(2004) 08 DEL CK 0080

In the Delhi High Court

Case No : Writ Petition (C) 603 of 1991

Mr. G.S. Vohra APPELLANT

Vs

Chairman, FCI and Others RESPONDENT

Date of Decision : 26-08-2004

Acts Referred:

CCP (Pension) Rules, 1972 — Rule 68
Constitution of India, 1950 — Article 14, 226, 41
Payment of Gratuity Act, 1972 — Section 8

Citation : (2004) 77 DRJ 57

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : B.B. Gupta, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—Pension is not only a compensation for services rendered in the past but it is also a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, Therefore, one is required to fall back on savings. Keeping this in mind the Courts have held time and again and have hoped that pension and other amounts would be paid within a reasonable short time on retirement, leaving the employee to counter penury and economic destitution.

2. The defaults in payment of pension and other retirement benefits, however, continue unabated. The present case is yet another instance where the pension, gratuity and other amounts were not paid in time despite the fact that the petitioner superannuated on 31.10.1982 and payments were made in 1987 after order of dismissal from service was set aside with consequential benefits on 28th January,1985..

3. The relevant facts in brief are that the petitioner joined as Junior Technical Assistant in Ministry of Food and Agriculture and he was holding the post of

senior godown keeper. He was transferred to Food Corporation of India on 1st March,1969. During his service with Food Corporation of India when he was working as District Manager, FCI, Hissar, petitioner was suspended on 24.4.1974. The suspension was, however, revoked on 29.4.1976. On revocation of suspension, full amount of pay during the suspension period was, however, not paid to the petitioner. He was rather dismissed from service on 7.3.1979. The petitioner challenged his order of dismissal from service and filed a writ petition no. CWP No.42 of 1981. The writ petition challenging the dismissal of the petitioner was allowed on 28.1.1985. While allowing the writ petition the Hon''ble Court was pleased to hold as under :-

"the impugned orders dated 7.3.1979 of Sh.B.C. Gangopadhyay, Managing Director, 8.8.1979 of Sh.K.V. Seshadri, Managing Director and 10.7.1980 of Brig.Harnam Singh, Manager are hereby quashed with all consequential benefits. It will be open to FCI to take appropriate decision in accordance with the Act and the law including the passing of the order of superannuation on due date of retirement in October, 1982. On the facts and circumstances, I make no order as to costs."

4. The order dated 28.1.1985 was passed after writ petition was contested by the respondents. A certified copy of the order was also sent by the petitioner to Food Corporation of India on 28.2.1985. Despite this respondents did not pass an appropriate order of superannuation of petitioner nor paid consequential benefits to the petitioner within a reasonable time in terms with order dated 28th January, 1985. The petitioner, Therefore, had to make representations to the respondents to pass the appropriate order and pay his consequential benefits. Petitioner sent representations dated 8.3.1985; 29.3.1985; 3.10.1985; 5.11.1985; 3.1.1986 and 11.8.1986 to the respondents demanding his consequential benefits. The petitioner in his representations categorically contended that he is a poor man who has suffered great financial hardships and difficulties during all these years. Despite a number of representations, for almost two more years nothing was done by respondents. Thereafter on 7.1.1987 an office order was passed regarding superannuation of petitioner from the service of Food Corporation of India w.e.f. 31.10.1982 (A.N.). By said office order dated 7.1.1987, the period between dismissal from service and superannuation (7.3.1979 to 31.10.1982) had been regularized to duty period and it was observed that the payments due to the petitioner be made as per rules after making adjustment of payments, if any, already released to him.

5. The petitioner was entitled for payment of arrears of salary, pension, gratuity, leave encashment etc. within a reasonable period after order dated 28th May,1985 was passed setting aside his order of dismissal from service and granting him all consequential benefits. It has been contended on behalf of the petitioner that considering his facts and circumstances and such other incidents, a period of sixty days was reasonable within which the respondents ought to have paid consequential benefits to the petitioner after his dismissal from service

was set aside by order dated 28th January,1985. The respondents passed an office order on 7.1.1987, after a considerable delay and only after a number of representations were made by the petitioner. Even after passing delayed office order to pay consequential benefits to the petitioner, the respondents again took more time to make payments. The details of the payments made to the petitioner are as under:-

-- S.No. Nature of relief/period Amount (in Rs.) Date of Payment -- 1. Suspension period 5993.30 5.06.1987 (From 18.5.1974 to 3427.00 5.12.1987 30.04.1976) 1758.00 4.12.1987

2. Dismissal period wages 90104.00 3.03.1987 (7.3.1979 to 31.10.1982)

3. Pension (retired on 31.10.1982) 55048.00 02.07.1987 8105.00 28.07.1987

4. Gratuity (retired on 31.10.1982) 25885.00 12.05.1987

5. Leave Encashment 13260.00 24.08.1987 (Retired on 31.10.1982) --

6. On account of delayed payment of consequential benefits, petitioner was paid simple interest @ 6% per annum on the amount of gratuity only and on his other consequential benefits, he was not paid any interest. The suspension of the petitioner was revoked on 29.4.1976. On revocation of suspension from 18.5.1974 to 29.4.1976, the petitioner ought to have been paid full arrears of pay but this was not done, making the respondents liable to pay interest on the amount which had become payable on revocation of suspension.

7. Petitioner has contended that he is entitled for interest at the rate of 18% on all the amounts of consequential benefits which were not paid to him within reasonable time after his order of dismissal from service was set aside and it was ordered to pay consequential benefits to him. The petitioner has contended that the period of two months was reasonable within which the respondents ought to have paid his consequential benefits in the facts and circumstances. Petitioner has relied on various judgments in support of his contentions that the consequential benefits ought to have been paid to him within a short time and within a period of two months which period can be construed to be reasonable.

8. Reliance has been placed on behalf of the petitioner on judgments reported as Deokinandan Prasad Vs. State of Bihar and Others, ; State of Kerala and Others Vs. M. Padmanabhan Nair, ; Loomba Vs. Municipal Corporation of Delhi and Ors. 1986 (1) SLR 201 and Rampyari Shukla Vs. The Secretary, Central Social Welfare Board, Bhopal and Ors. 1988 (6) SLR 206. In Deokinandan Prasad Vs. State of Bihar and others (supra) the Hon''ble Supreme Court has held that Article 41 obligates the State within the limits of its economic capacity and development to make effective provisions amongst others for assistance in case of old age, sickness and disablement. The Hon''ble Court observed that Pension provisions

are to some extent the legislative response to the constitutional expectation. It was observed that this legal conundrum would only provide a paper guarantee if the statutory right to pension is not translated into action in a reasonably short time on retirement leaving the employee to penury and economic destitution. In the matter of State of Kerala and Ors. Vs. M. Padmanabhan Nair, (supra) the Supreme Court awarded interest to the government employee on account of delayed payment of retirement dues which were delayed on account of non-production of last pay certificate by retiree on account of lapse on the part of issuing authority. The Hon''ble Court had granted interest @ 6% p.a though the employee had claimed interest @ 12%, since he acquiesced in his claim being decreed at 6% by not preferring any cross-objections and appeal and Therefore the Hon''ble Supreme Court awarded interest @ 6% only instead of 12% as claimed by him. In another matter Loomba Vs. Municipal Corporation of Delhi and Ors. (supra) this Court awarded simple interest @ 12% p.a on the arrears of gratuity and other amounts which were payable to the employee. In Rampyari Shukla Vs. The Secretary, Central Social Welfare Board, Bhopal & Ors. (supra) the learned Single Judge awarded simple interest @ 12% per annum w.e.f two months after the date of retirement as period of two months was considered to be reasonable for the authorities to pay retirement dues.

9. No one has appeared and argued the matter on behalf of respondents. In the counter affidavit filed by the respondents, it has been contended that the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of Constitution of India in respect of his money claim of interest amount on the delayed payments of arrears of pay, pension, gratuity, leave encashment and salary for the suspension period. The respondents have also contended that an alternative remedy is available with the petitioner to claim such relief in the Court of competent jurisdiction like the Civil Court, the Court of Industrial Tribunal and under the Industrial Disputes Act and/or noted Courts for relief under the Payment of Gratuity Act and Payment of Pension Act. The respondents also took a plea that the claim of the petitioner is barred by time. It was, however, not denied that pursuant to quashing of order of dismissal from service and payment of consequential benefits by order dated 28th January, 1985, the respondents passed office order only on 7.1.1987. No rational or cogent reason for taking so much time has been given. The respondents have also contended in their counter affidavit that the writ petition of the petitioner is not maintainable as he had filed an application dated 10th July, 1989 before the Central Administrative Tribunal which had been returned.

10. The writ petition was filed by the petitioner in the Hon''ble High Court on 20.2.1991. The writ petition was amended incorporating the details of payment of consequential benefits and the dates on which they were paid. An additional affidavit was subsequently filed by the respondents contending that all the dues as detailed by the petitioner have been paid. The respondents contended that a sum of Rs.4,616.18 paise as interest has also been paid as admissible under Rule 68 of CCP (Pension) Rules, 1972 and that the petitioner is not entitled to interest

@ 18% per annum as has been claimed by him.

11. The counsel for the petitioner has contended that the writ petition is not barred by time as no limitation is provided for filing the writ petition. He further contends that the petition does not suffer from delay and latches also. He contends that petitioner''s representations regarding payment of interest to him on account of delayed payments by respondents were declined by letter dated 18th January,1989 and the writ petition was filed on 20th February,1991 without any undue delay. Reliance has been placed on behalf of the petitioner on a matter, Ex.GDR Mohan Singh Vs Union of India; 2001 IV AD (DEL) 677, where a Learned single Judge had held that though no limitation is prescribed for approaching the writ Court under article 226 of Constitution of India, but the law is well settled that such an approach is to be made within a reasonable period without there being substantial delay. In that case, writ petition was, however, dismissed as the writ petition was filed after an inordinate delay of 27 years and no Explanation for such delay was given. In another case relied on by the petitioner, Mahender Pal Singh Vs Director General C.R.P.F; 2003 (2) SLR 613, a Division bench had declined a claim for pension made after a long period of 17 years, which was considered to be highly belated. However, another division Bench of the Hon''ble High Court in the matter Ex CT. Ex. Ct. Jasbir Singh and Others Vs. Union of India (UOI) and Others, has held that no plea of limitation can be entertained in the matter of grant of pension. The Hon''ble High Court held:

"6. We have also taken into consideration the arguments advanced by the Learned counsel for the respondents with regard to limitation. We make it clear that pension is neither a gratuity nor a bounty given by the respondents. It was an obligation on the part of the respondents to have granted pension, including disability pension. If the same has not been granted, the fault lies with the respondents and no plea of limitation can be entertained in the matter of grant of pension."

12. In the facts and circumstances, inevitable inference is that the petitioner has approached this Court without undue delay nor his petition is barred on account of limitation nor the relief prayed by the petitioner can be denied to him on this grounds as has been alleged by the respondents in their counter affidavit. The relief prayed by the petitioner can also be not denied to the petitioner on the ground that he had filed an application before the Central Administrative Tribunal which was not entertained, as the Learned Tribunal did not have jurisdiction to try the application of the petitioner, an employee of Food Corporation of India.

13. The other plea of the respondents is that writ petition under Article 226 of the Constitution of India is not maintainable as the petitioner has alternative remedy available to him under Industrial Disputes Act or noted Courts for relief under the Payment of Gratuity Act and Payment of Pension Act. Normally the High Court does not interfere in exercise of its jurisdiction under Article 226 of Constitution of India when an adequate alternative remedy is available but the

jurisdiction of the High Court under Article 226 of Constitution of India is not completely barred on account of availability of alternative remedy. The counsel for the petitioner has placed reliance on a judgment of the Hon''ble Supreme Court reported as J.M. Baxi and Co. Vs. Commissioner of Customs and Another, . It was held by the Hon''ble Supreme Court that where recourse to alternative remedy is onerous, the court can exercise its plenary jurisdiction under Article 226 of Constitution of India. It was held in this case that decision by High Court on merits was necessary despite alternative remedy being available and consequently the High Court''s order of dismissal on the ground that the alternative remedy was available, was set aside and the matter was remitted to High Court for decision on merits. Reliance has also been placed on behalf of the petitioner on matters reported as Ganga Retreat and Towers Ltd. and Another Vs. State of Rajasthan and Others, ; State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, and ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, . The Hon''ble Supreme Court has laid down in ABL International Ltd & Anr (supra) the legal principles regarding maintainability of writ petition:

"27. From the above discussion of ours, following legal principles emerge as to maintainability of a writ petition.

a. In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of Contractual obligation is maintainable.

b. Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

c. A writ petition involving consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of case has discretion to entertain or not to entertain writ petition. The Court has imposed upon itself certain restrictions in exercise of this power (See Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or instrumentality is arbitrary and unreasonable so as to violate the Constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

14. In the present case, the facts are admitted except the rate of interest. The petitioner was suspended on 24.04.1974, then his suspension was revoked on 29.04.1976, yet the full amount of pay payable to him during the period of

suspension was not paid.

15. Thereafter, he was dismissed on 7th March, 1979. The order of dismissal was set aside on 28th January,1985 and consequential benefits were ordered. The respondents did not do anything for almost two years and passed an office order only on 7th January, 1987. More time was taken to pay his consequential benefits. The petitioner had retired on 31st October,1982. The writ petition was filed in 1991 and it has been taken for disposal in 2004. Directing the petitioner at his juncture to file an appropriate suit for recovery or to take any other proceedings for recovery of interest amount for which he became entitled on account of delayed payment of retirement dues, will be travesty of justice and contrary to norms set up by the Hon''ble Courts. In these circumstances, the alternative remedy will be onerous and this Court will not be justified in declining the relief to the petitioner on the ground that an alternative remedy is available to petitioner. This Court would be justified in present facts and circumstances of the case to exercise its jurisdiction under Article 226 of Constitution of India despite alternative remedy being available to the petitioner.

16. Now in the circumstances, how much amount is petitioner entitled for as interest on the delayed payment of his consequential benefits. The petitioner has claimed interest on the retirement benefits at the rate of 18% which were not paid to him within a reasonable time after his order of dismissal from service was set aside. The respondents have paid interest on the amount of gratuity only at the rate of 6% and no interest has been paid on other consequential benefits. The respondents have paid interests on the amount of gratuity only @ 6%, though the Payment of Gratuity Act, Section 8 contemplates payment of interests at the rate as may be specified on the delayed payment of gratuity. The respondents have not produced any notification or order entitling them to pay interest at the rate of 6% only and not at the rate of more than 6%. In the cases relied by the petitioner, the interest has been awarded @ 12% per annum on the delayed payments of pension and other retirement benefits. In the circumstances, it will be appropriate to award simple interest @ 12% per annum to the petitioner. Considering the other facts and circumstances of this case simple rate of interest @12% per annum is otherwise also just and appropriate.

17. The order setting aside the dismissal from service of the petitioner and entitling him for consequential benefits was passed on 28th January, 1985. The respondents ought to have passed appropriate orders regularizing the period of dismissal of the petitioner and paid the consequential benefits within a reasonable time. A period of two months was reasonable for payment of consequential benefits by the respondents. In the circumstances it will be appropriate and fair to award interests to the petitioner for the period from 1st April , 1985 till the amounts were paid to the petitioner for pension, gratuity, dismissal period and on the amount of leave encashment. The petitioner also ought to have been paid his full amount of pay after revocation of his suspension on 29th April,1976. There was no rational justification for not paying full amount

of pay after revocation of suspension on 29th April, 1976. Consequently the petitioner shall also be entitled for interests from 30th April, 1976 when the suspension of the petitioner was revoked by the respondents on their own but the full amount of pay during the suspension period was not paid.

18. In the facts and circumstances, it will be just and appropriate and to meet the ends of justice to allow following amounts as interest to the petitioner:

All figures in Rupees

S.No. Nature of Relief Amount Paid Date of Period of delay Amount Payment in Due Payment @12% p.a. (Rounded off)
--- 1. Pension 55,048 2-7-87 1-4-85 to 2-7-87 14,863 (retired on 31-10-82) 8,105 28-7-87 1-4-85 to 28-7-87 2,269

2. Dismissal Period 90,104 3-3-87 1-4-85 to 3-3-87 20,724 (7-3-79 to 31-10-82)

3. Gratuity 25,885 12-5-87 1-4-85 to 12-5-87 6,600 (retired on 31-10-82)

4. Leave Encashment 13,260 24-8-87 1-4-85 to 24-8-87 3,800

5. Suspension Period 5,993.30 5-6-87 30-4-76 to 5-6-87 7,970 (17-5-74 to 30-4-76) 3,427 5-12-87 30-4-76 to 5-12-87 4,760 1,758 4-12-87 30-4-76 to 4-12-87 2,444

Total 63,430
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19. Under the proviso of section 8 of the Payment of Gratuity Act,1972, the amount of interest awarded should not be more than the amount of gratuity. The petitioner was paid Rs.25,885/- on account of gratuity and the interest awarded to the petitioner is Rs.6600/- which is less than the total amount of Gratuity which had been paid to the petitioner.

20. In the circumstances writ petition is allowed and the respondents are directed to pay an amount of Rs.63,430.00 to the petitioner on account of interest at the rate of 12% per annum on the consequential benefits which were not paid to the petitioner within a reasonable time. The petitioner shall also be entitled for pendent lite interest at the rate of 9% per annum till the payment of the amount in the facts and circumstances of the case. Consequently a Writ is issued against the respondents directing them to pay the amounts as indicated hereinabove to the petitioner within four weeks. However, in the facts and circumstances, the parties are left to bear their own costs.

