(1989) 01 CAL CK 0001

In the Calcutta High Court

Case No : C.R. No. 17871 (W) of 1984

Ramananda Goswami APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 19-01-1989

Acts Referred:

Citation : 93 CWN 785

Hon'ble Judges : Dilip Kumar Basu, J

Bench : Single Bench

Advocate : Nibaran Kr. Das, for the Appellant; Prafulla Kr. Ghosh, L.C. Biyani and Suchandra Mukherjee, for the Respondent

Judgement

Dilip Kumar Basu, J.—This is a type of writ petition in which the petitioner has challenged inaction of the appropriate authorities in the matter of claim of gratuity and other retirement benefits of the petitioner. On 27th September, 1984, a rule was issued and this rule was ready as regards service in terms of office report dated 10th December, 1987, Prayer of the petitioner was very simple, inasmuch as, petitioner, having served the respondent No.4, Sursuna High School, for a period of 35 year''s, as a teacher in Sanskrit, was due to retire in the year, 1979, on attaining the age of sixty years but ultimately petitioner''s tenure was extended by 2 years. But on 1st October, 1981 petitioner tendered voluntary resignation due to some difficulties in his family.

2. Petitioner after retirement made representation, before appropriate authorities for releasing retirement benefits and ultimately Secretary, Department of Education, Writers'' Building that the respondent No.1, by his memo No.C/1074/ EMS/83 dated 17/5./1983, informed the petitioner that petitioner''s claim was under consideration. Petitioner annexed last pay certificate issued by the respondent No.4 the said High School through the Headmaster from which, it transpires that petitioner had drawn Rs. 805/- (basic pay Rs. 535/- towards salary for the month of September, 1981).

3. It appears from the record that on 20th April, 1987, this rule was served on respondent No.3 & 4 and on 17th July, 1987 rule was served upon respondent No. 1 & 2. Though the rule was served by the respondents long before, no return was filed by the respondents.

4. It is only on 8th September, 1988, this court directed District Inspector of School (SE) 24 Parganas i.e. respondent No. 3 to appear with relevant papers and also to submit computation as regards amount payable to petitioner towards provided fund, gratuity and arrears of pension and also to furnish computation calculating interest (312% compounded annually from 1/10/81. The State respondent No.2, 3 was directed to furnish details of steps taken as regards release of retirement benefits and also to produce service book of the petitioner.

5. On 26th September, 1988, respondent No. 3, Sri S. N. Chakra-borty, was present in person in terms of the court''s order dated 8th September, 1988 where respondent No. 3 was directed to submit replies against certain queries and to file an affidavit on 28th September, 1988.

6. On 29th September, 1988, this court by order, impleaded Director of Pension, Provident Fund and Group Insurance, Purta Bhaban (2nd Floor), Salt Lake City'', Calcutta as respondent No. 5. On the same day Mr. Chakraborty, District Inspector of School i.e. respondent No.3, instead of filing affidavits, produced certain documents relating to pension and gratuity of the petitioner from which it transpired that papers relating to pension and gratuity, after due process were sent to the Director of Pension i.e. added respondent No. 5, on 27th September, 1988. At least this speed and efficiency shown by respondent No. 3, after court''s order passed on 26th November, 1988, is appreciable. At the time of hearing, learned advocate appearing for the petitioner has stated that on 18/3/87 his client had received Rs.2.952/- towards provisional pension for the period 1/10/1981 to 30/9/1989 @ Rs.246/- per month. Considering such payment the respondent No.5, Director of Pension was directed to release the arrear pension with interest @ 12% compunded annually to be calculated from 1/12/1981 i.e. after two months from the date of retirement, giving credia to Rs. 2,952/- which petitioner had already received towards provisonal pension. It was also directed that petitioner is entitled to get gratuity with interest and that too, to be calculated from 1/12/1981 at the same rate and in the same manner. It was indicated that gratuity amount will be paid after adjustment of providend fund account (Govern-1/12/81 and aforesaid sums have been paid by the respondents to the petitioner.........

12. Admittedly, petitioner was released from his service on and from 1st October, 1981 after serving some part of the extended period, and thereafter, petitioner approached the respondent authorities to release his pension and retirement benefis. Petitioner approached several times by submitting representation. At the instance of the respondent through their letter No.G/1074/FMs/P&S/83 dated 17/5/83, petitioner was informed that his claim as regards retirement benefits would be considered expeditiously. In suport of petitioner''s contentions such

averment was made in paragraph 6&7 in the writ petition which was not controverted by the respondents. On the other hand respondent No. 3 submitted an application, affirmed on 28th September, 1988, in reply to queries of this court made by an order dated 26th September, 1988. From the said application it appears that petitioner had been granted Rs. 2,952/- as provisional pension for one year for the period from 1/10/1981 to 30/9/82 "Rs.264/-per month under memo No.74(HS)/Pen/6/(s) dated 7/11/86 and petitioner received the payment on 18th March, 1987. Respondent No.3 has also stated in the said affidavit as the service hook and some papers were found not in order, the school authority received back the service book with necessary papers from DI of Schools (SF), South 24 Parganas, on 9/9/1987 for rectification and resubmission. In any event, from the application affirmed on 28th September, 1988, it does not appear that respondent No. 3 did not take any steps for releasing pensionary benefits to the petitioner after his retirement with effect from 1st October, 1981. It cannot be denied that the delay usually occurs by reason of non-production of last pay certificate, no liability certificate and service book concerning petitioners service. The date of retirement was. known to the respondents and factum of voluntary retirement with effect from 1st October, 1981, was duly communicated to the respondents. The aforesaid documents and relevant records whereof would be available from the office of the DI(SE), South 24 Parganas for processing the claim of the petitioner. In State of Kerala & Ors. v. M. Padmanabhan Nayer, AIR 1985 SC 356, Supreme Court gave anxious consideration on the mechanism of such processing by observing, inter alia, "Usually the delay occurs by reason of non-production of the LPC (Last Pay Certificate) and NLC (No Liability Certificate) from the concerned department but both these documents pertain to matters, records whereof would be with the concerned Government department since the date of retirement of every Government servant is very much known in advance. We failed to appreciate why the process of collecting requisite information and issuance of this two document should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month." On behalf of the respondents, a point was raised that petitioner is not entitled to get interest at the experiment contribution) which was already received by the petitioner. Respondent No. 5 was directed to submit working paper computing interest on the arrear of pension and gratuity.

7. On 7th October, 1988, Mr. P. K. Basu, Dy. Director of Pension, Government of West Bengal produced certain documents and stated that in the pension papers, some irregularities were detected and accordingly respondent No. 3 was directed to remove those difficulties and irregularities and to send the file to Director of Pension by 7th November, 1988. This court expressed a desire that respondent No. 5 would complete the procure by 22nd November and the matter was directed to appear on 23rd November, 1988, for further order.

8. Mr. P. K. Basu, Dy. Director of Pension, on behalf of the respondent no.. 5,

produced working papers in the matter of pension and gratuity of the petitioner. A copy of the said working paper was handed over to the learned advocate appearing for the petitioner and the basis of calculation was given, inter alia.

I) Monthly pension Rs. 354.00 with effect from 1/10/81 + relief as admissible. Gross Gratuity Rs. 12,259.50 Net Gratuity after deducting prov. pension Rs. 2,952.00 (paid on 18/3/87) and employer''s share of C.P.F. together with interest @5% as per rules amounting to Rs.9,173.44 - Rs. 134.06.

II) Calculated with 12% interest compunded annually with effect from 1/12/81.

III) Calculated 12% interest compunded annually with effect from 1/3/1986. 10.

9. Hearing the learned advocates appearing for the parties and also considering the working paper, submitted by Mr. P. K. Basu, Dy. Director of Pension, through learned advocate Mr. Biyani on 21/12/88, 1 directed respondents to release Rs. 24,492.00 towards arrear pension @Rs. 354.00 upto the month of November, 1988 and Rs. 3,086,00 towards gratuity due on 1/12/81 within 8/1/89 and to submit a compliance report on 9/1/89. The aforesaid amounts have been calculated from the computation sheet only towards claim of arrear of pension and gratuity without considering interest.

10. From the statement made at the bar it appears that in terms of the order passed by this court on 21st December, 1988, petitioner has received Rs. 27,249.00 towards arrear pension @ Rs. 354.00 upto the month of November 1988 and Rs. 3,086.06 only towards gratuity due on of two months from the date of retirement inasmuch as petitioner did not submit his claim just after retirement, on the other hand, petitioner had submitted his claim long after the date of retirement, I think, that this argument advanced by the respondent is not sound inasmuch as, it is the duty of the employer to release his salary after expiry of every month, similarly it is not necessary for any incumbent to submit any seperate claim so far pension, gratuity and retirement benefits as concerned. Petitioner is not supposed to submit a claim before the employer inasmuch as it is not a charity by the employer; on the other hand it is a statutory and legal right of an incumbent and the employers are accountable to discharge their statutory obligation so far settlement of retirement benefits including gratuity, providend fund and pension are concerned. In that view of the matter, it is not necessary that an incumbent is required to submit any claim after his retirement. It is the obligation of the employer to release retirement benefits and that too within shortest possible time. I am in respectful agreement with the decision of the Supreme Court in the aforesaid M. Padmanabhan''s case (supra) and I hold that the liability to pay penal interesaon the payable amount at the current market rate should commence at the expiry of two months from the date of retirement.

12. Considering the working paper produced by the respondent Nos. 5, I hold that petitioner is entitled to the following amount :-

Pension @ Rs. 354.00 with effe 1. 10. 1981 + Relief as admissible

Pension 1/12/1981 Rs. 708.00

Pension from 12/81 to 11/82 Rs. 4,248.00

Pension from 12/82 to 11/83 Rs. 4,248.00

Pension from 12/83 to 11/84 Rs. 4,248.00

Pension from 12/84 to 11/85 Rs. 4,248.00

Pension from 12/85 to 11/86 Rs. 4,248.00

Pension from 12/86 to 11/87 Rs. 4.248.00

Pension from 12/87 to 11/88 .. Rs. 4,248.00

Rs. 30,444.00 Rs. 30,444.00

Interest of pension @ 12% compounded annually with effect from 1/12/1981

Interest upto 30/11/82 Rs. 84.96

30/11/83 Rs. 604.92

" " 30/11/84 Rs. 1,187.27

30/11/85 Rs. 1,839.50

" " 30/11/86 Rs. 2,570.00

" " 30/11/87 Rs. 3,033.92

" " 30/11/88 Rs. 3,907.75

Interest has been calculated after debiting Rs. 2,952.00 on 18/3/87 as arrear provisional Rs. 13,228.32 Rs. 13,228,32

pension and in terms of report of Mr. P. K. Basu, Dy Director of Pension dated 20/11/88 Total: Rs. 43,672.32

Less, Provisional pension paid on 18/3/1987 Rs. 2,952.00 Rs. 40,720.32

GRATUITY Gratuity due on 1/12/1981 Less, Contributory Providend Fund + Interest Rs. 12,259.50 Rs. 9,173.44 Rs. 3,086.06

INTEREST Rs. 3,086.06

Interest on Rs. 3,086.06 upto 30/11/1982 Rs. 370.33

Interest on Rs. 3,456.39 upto 30/11/1983 Rs. 414.77

Interest on Rs. 3,871.16 upto 30/11/1984 Rs. 464.54

Interest on Rs. 4,335.70 upto 30/11/1984 Rs. 520.28

Interest on Rs. 4,855,98 upto 30/11/86 Rs.582.72

Interest on Rs. 5,438.70 upto 30/11/87 Rs. 652.64

Interest on Rs. 6,091.34 upto 30/11/88

Rs. 730.96 Rs. 3,736.24 Rs. 3,736.24 Rs. 6,822.30

Break up of payments under different Heads

1. Pension (Net due on 1/12/81) Rs. 30,444.00

Less provisional pension paid on 18/3/87 Rs. 2,952.00 Rs. 27,492.00

2. Gratuity (Net due on 1/12/81) Rs. 3,086.06 Rs. 30,578.06 Rs. 30,578.06

3. Interest against arrear pension upto 30/11/88 Rs. 13,228.32

4. Interest against gratuity upto 30/11/88 Rs. 3,736,24 Rs. 16,964.56 Rs. 16,964.56 Rs. 47,542.62

13. Perhaps it has become necessary to make certain comments on the accountability of the person for whom this court has been compelled to direct the State Government to pay interest. Now it is entitled law in our country and there is no reason for me to depart from those decisions of Supreme Court in State of Kerala & Ors. v. M. Padmanabhan Nayar, AIR 1985 Supreme Court 356, where it was held, inter alia, "Pension & gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of his court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be vested with the penalty of payment of interest at the current market rate till actual payment. "........" The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement." This decision was subsequently followed by O. P. Gupta v. Union of India & Ors., AIR 1987 Supreme Court 2257.

14. It is true that Central Government & State Government have initiated many social welfare legislations and schemes, which are not being implemented effectively and expeditiously due to apathy and indifferent attitude of a section of public officers. These social welfare legislations and schemes have not been allowed to be implemented effectively in bring changes in the life style of the vast sea of humanity, in which petitioners claim is only a drop. It is time, petitioner had been contionously approaching before the persons in the help of affairs but he did not get a fair deal from the public officers attached to the office of the State respondents and the bureaucratic mechanism did not respond to the claim of the petitioner for expeditious disposal of claim for retirement benefits and at least for a fair deal within a reasonable period, petitioner had no other alternative but to rush- to the High Court to embrace a legal battle, obviously, legal battle with the State Government is an unequal battle so far petitioner is

concerned.

15. The officers concerned, who are supposed to monitor the administration of different schools in the districts vis-a-vis service condition of the teaching and non-teaching staff, cannot avoid their obligation. Ft is due to the laches and lapses of the officers concerned in the office of the District Inspector of School (SE), South 2k Parganas, who are accountable for the latches, lapses and negligence for such non-payment or delayed payment. State respondents have been directed to pay interest. Citizens who are the custodian of the State Exchequer cannot afford this amount as penalty for laches and lapses of a few persons. By this order State Respondents have been directed to pay interest''. However, I give liberty to the appropriate authorities/State Respondents to recover the said amount, as directed to pay on interest account, from persons in the office of the District Inspector of School (SE), 24 Parganas South i.e. respondent No. 3, who held the office at the material time, and who are, according to me, are responsible and accountable. It is expected that authorities concerned would hold, an enquiry in this matter fixing the responsibility and accountability and if necessary, the amount may be recovered from the incumbents concerned on pro-rata basis. If these steps are taken, possibly, the State Government would be able to avoid payment of interest against identical claims in future and accountability-cum-work culture would, be introduced, at least in those sections in the office of the. District Inspector of School. This is not a direction but this may be treated as judicial advice to the State respondents to discharge their. Constitutional and statutory obligations. The respondents concerned can initiate and monitor the process for releasing retirement benefits at least six months before the date of retirement of the teachers; through a particular section of the office, if necessary by assigning some persons and/or creating a new section who will be accountable for non-payment and delayed payment. The respondents may also introduce a system of "two service books with photograph" of teachers concerned, one to be kept with the teacher concerned and other to be kept in the office of the AI of Schools or District Inspector of Schools, as the case may be. At the time of appointment a system of IDENTITY CARD with photograph of the teacher, duly countersigned by the teacher, appointing authority and approving authority, may be introduced by the State respondents for effective administration in the schools. If the office of the District Inspector of Schools is directed to initiate and monitor the process of retirement benefits in different districts at least six months from the date of the retirement of the persons concerned, it is hopefully expected that State respondents would be able to avoid payment of interest towards delayed payment, I hope, it is not a servant hope but it is an emergent necessity that steps shall be taken by the respondents immediately, if so advised. Let there be a start from 1989 and it is hopefully expected that State Government shall not be called upon to pay huge interest for latches, lapses and negligence of a few amongst public officers, in future.

16. I place it on record that assistance tendered by the respondents No. 5

through Mr. P. K. Basu, Dy. Director of Pension etc., learned advocate Mr. L. C. Biyani, Miss Suchandra Mukherjee and Mr. Nibaran Kr. Das, Mr. Prafulla Kr. Ghosh including S. N. Chakraborty, District Inspector of School, Secondary Education, South 24 Parganas are commendable and only for their sincere and effective assistance, the grievances of the petitioner, an old retired Sanskrit teacher, appears to be settled.

17. With the above observation I make the Rule absolution on the above terms. Let a Writ of Mandamus be issued directing the respondents to release the interest being Rs. 16,964.56 as calculated and determined in paragraph 10 hereinabove, within four weeks from date of communication of this order.

18. Considering the expenses incurred by the petitioners to recover his statutory claim, agony and anxiety, petitioner had suffered for lazy four years, I direct the State respondents to pay cost of this litigation which is assessed at Rs. 2,000/- and this cost shall be paid along with interest as directed within the aforesaid period. Parties are given liberty to obtain certified copy of the order within two weeks from the date of depositing requisites.

A copy of this order be sent to the learned L.R. for information and necessary communication to the appropriate authority within two weeks from date.