
(2014) 09 SC CK 0122

In the Supreme Court Of India

Case No : Civil Appeal No. 8612 of 2014 (Arising from SLP(C) No. 6320 of 2010)

Megh Varan Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 12
Industrial Disputes Act, 1947 — Section 6H(2)
Interest Act, 1978 — Section 2, 3, 3(1)
Uttar Pradesh Payment of Gratuity Rules, 1975 — Rule 10(1)

Citation : (2015) 1 SCT 12

Hon'ble Judges : J.S. Khehar, J;Abhay Manohar Sapre, J

Bench : Division Bench

Advocate : Dinesh Kumar Garg, Advocates for the Appellant; Arvind Varma, Sr. Adv., Ardhendumauli Kumar Prasad and Rakesh Uttamchandra Upadhyay, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner-Megh Varan Sharma was appointed as Chief Chemist in Shree Sitaram Sugar Co. Limited, Baitalpur, District Doria (Uttar Pradesh). The aforesaid sugar mill was taken over by the State Government on 24.04.1989. Thereafter, it came to be vested in the Uttar Pradesh State Sugar Corporation Limited. It is thus, that the Petitioner's employment came to be regulated by the above Corporation. It is not a matter of dispute that the above Corporation is State, within the meaning of Article 12 of the Constitution of India. Whilst the Petitioner was posted as Chief Chemist at Maholi Unit of the Corporation, he received a notice of retirement on 17.4.2000. Pursuant to the above notice, the Petitioner was actually retired from service with effect from 31.8.2000.

2. On account of his retirement, the Petitioner was entitled to his gratuity and other retiral benefits. It is therefore, that the Petitioner started making efforts to recover the aforesaid dues. It is not a matter of dispute, that even the personnel

department of the Corporation by a communication dated 29.05.2002, directed the releasing of retiral benefits to the Petitioner. Despite that, the Petitioner was not released any such monetary benefits.

3. Eventually, the Petitioner moved an application before the Labour Court Under Section 6H(2) of the Industrial Disputes Act, 1947, which was registered as Miscellaneous Case No. 17/2004. For gratuity, the Petitioner raised his claim Under Section 10(1) of the Uttar Pradesh Payment of Gratuity Rules, 1975, which was registered as P.G. Case No. 5 of 2004. According to the Petitioner, after he had initiated the above mentioned proceedings, he was asked by the Respondent-Corporation to withdraw the cases filed by him, with the assurance that he would be released his retiral benefits. Consequent upon the above, Respondent No. 2, i.e., the General Manager, U.P. State Sugar Corporation Limited vide an order dated 25.07.2008, directed early payment of Rs. 2,41,469.15 to the Petitioner. The above amount constituted the dues payable to the Petitioner at the time of his retirement (on 31.08.2000). It is not a matter of dispute, that the Petitioner actually received the aforesaid retiral benefits on 21.08.2008. It is therefore apparent that the payment which was due to the Petitioner on 31.08.2000, came to be released to him after eight years" of his retirement on 21.8.2008.

4. After having received the afore-mentioned belated payment, from the Respondent-Corporation, the Petitioner moved representations claiming interest on account of delay in the release of the above payments. Since his representations were not responded to, the Petitioner approached the High Court of Judicature at Allahabad, Lucknow Bench (hereinafter referred to as the High Court) by filing writ petition No. 1732 of 2008. Before the High Court, the Petitioner claimed interest at the rate of eighteen per cent, in addition thereto, the Petitioner also claimed six per cent penal interest. By its order dated 8.10.2009, the High Court, while disposing of the writ petition filed by the Petitioner, allowed him a lump sum payment of Rs. 55,000/- towards interest on account of delayed payment of retiral benefits. Aggrieved by the above order, the Petitioner has approached this Court by filing the instant special leave petition.

Leave granted.

5. During the course of hearing, learned Counsel for the Respondent-Corporation vehemently contended that there were justifiable reasons for not releasing the retiral benefits to the Appellant. Insofar as the instant aspect of the matter is concerned, our attention was invited to paragraph 6 of the counter affidavit filed before the High Court, wherein it was sought to be alleged, that criminal prosecution was initiated against the Appellant in the year 1999, and that the said proceedings were still pending before the Chief Judicial Magistrate, Sitapur. It was submitted, that during the pendency of the aforesaid proceedings, it would not have been justified to release the retiral benefits to the Appellant. It was pointed out that the said proceedings were initiated because the Appellant while evaluating molasses had down grading them, which resulted in a monetary loss to the Corporation. It was also pointed out, that the Appellant had been

given four electric motors for binding, and that, the Appellant had not returned them. Accordingly, a conscious decision was taken by the Corporation not to release the retiral benefits to the Appellant till the Appellant returned the said four electric motors.

6. Learned Counsel for the Appellant, however, refutes the aforesaid assertions made at the hands of the learned Counsel for the Respondent-Corporation. It is pointed out, that the criminal prosecution which was initiated in the year 1999 was still pending against the Appellant, and therefore, if the same was the basis for not releasing the retiral benefits to the Appellant, the same should not have been released to him even in the year 2008. Additionally, it is submitted, that the assertions at the hands of the learned Counsel for the Respondent-Corporation, that four electric motors had been handed over to the Appellant for binding, was also unacceptable on account of the fact, that the Appellant has never been asked to return them, and that the payment of retiral benefits had been made even without their return, leading to clear inference that no such electric motors were entrusted with the Appellant.

7. It is in the aforesaid factual scenario, the issue of payment of interest to the Appellant has to be adjudicated upon.

8. We have given our thoughtful consideration to the controversy. It is not in dispute, that the Appellant has already been released his retiral benefits. It is also not in dispute, that none of the issues, which have been relied upon by the Respondent-Corporation to withhold the Appellant's retiral benefits, has been resolved. Therefore, it is not possible for us to accept that the action of withholding the Appellant's retiral benefits was justified.

9. This Court examined an issue, similar to one in hand, pertaining to the payment of interest on account of delayed payment, in *State of Kerala and Others Vs. M. Padmanabhan Nair*, , wherefrom our attention was invited to the following observations:

"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

10. The aforesaid determination rendered by this Court was reiterated in *R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another*, . It is accordingly the contention of the learned Counsel for the Appellant, that the Appellant is entitled to penalty on account of delayed payment of retiral benefits, ascertainable on the basis of payment of interest at the current market rate, till actual payment. We are of the view that the aforesaid determination rendered by this Court is in consonance with the provisions of Interest Act, 1978. Section 3 thereof is being extracted hereunder:

"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 be, 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 (26 of 1881); or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

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

11. The term "current rate of interest", referred to in Section 3, has been defined in Section 2(b) of the Interest Act, 1978. The same is also being extracted hereunder:

"2(b)"current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

Explanation. - In this clause, "scheduled bank," means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949)."

On a cumulative interpretation of Section 3 read with Section 2(b) of the Interest Act, 1978, leaves us with a clear understanding, that interest would be payable at the highest of maximum rate at which interest is payable on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions).

12. In the above view of the matter, we are satisfied that while assessing the penalty payable by the Respondent-Corporation on account of delayed payment of retiral benefits, the Appellant would be entitled to the highest of the maximum rate, at which Scheduled Banks are currently paying interest on fixed deposits. We, accordingly, direct the Respondent-Corporation to calculate and pay the above interest to the Appellant, within two months from the date of receipt of a copy of this order. We are informed that the amount of Rs. 55,000/- awarded towards interest to the Appellant by the High Court has already been paid to the Appellant on 2.12.2009. We are satisfied, that it would be just and appropriate to adjust the said amount of Rs. 55,000/-, towards costs payable to the Appellant on account of having suffered unnecessary litigation.

The instant civil appeal is disposed of in the above terms.