(2008) 07 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 207 of 2008

Prabhakar Dalal APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 309
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 10
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 129A, 129A(1), 130, 130(1)

Citation : (2008) 5 ALLMR 306 : (2009) 1 BomCR 413 : (2008) 110 BOMLR 2465 : (2009) 2 SLR 660

Hon'ble Judges : Santosh Bora, J;F.I. Rebello, J

Bench : Division Bench

Advocate : C.K. Shinde, for the Appellant; N.B. Patil, AGP, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Rule. Heard forthwith.

2. The issue, which arises in this petition, is whether the petitioner is entitled to interest for what the petitioner contends is delay in payment of gratuity.

3. A few facts may be set out. The petitioner was in the service of respondents. A disciplinary inquiry was initiated against him in the year 1996. He retired on 28.2.1999, but the inquiry was continued. An Inquiry Officer came to be appointed on 12.4.2001. The Inquiry Officer submitted his report on 31.10.2001. The disciplinary authority did not agree with the findings of the Inquiry Officer and called on the petitioner to show cause. The petitioner filed a reply on 15.9.2004.The disciplinary authority, being not satisfied with the reply, issued a show cause notice dated 26.7.2005 and thereafter was pleased to impose punishment by order dated 31.2.2006. The punishment imposed was deduction of 10% from the petitioner''s pension. The gratuity in fact was paid on 18.4.2006.

4. The learned Counsel on behalf of the petitioner has sought to rely on the

provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and more specifically Rule 129-A and Rule 130(1)(c) as also the Government resolution dated 23.6.1986. It is the submission of the learned Counsel that the delay in payment of interest was attributable to administrative lapses on the part of the respondents and as such he is entitled to interest in terms of Rule 129-A.

The learned Counsel has sought to rely on the judgment of the Supreme Court in S.K. Dua v. State of Haryana and Anr. 2008 (1) SSC 95.

On the other hand, on behalf of the respondents, the learned AGP submits that as the inquiry was pending, the gratuity was not due and payable. The gratuity was paid after the order imposing punishment was passed and within the time prescribed and consequently, it is submitted that no interest on the gratuity is due and payable.

5. We have heard the learned Counsel for the parties. For better appreciation of the contentions, we may gainfully refer to the following rules. Rule 129-A(1) reads:

129-A. Interest on delayed payment of gratuity:

(1) If the payment of gratuity has been authorised after three months from the date when its payment become due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the following rate on the amount of gratuity in respect of the period beyond three months shall be paid:

(i) beyond 3 months and upto one year 7% per annum

(ii) beyond one year 10% per annum

Provided that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter: Provided further that no interest shall be payable in the case in which a provisional gratuity is sanctioned.

Rule 130(1)(c) reads:

130. Provisional pension where departmental or judicial proceedings may be pending:

(1) (a) ...

(b) ...

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in Sub-clauses (i), (ii) and (iv) of

Clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant.

A perusal of Rule 130 makes it clear that no gratuity is payable until the conclusion of the departmental or judicial proceedings and issuance of final orders thereon.

Admittedly, in the instant case, when the petitioner retired, there were disciplinary proceedings against him. Those proceedings concluded only on the order being passed on 30.1.2006. Under Rule 129-A, the expression used is "if the payment of gratuity has been authorised". In other words, interest becomes payable, only if gratuity has been authorised. Considering the language of Rule 130(1)(c), gratuity cannot be authorised till the departmental proceedings had concluded and a final order was passed thereon. In our opinion, therefore, a conjoint reading of Rule 130(1)(c) and Rule 129-A(1) makes it clear that interest for delayed payment of gratuity is payable only in the event of the conclusion of the departmental proceedings and payment of gratuity is authorised and after such authorisation it is not paid within three months.

6. The learned Counsel, however, draws our attention to the Government resolution dated 23.6.1986. We may gainfully reproduce para 3 of the English translation, which has been placed for our consideration.

3. That, in respect of the cases of the Government servant against whom, disciplinary or judicial proceedings are pending on the date of his retirement, the provisional pension is authorized as per Rule 130 of M.C.S. (Pension) Rules, 1982. In such cases, the amount of gratuity is not paid until the proceedings are completed and the final orders are passed thereon. However, on finalization of such proceedings, if the competent authority authorizes for release of gratuity, it shall be presumed that, such delayed payment of gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. However, the Government servants died pending judicial/ disciplinary proceedings and ultimately the proceedings against them have been closed shall not be entitled to the benefits of this order.

A perusal of the said Government resolution would show that on completion of the finalisation of the proceedings, if the competent authority authorises the release of gratuity, it shall be presumed that such delayed payment of gratuity is deemed to have fallen due on the date immediately following the date of retirement.

Based on this, the learned Counsel submits that the moment the disciplinary proceedings have been completed and the competent authority authorises release of gratuity, even if punishment has been imposed, the petitioner is entitled to interest. It is not possible for us to accept this submission made by the learned Counsel. Firstly, under Rule 129-A(1) read with Rule 130(1)(c), until the competent authority decides to pay the gratuity, interest would not be due and payable. These rules have been made in exercise of the powers conferred by

Article 309 of the Constitution of India. It is now settled law that no directions can be issued, which would be contrary to the provisions of the Rules made under Article 309. However, it will be open to the respondent - Government to issue a Government resolution in respect of those matters where the rules are silent and such instructions are not in conflict with the rules. In the instant case, in our opinion, the rules are clear and if so read, admittedly the Government resolution would be contrary to the provisions of the said rules.

We are also mindful of the fact that Courts normally would not strike down a rule or notification if it is possible to save the rule or notification whether it be legislation or notification in the exercise of executive power. In our opinion, correctly read para 3 of the said Government resolution will have to be construed to mean that on a person against whom disciplinary or judicial proceedings were pending, if he is discharged or the disciplinary authority comes to the conclusion that no punishment needs to be imposed and in case of judicial authority, such authority acquits such a person, then in those cases, on the competent authority authorising the release of gratuity, it will be presumed that the gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. If it is so read, then the Government resolution would not fall foul of Rules 130(1)(c) and 129-A of the Pension Rules.

7. We have considered the judgment in S.K. Dua. Firstly, the issue in that case is not in issue in the present case. The Supreme Court there found that the appellant was chargesheeted just before retirement by an officer with mala fide intention of satisfying his vendetta. It is on these facts that the Hon''ble Supreme Court was pleased to hold that if there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines and norms prescribed for the purpose, the appellant may claim benefit of interest on that basis and in the absence of that, could claim under Part III of the Constitution. on the facts there, the Supreme Court was pleased to set aside the order of the High Court as the matter was dismissed in limine even without issuing notice and remanded back to the High Court for consideration. In the instant case, there are statutory rules. The gratuity will, therefore, be payable in terms of the statutory rules and also considering the Government resolution, which we have explained earlier.

8. For the reasons aforesaid, we find no merit in this petition. Rule discharged. There shall be no orders as to costs.

