

(2020) 05 MP CK 0088

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 2039 Of 2019

Laxmi Narayan Chaurasiya

APPELLANT

Vs

State of MP And Others

RESPONDENT

Date of Decision : 18-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Order 2 Rule 2
Interest Act, 1978 — Section 3

Citation : (2020) 05 MP CK 0088

Hon'ble Judges : S. A. Dharmadhikari, J;Anand Pathak, J

Bench : Division Bench

Advocate : Brajesh Sharma, R.S. Bansal

Final Decision : Allowed/Disposed Of

Judgement

Anand Pathak, J

1. The present writ appeal is being preferred by the appellant/petitioner taking exception to the order dated 12.09.2019 passed by learned writ Court, whereby petition filed by the petitioner has been allowed, but no specific direction has been given to pay interest over delayed payment of the salary and other allowance.

2. Facts in brief are that the petitioner substantively holds the post of Assistant Director in Agriculture Department, Government of Madhya Pradesh and was transferred from Datia to Dindori vide order dated 13.07.2012 (Annexure P/1) and was relieved from Datia by relieving order dated 25.07.2012 (Annexure P/2) which prompted him to prefer Writ Petition No.5408/2012 on 26.07.2012 assailing the aforesaid transfer order. Vide order dated 01.08.2012 petition was disposed of with a direction by Writ Court to the Director, Agriculture Department to decide the representation of petitioner made primarily on the ground of wife's neurological ailments (and treated at Gwalior), by passing reasoned order and till said decision is taken, impugned order of transfer was stayed.

3. Apparently, on 04.08.2012 and 06.08.2012 (Annexure P/4) representations made by the petitioner to the Director, Agriculture Department and vide order dated 04.09.2012 (Annexure P/5) representation was rejected by the Director, Agriculture Department on the ground of failure of petitioner to file documents in support of the grounds of mental ailments of his wife, which prompted him again to prefer Writ Petition No.942/2012(S) on 17.09.2012 assailing the rejection of representation.

4. After hearing the parties, said writ petition was disposed of vide order dated 16.05.2013 (Annexure P/7), while setting aside order dated 04.09.2012; directing the Director, Agriculture Department to reconsider the representation on the basis of documents filed by petitioner in support of grounds of mental ailments of his wife within 60 days and also decide the question of allowance and other benefits for interregnum period. Thereafter, petitioner preferred fresh representation on 22.05.2013 (Annexure P/8) and the same was also rejected by the order dated 01.07.2013 (Annexure P/9) assigning reasons that ailment of wife of petitioner/appellant as projected does not appear to be serious enough and treatment can be continued at the place of transfer i.e. Dindori. Regarding allowance and other benefits for interregnum period, it was directed that the same would be considered on joining of appellant at transferred place.

5. It appears that on 09.07.2013 (Annexure P/10) the State Government cancelled the transfer order dated 13.07.2012 in due deference of order dated 16.05.2013 passed in Writ Petition No.6942/2012. On 15.07.2013 petitioner submitted his joining in the office of Deputy Director, Agriculture Department, Datia (Annexure P/11) on which Deputy Director, Datia sought guidance of Director, Agriculture regarding period of absence w.e.f. 01.09.2012 to 14.07.2013 vide letter dated 19.07.2013 (Annexure P/12). On 02.11.2013 (Annexure R/1) Deputy Director, Agriculture, Datia requested the petitioner to file application to enable the competent authority to deal with the period of absence in terms of Clause 13.3(ii) and Clause 13.4 of Transfer Policy 2012-13.

6. Since no affirmative steps were taken by the respondents, therefore, Writ Petition No.5949/2013 (subject matter of instant Writ Appeal) was preferred by the petitioner before Writ Court seeking following reliefs:-

"Direction to respondents be issued to release salary of petitioner from 01-09-2012 till date of joining 15-07-2013 forthwith alongwith interest @ 18% p.a.

Direction to pay salary from 15-07-2013 onwards be issued to forthwith and regular payment of salary per month be ensured.

Although order dated 01-07-2013, Annexure P-9 of respondent No.2 rejecting representation of petitioner is superseeded by order dated 09-07-2013 of respondent No.1, Annexure P/10 as such order dated 01-07-2013 and direction sought by respondent No.3 by respondent No.3 by letter dated 19-07-2013 be declared nonest and suitable direction for payment of salary be issued to

respondent No.3.

Issue any other writ, order or direction in nature of writ under Article 226 of the Constitution of India, as this Hon'ble Court may deem fit in facts and circumstances of case;

Cost of the petition may also be allowed."

7. It is submitted by the learned counsel for the appellant that writ court allowed the writ petition while considering the submissions of the petitioner but did not award the interest over the salary and allowances for which the petitioner denied the same. Since the transfer has been set aside and considering the said aspect, respondents were directed to pay full salary and allowances to the petitioner which are admissible to the post of Assistant Director, Agricultural for the period w.e.f. 01.09.2012 till 15.07.2013 and interest was also directed to be paid in case the said salary/allowances are not paid within 60 days and interest @ 8% was counted as well as cost of Rs.5000/- respondents were directed to be paid in favour of the petitioner, therefore, in that condition, interest ought to have been given to the petitioner for lapses committed by the respondents.

8. State opposed the prayer made by the petitioner and submitted that since it was an administrative procedure and later on, order was set aside, therefore, he can be given admissible salary/allowances but not the interest. Thus, he prayed for dismissal of this writ appeal filed by the appellant.

9. Heard learned counsel for the parties and perused the documents appended thereto.

10. Here in the case in hand, petitioner is seeking interest over the delayed payment. Section 3 of the Interest Act, 1978 is reproduced as under:-

"3. Power of court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings;

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1) -

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section, - (a) shall apply in relation to -

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect -

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881; or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908.

(c) shall empower the court to award interest upon interest."

11. Beside that, from the facts it appears that the appellant ultimately got the relief from learned writ court in September, 2019 for a case emanates in year 2012, therefore, for all practical purposes, he suffered for salary and allowances for almost 7-8 years and now if the direction is given for payment of salary then looking to the period of consumption as well as looking to the fact that it was the fault of State Government, therefore, rather adopting hardening of posture on the part of State Government by which the appellant suffered, State Government set aside the transfer order meaning thereby that no transfer order exists in the eye of law. Ultimately, State Government set aside the transfer order and therefore, realized the gravity of the case. In the cases of O.P. Gupta Vs. Union of India and others reported in (1987) 4 SCC 328, Union of India Vs. Justice S.S. Sandhawalia (RETD.) and others reported in (1994) 2 SCC 240 and Lallan Singh and others Vs. State of Uttar Pradesh reported in (2015) 13 SCC 362, it has been held that any delay in disbursement of due amount to the government servant is to be saddled with interest. It is fit case where the petitioner suffered due to the act of State Government, therefore, he should be duly compensated.

12. Resultantly, writ appeal stands allowed so far as relief of interest part is concerned and while keeping in view of the order of learned writ court intact following addition shall be included in the relief granted by the writ court that respondents shall pay the interest to the appellant @ 8% over the salary/allowances which admissible to the post of Assistant Director, Agricultural Department for the period w.e.f. 01.09.2012 till 15.07.2013 within a period of 90 days from the date of submission of certified copy of this order alongwith intimation letter.

14. With the aforesaid modification, writ appeal is allowed and disposed of in above terms.