(2012) 03 CAL CK 0006

In the Calcutta High Court

Case No : W.P.S.T. No. 64 of 2012

Rajendra Nath Biswas — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Citation : (2013) 2 CHN 684

Hon'ble Judges : Soumen Sen, J;Nishita Mhatre, J

Bench : Division Bench

Advocate : Uttiya Ray, for the Appellant; Jaytosh Majumder and Arindam Mandal, for the Respondent

Final Decision : Allowed

Judgement

1. This writ application has been preferred against the decision of the West Bengal Administrative Tribunal in Original Application No. 736 of 2011. By the order impugned in this writ application, the tribunal has dismissed the original application on the ground that the petitioner was not entitled to any interest on the deducted amount from the commuted value of pension or for non-payment of gratuity immediately after his retirement.

2. The present litigation has a chequered history. The writ petitioner was appointed as a painter and had been working as such from June 1, 1973. He was paid a certain pay scale, which continued to be paid to him till he retired on April 30, 2002. However, he was not paid either his gratuity or pension immediately after his retirement. Instead, his pay was recast and refuted by an order dated May 8, 2003. A subsequent order was passed on May 27, 2003 re-fixing further the petitioner''s pay scale. Even, on that date, neither the gratuity nor the commuted value of pension payable to him based on the re-fixed pay scale were paid to the petitioner.

3. The provisional pension papers were issued on August 27, 2004 indicating that the petitioner was not entitled to gratuity nor was he entitled to the entire

commuted value of pension. The government decided to recover from the commuted value of pension an amount of Rs. 43,629/- on the ground that this amount had been wrongly paid to him due to his incorrect pay fixation.

4. Aggrieved by that decision of the State, the petitioner preferred an original application being No. 307 of 2005 before the West Bengal Administrative Tribunal.

5. The tribunal disposed of this application on July 5, 2005 by directing the authorities to treat the original application together with all annexures as a representation of the petitioner and to pass orders in consultation with the finance department.

6. By the order dated May 30, 2006, the Deputy Secretary of the Health and Family Welfare Department, Government of West Bengal, informed the petitioner that the government was pleased to approve the revised fixation of pay of the petitioner and that the overdrawn amount should be recovered from his retiral benefits.

7. Aggrieved by that decision, the petitioner approached the Administrative Tribunal in Original Application No. 2317 of 2006.

8. The tribunal, by its order dated May 6, 2008, directed "the Principal Secretary, Department of Finance, Government of West Bengal, to consider the case of the petitioner afresh, keeping in mind the earlier Government Order dated November 30, 1983 and to decide whether the petitioner is entitled to get the benefit of the scale as claimed by him and this exercise must be completed within four months from the communication of this order."

9. The tribunal, further, directed that an opportunity of being heard should be granted to the petitioner or his authorised representative and that the Principal Secretary should communicate his decision to the petitioner within one month from the date of taking his decision.

10. Aggrieved by the decision of the West Bengal Administrative Tribunal taken on May 6, 2008, the petitioner approached this Court by filing a writ petition being W.P.S.T. 1474 of 2008.

11. By order dated November 24, 2008, this Court confirmed the order passed by the tribunal in Original Application No. 2317 of 2006 by clarifying that the issue of overdrawals should also be decided along with other issues.

12. Accordingly, by communication dated May 22, 2009, the petitioner was informed that the Principal Secretary to the Government of West Bengal, Finance Department, had passed an order, whereby it was found that although the petitioner had been paid an excess amount due to his incorrect fixation of pay, the overdrawn amount should not be recovered from the petitioner. The authority held that such overdrawn amount on account of the wrong fixation of pay ought to be waived in view of the judgment of the Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, . The authority held

that the petitioner''s pay should be fixed in the scale of Rs. 230-414/- as a painter under the West Bengal Service (ROPA) Rules, 1981. It was, further, held that the overdrawn amount owing to the wrong fixation of pay in the scale of Rs. 260-537/- should stand waived.

13. There can be no dispute that the order of the Principal Secretary was not implemented by the State till January 3, 2011, when a cheque of Rs. 43,629/- dated December 31, 2010 was paid to the petitioner towards refund of the deducted amount from the commuted value of pension. Subsequently, on April 5, 2011, another cheque of Rs. 87,947/- dated March 31, 2011 was issued to the petitioner towards refund of the gratuity amount.

14. The petitioner demanded interest on these delayed payments. But, as there was no response from the authorities, the petitioner preferred Original Application No. 736 of 2011. That application was dismissed by the tribunal on December 22, 2011 indicating that no interest was payable to the petitioner as there was overdrawals and that overdrawn amount was refunded prior to filing of the original application. Hence, the present writ application.

15. Mr. Uttiya Ray, learned advocate appearing for the writ petitioner, has submitted that the gratuity and the commuted value of pension have not been paid to the petitioner on the date of his retirement, that is, on the date when the amount became due. He pointed out that even after the Principal Secretary to the Government of West Bengal, Finance Department, passed the order in September 2009, no payment was made for more than a year. According to the learned advocate, the delay in respect of payment of retiral dues of the petitioner is over ten years and, therefore, the petitioner is entitled to interest on the said amount.

16. Mr. Jaytosh Majumder, learned senior government advocate, has submitted that the petitioner is not entitled to interest as his prayer for interest had been negatived by the tribunal in Original Application 307 of 2005 as also in the order passed by it in Original Application No. 2317 of 2006, which was affirmed by this Court in W.P.S.T. No. 1474 of 2008. He, therefore, submits that the prayer for interest on the gratuity and the commuted value of pension would be barred by res judicata.

17. The learned senior government advocate has, then, submitted that the recovery was made from the pension in view of the wrong fixation of the pay scale of the petitioner. According to him, the petitioner ought to have been honest and indicated that since he was posted as a painter, his pay scale ought to have been fixed in the grade of Rs. 230-414/- and not in the higher pay scale.

18. Mr. Majumder has relied on several judgments, to which we will presently advert, to point out that recovery can be made from the pension and the gratuity, if the employee was paid an excess amount than what was due to him because of the wrong fixation of pay.

19. The Principal Secretary to the Government of West Bengal, Finance Department, having concluded that the pay fixation was erroneous, has held that the recovery of the overdrawn amount should be waived in view of the judgment of the Supreme Court in the case of Shyam Babu Verma & ors. (supra). This order was passed in September 2009. However, the petitioner was not paid the amount for over a year.

20. It is true that there was an erroneous fixation of the petitioner''s pay scale. The petitioner has no grievance with the revised fixation of pay. In our opinion, when the pay scale was re-fixed by the State in 2004 itself, there was no reason for not paying the petitioner his gratuity and pension even on the basis of the revised pay scale. We have no manner of doubt that no amount could have been deducted from the gratuity payable to the petitioner even assuming his pay had been wrongly fixed. There was no explanation whatsoever from the State as to why the gratuity was not paid. Merely to contend that it was because of overdrawal of the amount that the petitioner was not paid his gratuity, is, in our opinion, a lame excuse.

21. In the case of V. Gangaram Vs. Regional Joint Director and others, , the Supreme Court was concerned with the permissibility of recovery of the excess amount paid to an employee as additional increments, from his pension. The Apex Court, in the facts and circumstances of that case, held that the real arrears paid prior to 1985 to the employee were not to be recovered, but the excess paid after that year was liable to be recovered in instalments from the pension payable to the employee.

22. In the case of Bank of India and Another Vs. K. Mohandas and Others, the Supreme Court, in a decision given in the case of several civil appeals, which were heard together, held that where there was a bona fide delay, payment of interest was not warranted. The Apex Court, further, held that since the dispute was not totally frivolous, the employees were not entitled to interest on the unpaid pension.

23. The next case, which Mr. Majumder referred to, is a decision of the Supreme Court in the case of Videsh Sanchar Nigam Ltd. and Another Vs. Ajit Kumar Kar and Others, wherein, more particularly, in paragraph 46, the Supreme Court has reiterated the well settled view that a bona fide mistake does not confer any right on a party. Therefore, according to the learned advocate appearing for the State, the petitioner has no right to interest. The case before the Supreme Court was regarding the right to pension of the retirees, which had accrued to them on the basis of a particular scheme of dearness allowance. The Apex Court held, in the facts and circumstances of that case, that the dearness relief granted to the employees under a particular pay scale did not entitle the retirees to pension as the grant of that dearness relief was in excess of 100% neutralisation, which normally cannot be permitted.

24. In our opinion, the decisions cited by Mr. Majumder have no relevance to the

facts of the case before us. More apposite are the judgments cited by Mr. Ray, learned advocate appearing for the petitioner, namely, the judgment in the case of S.K. Dua Vs. State of Haryana and Another, and the judgment of a division bench of this Court in the case of Suman Verma Vs. Union of India (UOI) and Others, . It is trite that the pension and gratuity are not paid as a bounty to the employees. The amounts are paid on account of the long and unblemished service rendered by an employee.

25. An employee, when he retires, is entitled to the benefit of both gratuity and pension in order to tide over his days in retirement. Obviously, therefore, the amount of gratuity and pension payable to an employee must be paid immediately after his retirement. In fact, there are rules applicable to the West Bengal Government servants, which prescribe that pension papers have to be processed, at least, a year before a person retires. We have not been informed that this was done in the case of the petitioner. Instead, the service book of the petitioner indicates that the gratuity and pension were paid by cheques drawn in December, 2010 and March, 2011.

26. Therefore, the submission of the learned advocate for the State that no amount of interest is payable to the petitioner cannot be accepted. There is no doubt that there has been a delay in quantifying the gratuity on the basis of either the revised pay scale or the earlier pay scale, which the petitioner was drawing, The quantification of the pension, also, has been delayed. As such, the petitioner would be entitled to interest.

27. The judgments cited by the learned advocate appearing for the State, in our opinion, do not, in any manner, restrict this Court or indeed the Administrative Tribunal from granting interest on the delayed payment of gratuity and pension.

28. The submission of Mr. Majumder that the petitioner''s claim for interest is barred by res judicata is without merit. The first original application filed by the petitioner was disposed of with a direction to the State to treat it as a representation. The tribunal passed an order in the second original application filed by the petitioner, directing the Principal Secretary to consider the petitioner''s case. That order was confirmed by this Court. The officials of the government, who considered the case of the petitioner on two occasions could hardly have awarded interest against the State. Neither the tribunal nor this Court had any occasion to consider the petitioner''s claim for interest on delayed payment. Obviously, interest could be awarded only after the amount claimed by the petitioner was quantified. The amount was quantified and the Principal Secretary directed that the amount should be refunded as it should never have been deducted. Therefore, the tribunal could have awarded interest and the claim was not barred by res judicata.

29. In the circumstances, the authorities shall pay interest at the rate of 9% per annum (simple interest) from the date when the gratuity and pension fell due, that is, from the date of refutation of pay scale of the petitioner, namely, May 27,

2003, upto December 31, 2010 on the amount of gratuity and upto March 31, 2011 on the deducted amount from the commuted value of pension. The amount of interest shall be released within three months from today.

30. With the aforesaid directions, the writ application stands allowed without, however, any order as to costs. Xerox certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

