(2015) 01 AHC CK 0121

In the Allahabad High Court

Case No : Special Appeal Defective No. 10 of 2015

Shiv Shankar Mishra APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 3 ADJ 302 : (2015) 3 ALJ 551 : (2015) 2 AWC 1473 : (2015) 2 ESC 1211 : (2015) 2 UPLBEC 1075

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

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant

Final Decision : Disposed off

Judgement

1. The appellant was working as a collection amin in the office of the Assistant Commissioner/District Assistant Registrar, Cooperative Societies, Bhadohi, impleaded as third respondent to these proceedings. The appellant attained the age of superannuation on 28 February 2013. His grievance was that during the tenure of his service, he was not paid his monthly salary for thirty one months between August 2004 to June 2007 and from January 2010 till the date of his retirement without any justification. Moreover, the appellant was not allowed the benefit of the payment of pay fixation and arrears in accordance with the report of the Sixth Pay Commission as adopted by the State. He filed a writ petition (Writ-A No. 47141 of 2010) for seeking the release of his salary and other retiral dues. A counter was filed on behalf of the respondents stating that an amount which was due had been paid while the balance would be paid over to the appellant as and when funds were made available. The learned Single Judge by an order dated 11 September 2013 disposed of the petition with the following observations and directions:

"The paucity of fund cannot be taken as a ground for not paying the admitted dues to the petitioner. Petitioner has since retired and, therefore, the petitioner should be duly paid his arrears.

It is submitted that even the pension etc. has not been finalized which is causing grave hardship to the petitioner.

Under the circumstances, the writ petition is disposed of with the direction that the respondent No. 2 will firstly pay the entire admitted arrears to the petitioner within a period of four months and will take immediate steps for determination of pension etc. within the same period and will make all endeavour to release the pension and other retiral dues to the petitioner within the same period.

With the aforesaid directions, the writ petition is finally disposed of."

Despite the order of the learned Single Judge, the admitted arrears were not paid within a period of four months, following which a contempt petition was filed (Contempt Application (Civil) No. 1765 of 2014). On 13 March 2014, a learned Single Judge acting on the contempt application granted one more opportunity to the respondents to comply with the order within one month failing which it was directed that the opposite parties would remain present before the Court.

2. On 17 February 2014, the Assistant Commissioner and the Assistant Registrar issued a letter to the Additional Commissioner for sanctioning an amount of Rs. 12,19,054.00 to the appellant. Eventually, on 20 March 2014, a communication was addressed to the Assistant Commissioner stating that a cheque in the amount of Rs. 12,19,054.00 dated 18 March 2014 had been made over.

3. The appellant moved representations on 5 May 2014 and again on 10 June 2014 complaining that his pension had not been released from the month of March 2014 and seeking the payment of interest on the delayed payment of his dues. A writ petition was filed for a direction to pay interest at the rate of 18% per annum on the delayed payment of the arrears of monthly salary and retiral dues. A mandamus was also sought for the payment of the monthly pension of the appellant w.e.f. March 2014.

4. The learned Single Judge, by an order dated 26 November 2014, directed that in view of the fact that the pensionary payments have been stopped w.e.f. March 2014, these should be paid on or before 31 January 2015 failing which, if the payment was not made by the said date, the appellant would be entitled for interest @ 9%. The learned Single Judge has declined to grant interest on the delayed payment of arrears of salary. Moreover, the claim for interest on the delayed payment of the pensionary benefits has also been declined in the sense that if payment is made by 31 January 2015, no interest would be admissible. The learned Single Judge has noted that payment was not released on the ground of paucity of funds and hence, there was no willful default on the part of the respondents in the payment of his salary or pensionary dues. This ground has weighed in denying the claim for interest.

5. The present case is an unfortunate instance where an employee has been left in the lurch after having rendered long years of service. Both the arrears on account of salary as well as pensionary dues have not been paid on time. When

the appellant had moved a writ petition before the Court, an order was passed on 11 September 2013 directing the payment of the admitted arrears within four months and for immediate steps to determine the pensionary dues. This order was not complied with following which, he was constrained to file contempt proceedings. It is only thereafter that on 18 March 2014 the payment of arrears of salary from August 2010 until February 2013 was made. It was only then that the appellant was also paid arrears on account of gratuity, pension and other retiral dues. There was no reason or justification to withhold the payment of salary during the period when the appellant had worked when salary fell due for payment or for the non payment of pensionary and retiral dues, the latter within a reasonable period of retirement. There was no lapse on the part of the appellant. The paucity of funds cannot surely be held up as an excuse not to pay the salary of an employee who had worked for the period for which his salary is due. Similarly, pensionary dues constitute a rightful entitlement of an employee. The State cannot be heard to say that it would fail to pay the pension on time and yet excuse itself from the liability to pay interest.

6. In the case of State of Kerala and Others Vs. M. Padmanabhan Nair, AIR 1985 SC 356 : (1985) LabIC 664 : (1985) 1 LLJ 530 : (1984) 2 SCALE 959 : (1985) 1 SCC 429 : (1985) 2 SCR 476 : (1985) 1 SLJ 106 : (1985) 17 UJ 764 , the Supreme Court held as follows:

"Pension and 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 this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

7. In a more recent decision in D.D. Tewari Vs. Uttar Haryana Bijli Vitran Nigam Ltd., AIR 2014 SC 2861 : (2014) AIRSCW 4511 : (2014) LLR 964 : (2014) 9 SCALE 78 : (2014) 8 SCC 894 , the Supreme Court observed that any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest. Hence, interest @ 9% on delayed payment was awarded to be paid within six weeks failing which interest @ 18% p.a. would need to be paid. An erroneous withholding of gratuity amount to which the employee is legally entitled, entails penalty on the delayed payment.

8. We, therefore, have come to the conclusion that the learned Single Judge was not justified in declining the prayer for the payment of interest. Insofar as the payment which was made to the appellant on 18 March 2014 is concerned, the appellant was clearly entitled to the payment of interest from the date of the filing of the writ petition in 2010 (Writ -A No. 47141 of 2010). The appellant would also be entitled to the payment of interest on the pensionary payment which was unlawfully withheld from March 2014 until actual payment is made. We direct that interest shall be admissible to the appellant at the rate of 9% per annum from the date on which the respective payments on account of arrears of salary, or as the case may be, towards pensionary dues became due and payable

as directed earlier. Interest shall be computed in terms of the aforesaid directions within a period of three months from the date of receipt of a certified copy of this order. The order of the learned Single Judge declining interest shall to that extent stand set aside and be substituted by the aforesaid directions. The appeal is, accordingly, disposed of. There shall be no order as to costs.

