(2014) 12 KL CK 0145

In the High Court Of Kerala

Case No : W.P. (C) No. 25996 of 2014

Krishnan Namboothiri T.V. — APPELLANT

Vs

Travancore Devaswom Board and Others — RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Citation : (2015) 1 ILR 758 : (2015) 1 KHC 143 : (2015) 1 KLJ 454

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : S. Subhash Chand, Advocates for the Appellant; A.N. Rajan Babu, Standing Counsel, Advocates for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioner approached this Court ventilating his grievance that though he retired from the service of the Devaswom Board on 31/08/2013 after attaining the age of superannuation, having worked as full time Santhi, his terminal benefits had not been paid despite lapse of more than one year. While the writ petition was pending, though the respondent Board initially filed its counter-affidavit, later reported to the Court that the petitioner''s retirement benefits had been settled. When this Court has proposed to close the writ petition having not survived for consideration in view of the developments lis pendens, the learned counsel for the petitioner has made his submissions concerning the delay on the part of the respondent officials in paying the retirement dues to the petitioner and, as a consequence, the petitioner is entitled to interest on delayed payment. The learned counsel for the petitioner has strenuously contended that right to pension is not a bounty but is a statutory and unconstitutional obligation on the part of the employer. According to him, the delay beyond two months, which is said to be a reasonable time to settle the retirement benefits, shall be compensated with payment of appropriate interest. In this regard, he has placed reliance on State of Kerala and Others Vs. M. Padmanabhan Nair, . On the issue whether the petitioner is required to approach a Civil Court if the issue were to involve any disputed question of fact regarding the delay, the learned counsel has placed reliance on S.K. Dua Vs. State of Haryana and Another, . The learned counsel has further placed reliance on Meenakshi K. v. Cherthala Municipality and Others 2010 (3) KHC 918 , and also an unreported judgment of this Court in WA No. 1840 of 2014 rendered on 04/12/2014 by a learned Division Bench.

2. Adverting to the unreported judgment of the learned Division Bench of this Court referred to above, the learned counsel would contend that it is for the Department to identify the persons at whose negligence the delay occurred and after paying the interest for the delay, the department is entirely at liberty to recover the said amount from the indolent employees responsible for the delay.

3. The learned Standing Counsel for the respondent Corporation has submitted that while in service the petitioner worked in various temples. According to him, it inevitably took some time for the authorities to gather information and necessary documents such as non-liability certificates from all those stations. In elaboration of his submissions, the learned counsel has submitted that NLCs could not be obtained expeditiously from two of the stations where the petitioner worked earlier, namely Thrikkariyoor and Mundakayam.

4. The learned Standing Counsel has submitted that the blame regarding the delay cannot be entirely placed on the respondent Board, inasmuch as the petitioner did not cooperate with the officials in securing those documents early. Having worked in those stations, the petitioner could have personally pursued the matter in those stations and secured the documents at the earliest so that the Board could have processed the claim expeditiously. When faced with a query whether it is mandatory on the part of a retired employee to visit all the stations where he worked earlier and secure the documents, the learned Standing Counsel, to his credit, has submitted that though it cannot be said to be mandatory, still nothing prevented the petitioner in extending his co-operation. Accordingly, the learned Standing Counsel has urged this Court not to entertain any plea on the part of the petitioner regarding the payment of interest on the alleged delay occurred in settling his terminal benefits.

5. The petitioner on his part has filed a reply affidavit and tried to repeal the contentions of the respondent Board.

6. As could be seen from Padmanabhan Nair (supra), way back in 1985, the Hon''ble Supreme Court held that to settle the terminal benefits of retired employees two months could be treated as a reasonable time. According to their Lordships, the authorities ought to have initiated the process of settling the terminal benefit even before the employee could retire. In S.K. Dua having acknowledged that the delay had been caused by certain insouciant employee, the Hon''ble Supreme Court has observed that it is for the employer to consider whether the erring officer should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. It is further observed that such action, as has been suggested, if taken, would help to generate in the

officials of the employer a sense of duty towards the employer under whom he served, as also sense of accountability to the members of the public. Essentially, the same view has been reflected in the unreported judgment of a learned Division Bench of this Court rendered very recently. Concerning the necessity of approaching a Civil Court claiming interest on delayed payment, in S.K. Dua, the Hon''ble Supreme Court has held thus:

"If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Article 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retrial benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, me High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

7. As could be seen in Meenakshi K (supra), the learned Division Bench of this Court, having placed reliance on both Padmanabhan Nair and S.K. Dua, has held that 6% per annum on the delayed payment should be the interest to be paid by the employer. It is to be appreciated that there is some force in the contention of the learned Standing Counsel that if there is any fault or negligence, contributory or otherwise, on the part of the retired employee, it may not be fair to compel the employer to pay interest on the delayed payment of the retirement benefits. In this regard, the defence offered by the respondent Board is that the petitioner worked in different stations and the officials could not secure NLCs from two stations.

Firstly as has been observed by the Hon''ble Supreme Court in the decisions cited supra, the authorities ought to have initiated necessary steps regarding securing all the necessary documents in advance from the stations where the petitioner worked while he was in service. That apart, the respondent Board cannot expect a retired employee to make his sorties to all the places where he worked earlier and request the officials therein to expedite the process, which is entirely the lookout of the Board inasmuch as all those officers were fastened with the responsibility of sending the necessary documents, if the Board directs. Accordingly, it is to be held that there is no negligence, contributory or otherwise, on the part of the petitioner. Thus, going by the ratio laid down in Padmanabhan Nair, as has been re-affirmed in the unreported judgment of the learned Division Bench of this Court in WA No. 1840 of 2014, this Court allows the writ petition directing the respondent Board to pay simple interest on the delayed payment at the rate of 10% per annum, as has been decided by the learned Division Bench in WA No. 1840 of 2014, after excluding the reasonable time, i.e., two months, required for settling the terminal benefits.

