs. 10,000/-each."

5. The respondents pleaded that in the instant case the very basic event of reinstatement is under challenge in the Hon'ble High Court of Delhi, hence the grant of final pension and gratuity is not in order and cannot be allowed.

6. The matter has been carefully heard. It is undisputed that the judgment for reinstatement of the applicant dated 29.01.2015 is presently under challenge in Hon'ble High Court of Delhi and final decision is still awaited. However, the decision in respect of reinstatement has neither been stayed nor set aside. The applicant has since been reinstated and retired also. The financial problems being faced by a retired employee can very well be appreciated and thus it is not considered in order, that he should be denied pension in this retired state and especially in view of the judgment of Hon'ble Supreme Court quoted in Para 4.0 above.

7. At the same time, it is also noted that any orders permitting final pension and grant of gratuity, when the reinstatement itself is subjudice in Hon'ble High Court of Delhi, may lead to this WP No.3759/2010 itself become infructuous and as such may also not be in order.

8. In the event, following directions are given to the respondents:

(a) to fix provisional pension of the applicant and start paying the same to the applicant, including arrears, within a time period of eight weeks from the date of receipt of a copy of this order. Any delay, in payment, thereafter, shall carry interest at GPF rates.

(b) 50% of the amount of gratuity be also released forthwith alongwith interest, for the period w.e.f. 31.05.2017 till date of payment, at GPF rates. For this purpose the applicant will give an undertaking that in the event of gratuity not being payable, after the decision of Hon'ble High Court in WP (C) No.3759/2010 is received, the applicant will pay back the same along with interest being received by him now.

(c) In respect of remaining 50% gratuity amount, the respondents will take an appropriate decision once the Hon'ble High Court ruling in respect of reinstatement is received. This balance 50% of the gratuity amount, if and when released, will also carry GPF interest rate for the period w.e.f. 31.05.2017.

No order as to costs.

