(2014) 07 DEL CK 0114

In the Delhi High Court

Case No : W.P. (C) 2664/2013 and CM No. 2646/2014 (early hearing)

P.L. Singla APPELLANT

Vs

UOI RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Citation : (2014) 07 DEL CK 0114

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Sanjiv Kakra and Bheem Sain Jain, Advocate for the Appellant; Amrit Pal Singh and Amiet Andlay, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.—Despite opportunities being given to the respondents to pass an appropriate order granting exemption from observance of Rule 49(2)(b) of the CCS (Pension) Rules, 1972 (in short 1972 Rules), no substantive decision has been taken in that behalf either by the Government of NCT of Delhi or by the Government of India. For this purpose, the proceedings of 24.02.2014 and 28.05.2014 are referred to as a measure of good order and record.

2. I had made it clear in my last order dated 28.05.2014 that if no decision is taken, in that behalf, by the concerned authorities of the respondents then, this court, will have to step in and pass appropriate orders in accordance with law.

3. Briefly, the grievance of the petitioner qua grant of admissible pension is made in the background of the following circumstances:-

3.1 The petitioner, retired as an Additional District & Sessions Judge, on 31.01.1987, after completing 28 years and 4 months of qualifying service. The respondents, however, refused to pay him the pension in accordance with the recommendations of the First National Judicial Pay Commission (in short Shetty Commission).

3.2 It is the respondents'' stand that since the petitioner had served less than the full qualifying service, which is, 33 years, he would be entitled only to such pension, which is proportionate to the time served by the petitioner.

3.3 It may only be noted that the Supreme Court vide its judgment dated 21.03.2002, passed in WP (C) 1022/1989, titled All India Judges Association and Ors. Vs. Union of India and Ors., has accepted, the recommendations of the Shetty Commission, which are contained in Chapter 23, in particular paragraph 23.18. As per the recommendations contained in the said paragraph, retired Judicial Officers are entitled to get 50% of the minimum pay of the post held at the time of retirement, as revised from time to time.

3.4 As per the petitioner, this would apply to all retired judicial officers, who retired prior to 01.07.1996 even though service rendered by such retired judicial officers was less than 33 years.

3.5 It is also noticed from the record that in the very same writ petition filed in the Supreme Court, several interlocutory applications were moved including an application bearing: IA No. 157. This application was filed by the Andhra Pradesh Retired Judicial Officers'' Association for setting aside: the Government order (G.O.) Ms. No. 79, dated 17.07.2004, issued by the Law Department of the State of Andhra Pradesh (as it then was). The applicant above named was aggrieved by the fact that the said G.O. required proportionate reduction in payment of pension qua those who had completed less than the full qualifying service, which was, 33 years.

3.6 The Supreme Court upon consideration of the said application i.e., IA No. 157 agreed with the contentions of the applicant and consequently set aside that part of the G.O. which required proportionate reduction in payment of pension vis-a-vis those who had completed less than full qualifying service. The relevant observations of the Supreme Court in respect of the said IA are as follows:-

This application has been filed by the Andhra Pradesh Retired Judicial Officers'' Association for setting aside G.O.Ms No. 79, Law Dep., dated 17th July, 2004 to the extent of the direction that who have put in full qualifying service at the time of retirement, and in respect of Judicial Officers who have put in less than the full qualifying service there shall be proportionate reduction. Further prayer is that the Government of Andhra Pradesh be directed to revise the pension uniformly to past pensioners irrespective of length of qualifying service, at 50% of minimum pay in the revised pay scale of the post from which the past pensioner retired.

Chapter-23 of the Shetty Commission Report deals with pension structure for past pensioners. Chapter 22 deals with retirement benefits. For considering the pension structure for past pensioners, Chapter 22 has not relevance. The first recommendation of para 23.18 contained in Chapter 23 reads as under:-

The Revised Pension of the Retired Judicial Officers should be 50% of the minimum pay of the post held at the time of retirement, as revised from time to time.

Paragraph 22.33 in Chapter 22 recommends that the qualifying years of service should be 33 years for earning full pension except in the States of Tamil Nadu and Kerala. This clause has no relevance for working out the benefit of pension under clause (1) of recommendation in para 23.18 above-noted. No other material has been shown to us which may justify the stipulation in para 8 of the order of the Andhra Pradesh Government dated 17th July, 2004, about the requirement of full qualifying service at the time of retirement and proportionate reduction in respect of judicial offices who have put in less than full qualifying service. The aforesaid recommendation has been accepted by this court in its judgment reported in All India Judges Association and Others Vs. Union of India (UOI) and Others, .

Under these circumstances, the direction in respect of full qualifying service in the Government order dated 17th July, 2004 is set aside, as prayed in the application. The Government of Andhra Pradesh is directed to work out the benefit strictly in terms of the first recommendation contained in para 23.18 of the Shetty Commission, as quoted above.

3.7 The aforementioned order in I.A. No. 157 was passed on 21.11.2006.

3.8 In line with the aforementioned judgment and order of the Supreme Court, Government of NCT of Delhi, Department of Law, Justice and Legislative Affairs passed an order dated 26.05.2008. While the said order reflected the fact that the issue (which is also the issue raised in the instant writ petition) is, covered by the judgment of the Supreme Court in All India Judges Association and Ors. Vs. Union of India and Ors.''s case, it proceeded to add a caveat to the grant of relief which is that revision in pension would be subject to observance of Rule 49(2)(b) of the 1972 Rules. Notably, order dated 26.05.2008 specifically records that it has been issued with the approval of the Lt. Governor of NCT of Delhi, to implement the recommendations of the Shetty Commission w.e.f. 01.07.1996.

3.9 It is this last aspect, which is the grant of exemption from observance of the provisions of Rule 49(2)(b) of the 1972 Rules (as I was told that respondents were seeking an exemption and that difficulty lay in only not being able to decide who was to grant exemption) that the instant writ petition had to be adjourned from time to time to enable the relevant authorities to take a decision in the matter. As indicated at the very outset, the concerned authorities have failed to take a decision in the matter and, consequently, this court is left with no choice but to step in.

4. Having regard to the fact that the law on the issue has been declared by the Supreme Court vide its judgment dated 21.03.2002, passed in All India Judges Association and Others Vs. Union of India (UOI) and Others, and, the subsequent order dated 21.11.2006, passed in the same writ petition in: IA No. 157, this court is inclined to direct that the petitioners be paid pension in terms of the recommendations of the Shetty Commission as contained in paragraph 23.18 of

the Chapter 23, as accepted by the Supreme Court, in its aforementioned judgment and order. This would mean that the respondents need not now seek exemption from the provisions of Rule 49(2)(b) for payment of revised pension to the petitioner.

5. Mr. Kakra at this stage makes two prayers. First, (which is explicitly part of the writ petition) that interest be granted on the arrears. Second, that the payment of arrears of pension be directed to be paid within a specific time frame given the advanced age of the petitioner, which he says is, 85 years, as of today.

6. Accordingly, the respondents are directed to pay the arrears to the petitioner within six (6) weeks from today with interest at the rate of 9% p.a. (simple) with effect from 30.06.2011, that is the date when, a representation was made in this behalf, by the petitioner, for the first time. It is, however, made clear that if the arrears alongwith interest is not paid within the stipulated period of six weeks, the interest will stand enhanced to 18% p.a. (simple) on the outstanding amount.

7. With the aforesaid directions in place, the captioned petition and the pending application are disposed of.