

(2006) 03 AHC CK 0097

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31872 of 2000

Raj Pal Singh

APPELLANT

Vs

The Collector, Executive Engineer, Investigating and Planning,
Quality Control Division (World Bank) and The Deputy Labour
Commissioner

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Citation : (2006) 9 ADJ 318 : (2006) 3 AWC 2900

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Siddharth, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The petitioner has claimed the following relief when the petition was initially filed: -

(i) a writ of mandamus directing the respondent No. 1 to recover the amount of Rs. 1,99,821.10 from respondent No. 2 in pursuance of the recovery certificate dated 8.9.1999 issued by the respondent No. 3 within some fixed period of time in execution of Award dated 20.9.95 passed by the Labour Court (II) U.P. Ghaziabad in Adjudication Case No. 39/92.

(ii) Any other writ order or direction which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case of the petitioner.

(iii) Award costs of the writ petition and counsel's fee to the petitioner.

2. An award dated 20.9.1993 was made by the Labour Court in favour of the petitioner which was challenged by respondent No. 2 in Writ Petition No. 2,0168 of 1994. The writ petition filed by respondent No. 2 having been dismissed vide judgment and order of this Court dated 25.9.1998, the judgment and order of

this Court became final as the same was not challenged before the Hon''ble Supreme Court.

3. The petitioner came up before this Court with the grievance that the amount awarded to him under the award has not been released in his favour.

4. Vide order dated 27.7.2002 the learned Standing Counsel was directed to produce the cheque for the amount due to the petitioner within a period of 30 days. When the case was listed again on 30.8.2000 the cheque as directed by this Court was not produced before this Court, hence direction for personal presence of the respondents in Court on the next date was given. In spite of granting time the cheque was not produced and ultimately the Court passed the following order on 28.01-03:

...Since 27th July, 2002 neither the cheque has been produced by the Standing Counsel covering the amount under award nor any application has been filed for granting further time. This Court had granted time again and again, but the respondents have not complied with the directions of this Court. Every citizen of this country has a right to legal remedy for which he approaches courts and if any direction is issued by this Court, the same must be complied within the time allowed by the Court. It does not depend on the sweet will of any person to ignore any part of the order. Non-compliance of the order is a clear contempt....

It appears that respondents No. 1 and 2 are taking the matter very lightly and sitting tied over the matter.

List on 04.03.2003. The respondents No. 1 and 2 shall be personally present before this Court and shall explain by means of an affidavit why they have not made compliance of the order dated 22.7.2000 passed by this Court within the time allowed.

5. However, the payment was made to the petitioner vide cheque No. 25.2.2003 for a sum of Rs. 1,99,821.10 in favour of the petitioner.

6. Thereafter the petition was amended for the following relief: -

(iv) Issue a further writ, order or direction in the nature of mandamus directing the respondent Nos. 1 and 2 to pay 12% simple interest on the awarded amount of Rs. 1,99,821.10 with effect from 25.9.1993 to 4.3.2003 and a cost of Rs. 50,000/- to the petitioner.

7. The amendment was allowed vide this Court's order dated 1.3.2005. Counter and rejoinder affidavits to the amended writ petition have been exchanged,

8. The short controversy involved in this writ petition is regarding the rate of interest on delayed payment of the awarded amount made by the respondents.

9. The petitioner has claimed that he is entitled to 12% simple interest on the awarded amount of Rs. 1,99,821.10 w.e.f. 20.9.1998 to 4.3.2003 and a cost of Rs. 50,000/-.

10. In the counter affidavit filed to the amendment application no convincing reason whatsoever has been given by the respondents for delayed payment of the awarded amount and for illegal withholding of the interest accrued on the awarded amount.

11. The learned Standing Counsel has relied upon a Full Bench decision of this Court rendered in Farhat Hussain Azad and Ors. v. State of U.P. and Ors. 2005 A.C.J. 359 in which it has been held that even if a party does not pray for a relief in earlier writ petition which he ought to have claimed, then he cannot file successive writ petitions claiming that relief and submits that in view of the aforesaid judgment no relief can be granted to the petitioner as the present writ petition is second writ petition for the same cause.

12. The instant case is not a case of second or successive writ petition claiming relief out of same cause. The amendment filed in the writ petition for amending the relief clause has been allowed by the Court and an application for amendment cannot be treated as a second or fresh writ petition, hence the ratio laid down in the case of Farhat Hussain Azad (Supra) is not applicable and that case is clearly distinguishable on facts and law.

13. The other point raised by Sri Siddharth, learned Counsel for the petitioner, that if he is not allowed to be paid the interest which is accrued on the principal amount, the respondents have no right or entitlement to keep the amount of interest accrued on the awarded amount with them.

14. It is not in dispute that the respondents illegally withheld the amount of back wages of the petitioner for more than three years. If the contention of the learned Standing Counsel is accepted then it would result into miscarriage of justice because the amount was illegally withheld by the respondents for a period of three years depriving the petitioner of the interest accrued on the aforesaid amount to which he is entitled to.

15. This would amount to allowing the respondents to usurp the interest of the petitioner to which he was entitled. This would be laying down a bad law and cannot be permitted.

16. For the reasons stated above, prayer No. 4 added in pursuance of the amendment application as well as the writ petition is also allowed to the extent that the petitioner is entitled to interest as claimed by him. Ordered accordingly. No order as to costs.