(2006) 12 AHC CK 0008

In the Allahabad High Court

Kunwar Singh Kannaujiya APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : (2007) 3 ADJ 101

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Unfortunate and sorrow state of affairs emerge from the facts giving rise to this writ petition. In this case a retired Government servant has been subjected to extensive harassment and trauma by the State Government and its officers who are expected to act as a model employer. The petitioner retired on attaining the age of superannuation on 31.12.1991 and for his lawful claim of pension and post retiral benefits he is running from pillar to post for more than a decade, though pension and other retiral benefits under the rules is his legal right and not a bounty yet the starvation and agony, which the petitioner facing in these hard days, is writ large.

2. The petitioner working as a consolidation Lekhpal in Consolidation Department sought to be retired on attaining the age of 58 years on 31.12.91, but as per the decision taken by the State Government since the retirement age was increased to 60 years, he approached this Court by means of a Writ Petition No. 35332 of 1991 wherein an interim order was passed on 7.12.91 directing the respondents to continue him in service till the age of 60 years. The petitioner served the respondents till the age of 60 years and retired on 31.12.93. It appears that during the period he served the respondents after completing 58 years of service, pursuant to interim order dated 7.12.91, the respondents neither finalized his pension nor paid any salary. Thereafter, the petitioner made repeated requests and representations to the respondents but they did not take

any action either for payment of pension and post retiral benefits or salary for the said period.

3. The aforesaid writ petition was dismissed on 17.10.2001 as infructuous. In the meantime, the Settlement Officer (Consolidation), Farrukhabad forwarded his pension papers to the Pension Directorate on 14.5.2001 whereupon the Director (Pension) made an enquiry vide letter dated 17.7.2001 to find out the reasons of delay. However no further action was taken, thereafter. The petitioner thus preferred the present writ petition seeking a mandamus commanding the respondents to pay arrear of salary from 31.12.1991 to 31.12.1993 and pension along with 18% interest.

4. The respondents have filed a counter affidavit wherein entitlement of petitioner for salary is disputed since he was liable to retire on attaining the age of 58 years. It is said that petitioner''s claim that he was entitled for salary till 60 years of age was not adjudicated and on the contrary his writ petition has been dismissed without granting any relief, hence he was liable to be treated to have worked only till the age of 58 years. However, with regard to pension and other retiral benefits, it is averred that the petitioner has retired on 31.12.1991 or on 31.12.1993 and hence his claim for pension and other retiral benefits by means of the present writ petition preferred in 2003 is grossly barred by limitation and laches. In para 13 of the counter-affidavit it is said that the writ petition lacks merits and deserved to be dismissed.

5. I have heard learned Counsel for the parties and perused the record. It would be appropriate first to deal with the prayer of the petitioner with regard to the salary for the period from January, 1992 to December, 1993 during which he has served pursuant to an interim order dated 7.12.91 passed by this Court in Writ Petition No. 35332 of 1991 which stood dismissed as having become infructuous on 17.10.2001. Admittedly the respondents seek to retire the petitioner on attaining the age of 58 years i.e. on 31.12.1991. The action of respondents was consistent with provisions of Fundamental Rule 56. The writ petition filed by the petitioner having been dismissed, it cannot be said that this Court held that the petitioner was entitled to continue till the age of 60 years. In the absence of any adjudication regarding entitlement of the petitioner to continue till the age of 60 years it cannot be said that under law he was entitled to continue till 60 years of age and therefore, in my view the petitioner is not entitled to claim salary for the aforesaid period. The question of entitlement of employees whether to continue till 58 or 60 years has been considered by a Full Bench in Surya Deo Mishra v. State of U.P. and Ors. 2006 (1) Allahabad Daily Judgments 467 wherein it has been held that the provision pertaining to retirement at the age of 60 years is applicable to the members of inferior service only and other employees are liable to retire on attaining the age of 58 years Admittedly the petitioner is not a member of inferior service and therefore, he would have retied on attaining the age of 58 years. The Full Bench has also held where pursuant to an interim order a person has worked beyond 58 years and has been paid salary no recovery shall

be made but where no payment has been made, a mandamus for payment of salary cannot be issued since the employee has no legal right to ask for such a mandamus. Learned Counsel for the petitioner in view of the aforesaid law laid down in Surya Deo Mishra (Supra) also finds difficulty to press his relief in respect to salary for the period from January, 1992 to December 1993 and therefore, did not press further and confined his claim for payment of pension and other post retiral benefits along with interest thereon.

6. In the aforesaid circumstances, this Court now proceed to consider the question whether the demand of the petitioner for pension and other retiral benefits is barred by Limitation or he is entitled for the same in accordance with rules and such other relief including interest, on the amount if any, found payable to the petitioner.

7. The learned Standing counsel vehemently contended since it was not clear whether the petitioner was entitled to continue upto the age of 58 or 60 years and his writ petition was also pending and dismissed as having been infructuous only in 2001, therefore, delay in payment of retiral dues was neither deliberate nor without any lawful and unexplained reasons. Further he also pressed his stand taken in the counter affidavit that the relief sought by the petitioner for pension and other retiral benefits in 2003 is barred by Limitation and the writ petition deserves to be dismissed on this ground alone.

8. In my view the stand of the respondents is wholly unjust, illusory, vague and evasive. Admittedly the petitioner attained the age of 58 on 31.12.1991. His service being pensionable, he was entitled for pension and other retiral benefits under the rules after 31.12.1991. It is admitted to the respondents that they did not make any payment of salary to the petitioner during the pendency of writ petition No. 35332 of 1991 though an interim order was passed therein on 7.12.91 directing the respondents to continue the petitioner in service till the age of 60 years and he actually worked also. Therefore, the question of subsequent recovery of the amount if any paid towards salary for the aforesaid period on the dismissal of the writ petition never subsisted. There was no hurdle before the respondents for not paying pension and other retiral benefits to the petitioner treating his age of superannuation as 58 years in January, 1992, in any case after 31.12.1993 subject to final decision in the pending writ petition. However, neither any reason for non payment has been shown in the counter-affidavit, nor it appears that any action was taken by the respondents in this regard and they conveniently kept silent over the matter for also more than a decade. The writ petition No. 35332 of 1991 filed by the petitioner was dismissed on 17.10.2001. Even before that, it appears from the record that Settlement Officer (Consolidation), Farrukhabad forwarded pension papers of the petitioner to the Pension (Directorate) on 14.5.2001 but respondent No. 2 vide letter dated 17,7.2001 only made enquiry about the reasons for delay and thereafter did not take any further action at all towards payment of pension and other retiral benefits to the petitioner. This shows total apathy and harassing attitude towards

a retired employee in the hands of the respondents. Interestingly in the counter-affidavit the only stand taken by the respondents is that demand for pension and other retiral benefits is barred by time. Neither any reason nor any statutory provision has been pressed and placed before this Court in support of the stand that the claim for payment of pension and other retiral benefits can be rejected on account of limitation or laches. I, therefore, proceed to consider whether a writ petition seeking a mandamus for pension and post retiral benefits can be dismissed on the ground of Limitation if has been filed after more than three years from the date the amount allegedly fell due to the employee concerned.

9. Article 458 of Civil Service Regulations (CSR) confers a right upon Government Servant for superannuation pension while retires on a particular age and reads as under-

458- A superannuation pension is granted to an officer in superior and inferior service entitled or compelled, by rule to retire at a particular age.

10. Thus right to receive pension is statutory and obligates the employer to pay the same to an employee after his superannuation. A public employee holding a civil post or office under the State has a statutory right, thus, to receive pension at the evening of his life after retirement. It is not a bounty of the State. In D.S. Nakara and Others Vs. Union of India (UOI), a Constitution of the Apex Court held that -

Pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess in ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. Therefore, it is a sort of stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore, can be said to be a deferred portion of the compensation or for service rendered.

11. In one sentence one can say that the most practical raison d''etre for pension is the inability to provide for oneself due to old age and avoid unemployment but not senility and penury if there is nothing to fall back upon. Recognizing these principles the State Government has also laid down a time schedule for payment of pension so that at the fag end of the retirement, the retired employee may not run from pillar to post for his pension and other retiral benefits and it should be paid well within time and that too within a reasonable one. As back as on 13th December, 1977, Government Order No. Samanya 3/2085-Das/207/77 was issued laying down a time schedule which emphasize that except all those cases where pension or other retiral benefits have been withheld or liable to be withheld, the same should be paid from the very next month after retirement of

the concerned employee for which purpose two years before the date of retirement of the concerned I employee necessary processing of the documents must start and the same should be completed by the time the employee retires. It also insists that in case the entire processing could not be completed and if delayed for some reason, the same should be completed within two month after retirement of the employee concerned and in case if there is any reason on account whereof the pension and other retiral benefits may not be finalized, at least provisional pension should be paid. The liability to maintain record is upon the authorities of the department concerned and for any delay or inaction, the aforesaid Government Order provides that the concerned Government officer in the department would be held responsible. Therefore, the pension is admittedly payable every month, once it is sanctioned under the rules. It is not the case of the respondents that the competent authority sanctioned pension to the petitioner at any point of time or reasonable time or even till date. It is true that the pension is payable every month but only after sanction by the competent authority. The competent authority in the department has been authorized to look into the service record of the concerned employee for verification of satisfactory service and on his satisfaction, the pension and other retiral benefits may be sanctioned. Where the competent authority has failed to exercise this power it would amount to inaction or dereliction of duty in discharge of statutory function. A person aggrieved may seek a writ of mandamus and in such a case it cannot be said that the consequential action i.e. demand of pension is barred by limitation. The respondents have not pleaded that the competent authority at any point of time sanctioned pension after verification of record. This shows total laxity in discharge of statutory function by the competent authority in sanctioning pension. It is not the case of the respondents that the petitioner''s pension was withheld under any provision of law or his service was unsatisfactory hence entire pension was forfeited.

12. Since the entitlement of pension under the rules is not disputed it also cannot be disputed that the pension is payable every month. That being so it is a continuous cause of action. The respondents'' stand thus, that the claim of the petitioner seeking pension and other retiral dues is barred by limitation is irrational, irresponsible, illegal, illogical and is unsupported by any statutory provision. The retiral benefits are payable to a retired employee every month and therefore, is a recurring cause of action. Where the amount payable to an employee every month is not paid, in such case the cause of action is always intact and it cannot be said that the claim of the employee is barred by time. Considering almost a similar situation in Hindustan Lever Mazdoor Sabha Vs. Hindustan Lever Ltd. and Another, the Apex Court observed as under:

By refusing to give benefit under the said settlement to the employees concerned, the management went on committing errors everyday. It was a continuous cause of action on the part of the employees to claim benefits thereunder. Hence, the complaint cannot be said to be barred by limitation.

13. In M.R. Gupta Vs. Union of India and others, , the dispute for correct fixation of salary in 1978 was raised after 11 years. The salary of the employee was not correctly determined in 1978 when he was appointed. He filed an application before the Tribunal in 1989 praying for proper fixation A of initial pay in 1978 and to give consequential benefit. The Tribunal dismissed the claim on the ground of limitation Reversing the order of Tribunal, the Apex Court held that the claim for correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary since the employee is entitled to salary computed correctly in accordance with the rules. This right is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. In the case of pension which is payable to a Government servant is entitled to claim pension every month and it is a recurring cause of action till he survives or till any order otherwise is passed by the competent authority forfeiting pension if permissible under rules.

14. In the circumstances, I am of the considered view that the relief sought by the petitioner for demand of pension and other retiral benefits cannot be said to be barred by Limitation and laches and the petitioner cannot be non suited on this ground. Moreover, the respondents are ''State'' under Article 12 of the Constitution of India and since entitlement of the petitioner for pension and other retiral benefits under the ruler is not disputed, such a plea should not have come forward from their mouth. In my view it is unjustified. The petitioner entitled for payment of pension every month, his claim accrued every month and therefore, it is a recurring cause of action wherein plea of limitation would have no application.

15. There is another aspect of the matter. Apparently the respondents themselves are guilty of delay in taking steps for payment of pension and post retiral benefits to the petitioner, therefore, they cannot be allowed to take advantage of their own wrong. This is against equity and good conscious. It is well settled exposition of law that no person can take advantage of his own wrong. Hence I reject the defence of the respondents that the relief sought by the petitioner is bared by time and the writ petition is liable to be dismissed on this score alone.

16. Now I proceed to consider the question of interest. What is most shocking to the Court is that the respondents have not made any attempt even in the counter-affidavit by stating before the Court that they are taking steps for payment of pension etc. to the petitioner. There is not even a whisper towards assurance for such payment to the petitioner throughout in the counter affidavit which is conspicuously silent on this question. The approach of the respondents show total carelessness, recklessness and apathy towards a retired employee. In my view, it is ex facie arbitrary and a glaring example of emboldened inaction deserves to be condemned in strongest words. As already observed it is too late

in the day to deny pensionary benefits to an employee entitled for the same under the rule. Non payment of pension amounts to denial of right to earn livelihood of an employee who after retirement may need it most, since he does not get thereafter a regular salary from the employer but at the advance age, the employee and his family is taken care by the nominal amount paid to him as retiral benefits. Hence I have no hesitation to hold that non payment of pension and other benefits to the petitioner is wholly arbitrary, unreasonable and malicious in law on the part of the respondents for the reasons that there is no justification at all provided by the respondents for non payment of any amount to him till date. The laxity on the part of the respondents is so evident which needs to be curbed, otherwise, such kind of evil may spread and hurt the interest of retiring employee in the hands of such negligent and careless officers of the respondents. In a democratic system governed by rule of law. The Government does not mean a lax Government. The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or in-action may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

17. In the case of Lord Hailsham in Casseli & Co. Ltd. v. Broome 1972 AC 1027 the Apex Court held as follows;

An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law...public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it....Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous.

18. In the case of Registered Society v. Union of India and Ors. (1996) 6 SCC 530 the Apex court has follows as under:

No public servant can say "you may set aside an order on the ground of mala fide but you can not hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary.

19. In the case of Shivsagar Tiwari Vs. Union of India (UOI) and Others, the Apex Court has held as follows:

An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit.

20. In the case of Delhi Development Authority Vs. Skipper Construction and

another, has held as follows;

A democratic Government does not mean a lax Government, The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.

21. Since the date of retirement is known to the respondents well in advance, there is no reason for the respondents not to make arrangement for payment of retiral benefits to the employee well in advance so that as soon as he retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues. In the case of State of Kerala and Ors. v. M. Padmanabhan Nair 1985 (1) SLR 750, the Hon''ble Supreme Court has held as follows:

Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retire* or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay penal interest on threse dues at the current market rate should commence at the expiry of two months from the date of retirement.

22. In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained.

23. Normally this Court in exercise of its equitable discretion does not settle the State with civil liability unless the Court is satisfied that the helpless employee had been compelled to litigate for his survival for long i.e. over more than a decade in this case and the action of the respondent State Government and its officers is found to be wholly arbitrary, unreasonable and malicious in non finalization of the pensionary dues and other benefits to the petitioner in time. In my view it is a fit case where the writ petition is liable to be allowed with exemplary costs which is to be realized from the respondents on account of whose lethargic action this situation has arisen. It would be relevant to notice at this stage that the writ petition remained pending before this Court and despite repeated opportunities, when even a stop order was passed on 5.10.2006 yet no counter affidavit was filed by the respondents. Thereafter, the Court directed respondent No. 4 to be present in person on 7.11.2006 or to show cause by filing

affidavit. A counter affidavit has been filed only thereafter by respondent No. 4 on 2.12.2006. In the counter affidavit also nothing has been said about the efforts if any, made by the respondents for payment of pension and other retiral benefits to the petitioner and the only stand taken therein is that the writ petition seeking relief of mandamus for payment of pension and retiral benefit is barred by limitation. This aspect has already been dealt with above and decided against the respondents. Considering all the circumstances and conducts of the respondents and also the dictum laid down by the Apex Court in State of Punjab and Others Vs. Bhajan Singh and Another, and State of U.P. and Others Vs. Manohar, that if evidently any part of litigation has unreasonably protracted, the Court must consider for exemplary costs, in my view, justice demand in this case exemplary cost to be imposed upon the respondents.

24. Accordingly, this writ petition is allowed and a mandamus is issued to the respondents to pay pension and other retiral benefits to the petitioner treating his age of retirement as 58 years and to pay entire arrears with interest at the rate of 10% per annum within two months from the date of communication of this/order to the respondents. The petitioner is also entitled to the cost which is quantified to Rs. 25000/- Respondent No. 1 is also directed to make an enquiry for fixing responsibility of the person concerned for causing such inordinate delay in finalization of payment of pension and other retiral benefits to the petitioners and after holding enquiry impose suitable punishment within six months from the date of communication of this order. Respondent No. 1 is also at liberty to recover the amount of interest & costs paid under this order, from the salary of such person who is found responsible for such laches.