

(2012) 04 RAJ CK 0077

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 428 of 2012 in Civil Writ Petition No. 11550 of 2011

Koshlesh Kumar Sharma

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Penal Code, 1860 (IPC) — Section 120B, 409, 467, 468, 471

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 14, 17

Rajasthan Civil Services (Pension) Rules, 1996 — Rule 90(1)

Citation : (2012) 2 WLN 575

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. At the request of learned counsel for the parties, arguments were heard and special appeal is being disposed off finally. For the reasons mentioned in the application u/s 5 of the Limitation Act, delay of 16 days in filing the appeal is condoned. Application u/s 5 of the Limitation Act stands allowed.

2. So far as merits of the case are concerned, learned counsel for the petitioner/appellant submitted that the appellant filed writ petition for payment of amount of gratuity, which has not been paid to him so far since his retirement way back on 31.07.1999. He submitted that learned Single Judge committed an illegality in dismissing the writ petition on the ground that a case under the provisions of Prevention of Corruption Act has been registered against the petitioner, whereas the said case was registered after his retirement and the same was not pending on the date of his retirement, therefore, the appellant was entitled to receive amount of gratuity.

3. Mr. S.N. Kumawat, learned Additional Advocate General appearing on behalf of the respondents referred Rule 90 (1) (c) of the Rajasthan Civil Services (Pension)

Rules, 1996, wherein it is provided that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon, therefore, writ petition filed by the petitioner/appellant has rightly been rejected by the Single Bench.

4. We have considered the submissions of learned counsel for the parties and examined impugned order as well as other documents available on record.

5. Learned Single Judge has dismissed the writ petition observing that before conclusion of the criminal trial of the case registered against the petitioner under the provisions of Prevention of Corruption Act, no service benefits, except provisional pension, can be granted to an employee, therefore, no case is made out for interference.

6. Learned counsel for the appellant does not dispute that a case under the provisions of Prevention of Corruption Act has been registered against the appellant in respect of his service period and the trial of the same has not been concluded so far.

7. From Annexure-4, annexed with the writ petition, i.e. reply to notice of demand of justice to counsel for the appellant dated 21.09.2010, it is clear that FIR No. 304/2000 dated 19.07.2000 was registered against the appellant under the provisions of Prevention of Corruption Act and in addition to above offence, the said FIR has also been registered under Sections 409, 467, 468, 471, 477(A) and 120B IPC. Challan has already been filed in the matter. The appellant was informed vide reply dated 21.09.2010 that the case of gratuity has not been kept pending deliberately, but payment thereof has not been made for the reason that a criminal case, mentioned above, is pending against him. Rule 90 (1) (c) of Rajasthan Civil Services (Pension) Rules, 1996 reads as under:

90. Provisional pension where departmental or judicial proceedings may be pending

(1)(a)...

(b) ...

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

Provided that where departmental proceedings have been instituted under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, for imposing any of the penalties specified in clauses (i) and (ii) of Rule 14 of the said Rules, the payment of gratuity shall be authorised to be paid to the Government servant.

8. From the above provision, it is clear that amount of gratuity has rightly been not paid to the appellant until the conclusion of the judicial proceedings.

9. In view of above discussion, we are satisfied that learned Single Judge was

right in not interfering in the matter and in dismissing the writ petition filed by the appellant. We do not find any merit in this intra-Court appeal and the same is, accordingly, dismissed with no order as to costs.