(2006) 05 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) 6691 of 2002

Satish Chandra Singh APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 90 DRJ 168

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.G. Sharma, for the Appellant; C.N. Shreekumar, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner has approached this Court in proceedings under Article 226 claiming various directions for the release of his terminal/ pensionary dues. He was working with the second respondent State Farms Corporation of India Limited (hereafter referred to as the Corporation). The petitioner was appointed as Executive Engineer on 27.4.1973. He held various positions and at the time of his retirement on 31.3.1998 was heading the farm at Kokilabari in Assam. It is contended that the petitioner''s services were extended by one year. Eventually, he retired from the services on 31.3.1999.

2. The petitioner''s principal grievance is that at the time of his retirement terminal dues such as provident fund, leave encashment dues, gratuity, special duty allowance etc. were not paid even though the respondent Corporation, a public authority falling within the expression State under Article 12, was under an obligation to do so.

3. Learned counsel for the petitioner had relied upon a chart produced in the petition which outlines the delay in respect of the payments made to the petitioner by the respondent Corporation. The chart is extracted below:

--- Sl. NATURE AMOUNT DATE OF RECEIPT BY DELAY IN PAYMENT No. OF DUES THE

PETITIONER -- 1. E.P.F. Rs.5,08,629.00 31.7.2000 1 year 4 months 2. Leave encashment & salary arrears 1st Installment) Rs.1,00,000.00 02/08/01 2 year 4 months 3. Leave encashment & salary arrears (2nd Installment) Rs.1,58,282.36 6.9.2001 2 years 5 months 4. Gratuity (incorrect amount) Rs.2,27,296.95 26.9.2001 2 years 6 months 5. Special duty allowance Rs.19,700.00 24.1.2002 2 years 10 months. --

4. It is also contended that in addition to the amount of Rs. 2,27,296.95 released on 26.9.2001 towards gratuity, a further amount of Rs. 95,443/- is outstanding on that account. Learned counsel submits that the above amounts were released after delay and that being a public employer, the respondent was under an obligation to ensure that terminal dues of a superannuating employee like the petitioner were paid immediately upon his retirement. Therefore, he urges this Court under Article 226 of the Constitution should issue an appropriate direction for payment of interest at a suitable rate. Learned counsel further states as per judgment of the Supreme Court, delayed payment of terminal dues attracts a penal interest of 18% per annum.

5. The principal defense of the Corporation is that vigilance clearance required by its guidelines had not been furnished in respect of the petitioner''s services at the time of his superannuation. It is also claimed that for this reason, the gratuity amounts were not paid till such clearance was obtained in the year 2000. So far as the payment of provident fund is concerned, it is submitted that no prejudice was caused to the petitioner on account of the payment under Employees Provident Fund Act on 27.7.2000 because the amounts received by him included interest component.

6. Learned counsel appearing on behalf of the Corporation also submitted in addition that the financial health of the Corporation is far from satisfactory and that it has been referred to the Board of Re-construction of Public Sector Enterprises due to accumulated losses and that it does not even have a regular Chairman-cum-Managing Director; a retired person has been appointed for the purpose.

7. Learned counsel also submitted that although there was some delay in regard to payment of leave encashment amount as per Items-2 and 3 and also in respect of the release of special duty allowances as per Item-5 above, no fault could be attributed and there was bona fide delay in processing of the petitioner''s case.

8. The factual narrative discloses that the petitioner''s grievance with regard to delayed payment of the bulk of the amount payable i.e. Employees Provident Fund does not survive since counsel has not disputed the assertion of the Corporation that the amount of Rs. 5,08,629/- paid included an interest component as per the provisions of the Employees Provident Fund and

Miscellaneous Provisions Act, 1952. However, as far as delayed payment of Items 2 & 3 and 5 are concerned, the pleadings in the case as well as contentions establish that there is an un-explained delay of around 2 and half years, in the case of the special duty allowance, the delay was nearly three years, I am of the opinion that the Corporation has not sufficiently explained the delay in the release of sum of Rs.2,77,996/- towards the leave encashment and salary arrears as well as the special duty allowance.

9. In judgments of the Supreme Court reported as in Nalini Kant Sinha Vs. State of Bihar and others, , R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, , R.R. Bhanot Vs. Union of India and others, it has been held that delay on the part of the employer and settling the terminal and pensionary dues of a public employee retiring from services would attract a direction from the Court to pay interest. I am of the opinion that the respondents should pay interest on the said amount of Rs.2,77,996/- for a period of two years at the rate of 8% per annum

10. So far as the aspect of gratuity is concerned, there is some dispute not only with regard to amount but also with regard to applicability of the circular relied upon by the respondent. Counsel contended that the benefit of Payment of Gratuity Act (which was amended in 1995) enures the petitioner and that the higher benefits prescribed under the statute would be applicable, in which case the amounts payable would be in excess of what has been paid. Learned counsel for the respondent disputed this and on the other hand submitted that the appropriate forum to decide the issued would be authority constituted under the Payment of Gratuity Act.

11. Having considered the rival submissions, I am of the opinion that it would be appropriate that petitioner approaches the authority constituted under the Act and prefers his claim. Liberty is granted for the purpose. The petitioner may approach the said authority within a period of two months from today. In case he does so, the authority shall decided the dispute in accordance with law within a period of six months unhindered by the issue of limitation having regard to the fact that the present writ proceeding has been pending for the past four years as also that the respondent took the objection as to the maintainability of such claims and stated that the matter would be appropriately ad judicable before the authority.

12. In the light of the above discussion, the writ petition is partly allowed. The Corporation is directed to pay 8% interest for a period of two years upon the amount of Rs. 2,77,996/- to the petitioner within eight weeks from today. No costs.

