(2007) 09 DEL CK 0209

In the Delhi High Court

Case No : LPA No. 1179 of 2007

Narender Kumar Ex-Ati — APPELLANT

Vs

Delhi Transport Corporation — RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Citation : (2007) 09 DEL CK 0209

Hon'ble Judges : Dr. M.K. Sharma, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Anil Mittal, for the Appellant; Avnish Ahlawat, for the Respondent

Judgement

Mukundakam Sharma, C.J.—The present Appeal has been filed by the appellant against the order of the learned Single Judge pronounced on 30.07.07 in W.P(C) No. 12946/2005. The appellant herein was an employee of the Delhi Transport Corporation (DTC for short) from where he retired as a class IV employee on 31st July 2003 on reaching the age of superannuation.

2. During the course of his employment with the Respondent , the Appellant had taken a non refundable payment of Rs. 68000/- under the Contributory Provident Fund Scheme for the purpose of the construction of his house in the year 1992. The said payment had two components viz., first Rs. 34000/- from the employee''s contribution to the provident fund and the second another Rs. 34000/- out of the employer''s contribution to the said scheme, as mentioned in the letter dated 20th March 1992 vide which the said payment was approved.

3. Subsequently the DTC introduced a Pension Scheme for its employees. Under the terms of the said scheme the employees of DTC including those who had retired w.e.f 3rd August 1981 had to either opt for the Pension Scheme or the Contributory Provident Fund Scheme within a period of 30 days from the introduction of the Scheme. In the event of an employee not exercising his option, the said employee was to be deemed to have opted for the Pension Scheme. Clause 6 of the said Scheme inter alias provides that in case an

employee opts for the Pension Scheme, then any amount that might have been paid from the employer''s contribution, shall have to be refunded with interest. With this Scheme coming into force, the component of the payment given to the appellant from the employer''s contribution became refundable with interest. We may note that the rate of interest is not specified in the Scheme. The Scheme was silent in this respect.

4. The Appellant retired on 31st July 2003 and was handed over the amount of Rs. 1,40,663/- as his contribution to the provident fund. On 7th November 2003, the pension case of the Appellant was sent to the pension department for necessary formalities and payment. Consequently, on 27th February 2004 the Appellant received a letter stating that he was liable to refund the amount of Rs. 34000/- advanced from the Employer''s Contribution back to the employer. The total amount due was stated to be Rs. 1,23, 686/- with the interest being charged @ 12% per annum compounded annually, alone standing at a staggering 89,686/-.

5. Learned Counsel for the Appellant restricted his arguments and submissions only to the question of the rate of interest.

6. In our considered opinion the interest charged at the rate mentioned above was very steep and close to being punitive. We have to take into consideration the fact that the Appellant is a retired individual and even otherwise was employed as a class IV employee, which points to the fact that he is a person of limited means. In this situation to ask the Appellant to pay interest @ 12% per annum compounded annually would be harsh and cause intense hardship. One has to keep in mind that whether it be the Pension Scheme or the Contributory Provident Fund Scheme under which the amount of Rs. 34000/- was advanced are both Schemes meant to ensure welfare of the employees and are not to be run as commercial ventures. Further, the Pension Scheme did not specify any rate of interest. The Respondent Corporation had also kept quite and had not asked for refund of the amount of Rs. 34000/- while he was still in their employment or adjusted the amount from the provident fund or other amounts available with them.

6. In this view of the matter and in light of the peculiar facts and circumstances of the case, we are of the opinion that the Appellant should refund Rs. 34000/- along with simple interest charged @ 9% per annum. However, it is clarified that the order made in the present case shall not be regarded as a binding precedent.

