(2015) 01 AHC CK 0144

In the Allahabad High Court

Case No : Special Appeal No. 1206 of 2014

Qamaru Nisha APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 3 ADJ 119 : (2015) 2 AWC 1683 : (2015) 2 ESC 1151 : (2015) 2 UPLBEC 1092

Hon'ble Judges : D.Y. Chandrachud, C.J;Suneet Kumar, J

Bench : Division Bench

Advocate : Keshav Kumar Srivastava, for the Appellant

Final Decision : Disposed off

Judgement

1. The appellant had filed a writ petition seeking a direction to the second respondent, namely, the Deputy Director of Consolidation, Farukhabad, to pay the balance of the death-cum-post retiral dues on account of the services rendered by her spouse and for a decision on a claim for the payment of interest for a delay of 29 years till the payment of the retiral dues. The writ petition has been dismissed by the learned Single Judge by the impugned order dated 2 December 2014 on the ground that (i) the appellant has not indicated what is the balance of death-cum-post retiral benefits; (ii) the claim having been set up in the writ petition in 2014 is barred by laches; and (iii) the appellant is not entitled to interest on the amount, if it is due, since the appellant is at fault for not having approached the Court at the relevant point of time. The appellant in the writ proceedings averred that her spouse was working as a peon in the establishment of the Deputy Director of Consolidation, Farukhabad and died in 1983 during the tenure of his service. It was her case that after the death of her husband, she had fulfilled all necessary requirements for the payment of the retiral dues, inspite of which, no payments have been made to her even in respect of the admitted amount of GPF, pension, group insurance policy etc. The appellant filed a writ petition, which was disposed of on 30 July 2008 (Civil Misc.

Writ Petition No. 35682 of 2008) with a direction to consider and dispose of the representation. Though the appellant moved a representation on 4 November 2008, it was not decided, after which, she was constrained to move a contempt application. At that stage in 2011, an amount of Rs. 5,75,000/- was paid to her, as stated in paragraph 21 of the writ petition. The grievance of the appellant was that even 29 years after the death of her spouse, full payment of the death-cum-retiral benefits have not been made, as a result of which, she was entitled to the payment of the balance amount together with interest. The appellant, in support of her contention, annexed at Annexure 4, relevant details in regard to the payments made under the directions of the Treasury Officer, Gorakhpur.

2. On these facts, we find merit in the contention of the learned counsel for the appellant that the learned Single Judge was clearly not justified in dismissing the petition on the ground of delay and laches. Payment of retiral benefits, including benefits which accrue on account of the death of an employee, is not a matter of largesse or charity but constitutes a vested right on account of the years of service rendered as an employee of the State. The facts on the record would make it clear that it was the State which took a long period of 29 years to make payment of the retiral dues. As pleaded by the appellant, an amount of Rs. 5,75,000/- was paid to her in 2011 though the death of the employee had occurred in 1983. The grievance of the appellant is that this did not represent the full amount of the payments due and outstanding towards death-cum-retiral benefits. The learned Single Judge has erred in finding fault of the appellant for not specifying what were the exact balance dues. As a matter of fairness, it was for the Suite to indicate in the form of a computation, the dues as computed and to which the appellant was entitled and that the entirety of the dues had been paid. This ought to have been placed on the record before the learned Single Judge. In any event having due regard to the facts of this case, it was the duty of the State to explain why no payment had been made for a period of 29 years since the date of death of the employee.

3. In these circumstances, the heirs of an employee cannot be non-suited on the ground of delay when there has been a failure on the part of the State to pay the retiral dues within a reasonable period. In this view of the matter, we are of the view that the impugned order of dismissal of the writ petition is unsustainable and would have to be set aside. We, accordingly, set aside the judgment of the learned Single Judge dated 2 December 2004 and restore Writ-A No. 64921 of 2014 for fresh disposal on merits. We direct the respondents to file a counter-affidavit on or before 9 March 2015. The counter-affidavit shall specify the computation of the death-cum-retiral dues. The affidavit shall also contain an explanation, if any, of the State for the delay of well over 29 years in the payment of the dues to the appellant. The issue as to whether full payment has been made to the appellant and whether the appellant should be entitled to the award of interest, shall be decided by the learned Single Judge after the counter-affidavit is filed. We grant liberty to the appellant to move the learned Single Judge upon the expiry of the period fixed by this order for the filing of a counter-

affidavit. The learned Single Judge may, having due regard to the facts of the case, and more particularly that the appellant is a poor widow who is fighting for the payment of her entitlement, take an appropriate view while directing the listing of the writ petition for final disposal at an early date. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

