
(2015) 03 CAL CK 0094
In the Calcutta High Court
Case No : Writ Petition 33804 (W) of 2014

Purushottom Dubey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 2 CALLT 140 : (2015) 3 CHN 545 : (2015) 146 FLR 465

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Achin Majumder, for the Appellant; Partha Sarathi Basu, Sima Sengupta and Aparna Banerjee, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J.

1. The claim of the petitioner is on account of interest for the delayed payment of gratuity to the petitioner. The petitioner retired from the Railway Protection Force on March 31, 2013. The gratuity due to the petitioner was paid in June, 2014. The parties have referred to Rules 10(c) and 87 of the Railway Services (Pension) Rules, 1993 and a circular of the Railway Board of November 6, 2008 that mandates the payment of interest at 12% per annum compounded annually for delayed payment of gratuity beyond three months of the date of retirement.
2. The petitioner was issued a charge-sheet in connection with departmental action proposed to be taken against the petitioner. The petitioner challenged the charge sheet in this court and by an order dated April 7, 2009, the charge-sheet of January 8, 2009 was set aside with liberty to the employer to proceed afresh against the petitioner in accordance with law on similar allegations.
3. The employer preferred an appeal from the order dated April 7, 2009, but did not obtain any interim order in the appeal. Such appeal, FMA 1427 of 2011, was disposed of on April 17, 2014 by directing the employer to disburse the admissible retiral benefits of the petitioner herein within a period of three weeks

of the date of communication of such order. It is not in dispute that within reasonable time of such order, the gratuity of the petitioner was released by June, 2014.

4. The respondents say that Rule 10(c) of the said Rules of 1993 prohibits the payment of any gratuity to a railway servant until the conclusion of any departmental or judicial proceedings and the issue of final orders thereon. The relevant Rule provides for an exception in case minor penalties are proposed to be imposed in the departmental proceedings. The respondents say that the question of interest arises under Rule 87 of the said Rules of 1993 only if "it is clearly established that the delay in payment was attributable to administrative lapse" and that such delay "was not caused on account of failure on the railway servant to comply with the procedure" for receiving the gratuity.

5. The substance of the respondents' submission is that since the appeal from the order dated April 7, 2009 was pending, there was an embargo imposed by virtue of Rule 10(c) of the said Rules on the gratuity being paid and the same being received. The respondents submit that the delay in receiving the gratuity by this petitioner cannot be regarded to be attributable to any administrative lapse, within the meaning of the relevant expression in Rule 87 of the said Rules.

6. It is now recognised that the right to receive gratuity is a valuable right. The Payment of Gratuity Act, 1972 imposes strict conditions when the payment of gratuity may be suspended or the obligation thereunder extinguished in certain cases, subject to rules in such regard being made by the relevant organisation. Gratuity cannot be regarded as a form of a dole or alms that is paid to a government servant at the end of his service career.

7. There is no doubt that Rule 10(c) of the said Rules of 1993 prohibits the payment of gratuity during the currency of any departmental or judicial proceedings. It is equally relevant that interest under Rule 87 of the said Rules of 1993 cannot be paid till it is established that the cause for the non-payment of the gratuity was attributable to any administrative lapse.

8. By virtue of the order dated April 7, 2009 passed on the previous petition of this petitioner, the charge-sheet of January 9, 2009 issued against him was obliterated in the sense that, legally, the situation has to be regarded as if the charge-sheet had never been issued against the petitioner. No immediate order was passed in the appeal preferred by the respondents; though even if an order of stay had been passed, it would only have had the effect of keeping the order of April 7, 2009 in suspended animation and not have had the effect of wishing away the same till the appeal was finally allowed.

9. Thus, it is evident that upon the order dated April 7, 2009 taking effect and such order not being interfered with in appeal, there were no disciplinary proceedings against the petitioner. The width or amplitude of the expression "judicial proceedings" in Rule 10(c) of the said Rules cannot be extended to the prejudice of an employee to deny the gratuity when an appeal is kept indefinitely

pending from an order by which very initiation of the departmental proceedings is quashed or set aside.

10. Since the said Act of 1972 is for the benefit of employees, any error in interpreting the rules pertaining to gratuity must be made on the side of the employee. When the charge-sheet of January 9, 2009 stood quashed and set aside by the judicial order of April 7, 2009, there were no "departmental or judicial proceedings" pending within the meaning of such expression in Rule 10(c) of the said Rules and the gratuity due to the petitioner ought to have been paid to the petitioner upon the petitioner's superannuation. This is more so since it was open to the respondents to obtain an interim order in the appeal that upon the petitioner's superannuation, the petitioner would not be required to be paid the gratuity immediately during the pendency of the appeal. When the charge-sheet itself, which is the initiation of any departmental action, was set aside, the mere institution of an appeal from the order setting aside the charge-sheet cannot be regarded as sufficient cause not attributable to any administrative lapse, on a conjoint reading of Rule 10(c) and Rule 87 of the said Rules of 1993, to give latitude to the employer to delay or withhold the payment of gratuity to a retired employee.

11. W.P. 33804 (W) of 2014 is allowed by directing the respondent authorities to pay the interest in terms of the Railway Board notification of November 6, 2008 to the petitioner at the rate of 12% per annum from July 1, 2013 till May 31, 2014 since the payment was made in June, 2014. There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.