(2018) 01 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : 1971 of 2007

Smt. Vijay Laxmi APPELLANT

Vs

State of J&K and others. RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Citation : (2018) 01 J&K CK 0020

Hon'ble Judges : Sanjay Kumar Gupta

Bench : Single Bench

Advocate : Dhiraj Choudhary, Ravinder Gupta

Final Decision : Allowed

Judgement

1. The case of the petitioner is that she has served the Education Department as Teacher for 33 years with utmost care, sincerity and dedication.

She was lastly posted as Head Master in Govt. High School Liater, Reasi, from where she was relieved after availing voluntary retirement. It is

submitted that due to her ill health, she made a request to the respondents to adjust her at appropriate place in Jammu, which was declined, so on

08.03.2006 she applied before respondent Nos.2 & 3 for her voluntary retirement w.e.f. 30.06.2006. Respondent No.3 i.e. CEO Udhampur vide

his letter No.E-1/GAZ/31312 dated 17.03.2006 forwarded the detailed service particulars of the petitioner to respondent No.2 i.e. Director

School Education. Petitioner again on 18.08.2006 filed an application before respondent No.2 & 3 stating therein that the petitioner applied for

her voluntary retirement w.e.f. 16.08.2006 but no sanction was accorded to it and no instructions were given to the petitioner regarding her

handing over of charge of the school at her last place of posting. It was also stated in the application that she has not received any salary w.e.f.

December, 2005 to April, 2006 when she was attached in the office of respondent No.3. Respondent No.3 vide his letter dated 30.08.2006, in

reference to letter dated 31.05.2006, forwarded service verification certificate of the petitioner issued from the office of Accountant General J&K

Jammu, to respondent No.2 and requested him to accord sanction to the voluntary retirement in favour of the petitioner. Respondent No.2 vide his

letter dated 26.09.2006 in reference to CEO''s Udhampur letter dated 30.08.2006 forwarded the voluntary retirement case of the petitioner to

respondent No.1 with request for according sanction to the voluntary retirement case of the petitioner with weightage of 16 months. The petitioner,

again on 11.10.2006, filed an application before respondent No.2 for issuance of necessary instructions regarding her handing over of school

charge to the next immediate senior master. The petitioner vide her official letter dated 08.12.2006 requested respondent no.2 to consider the date

of her voluntary retirement as 31.12.2006 instead of 30.06.2006 as respondent No.1 has miserably failed to accord sanction for case of voluntary

retirement, from previous date despite numerous requests. The petitioner, as such, was forced to work against her wishes despite her request for

her voluntary retirement but it is a matter of great concern that she was not paid for the work done by her. So the petitioner again vide his letter

dated 16.12.2006 requested respondent No.3 to release salary in her favour w.e.f. December, 2005 to March, 2006. Respondent No.3 vide his

letter dated 26.12.2006, in reference to the letter dated 08.12.2006, directed the petitioner to relieve herself from the school on 31.12.2006 and

handover the charge of the school to the next senior most master who will look after the school routine work.

2. It is further case of the petitioner that after having completed all the requisite formalities for the purpose of getting her pensionary benefits but

despite that, the same have not been released in her favour. Since the petitioner has retired from service on 31.12.2006 but the respondents have

not initiated any process for releasing the pension and retiral benefits in favour of the petitioner. It is stated that the respondents are under legal

obligations to settle and release the pension and pensionary benefits as due to the petitioner. The act of the respondents in not settling and releasing the pensionary and other benefits are highly illegal, unjustified and shows mala fide on the part of the respondents. The petitioner has, thus, prayed

for the following reliefs:-

i) Writ of mandamus thereby directing the respondents to settle and release the pension, gratuity, commute pension, G.P. Fund, case in lieu of

leave and other retiral benefits w.e.f. 01.01.2007.

ii) Writ of mandamus thereby directing the respondents to pay interest @ 18% p.a. on the aforesaid pensionary benefits.

iii) Writ of mandamus thereby directing the respondents to release salary of the petitioner w.e.f. 27.12.2005 to March 2006.

iv) Writ of mandamus thereby directing the respondents to pay Rs.10,000/- as costs of litigation for forcing the petitioner to file this writ petition.

v) Any other appropriate writ, order or direction as the Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

3. Respondent Nos.1 to 3, in their objections, have stated that the petitioner''s request for voluntary retirement has been accepted w.e.f.

31.12.2006. It is further submitted that the G.P. Fund claim has been paid to the petitioner vide letter dated 10.12.2009 written by Headmaster,

Govt. High School, Laiter, Reasi. Petitioner has also been paid the State Life Insurance. The case of the petitioner for pensionary benefits is under

process in the office of respondent No.3, as the requisite formalities for sanctioning the pensionary benefits are being procured by respondent

No.3. Respondent No.3 has already written to the Principal, Govt. Medical College, Jammu, for medical examination in favour of the petitioner

vide letter dated 20.04.2010 for the purpose of sanction of commute pension. It is accordingly submitted that the case of the petitioner for pension

is under process and the same would be released in favour of the petitioner soon after the requisite formalities are fulfilled by the petitioner.

4. Respondent No.4, in its revised reply, has stated that the case of the petitioner seeking voluntary retirement w.e.f. 31.12.2006 was not

forwarded by the Pension Sanctioning Authority to the office of respondent No.4. Letter dated 24.05.2007 issued by respondent No.3 to the

office of respondent no.4 reveals that the case of the petitioner was not forwarded to respondent No.4 for want of necessary sanction from the

Administrative Department under rules. As regards release of GP Fund of the petitioner, it is submitted that GPF balance of Rs.8750/- and Rs.433

(Total Rs.9183/-) ending March, 86 stands transferred to Fund Office Doda vide transfer advice dated 23.12.1995 and letter dated 31.07.2006

respectively for final payment of GPF in favour of petitioner. The release of GPF final payment was thus with the J&K Fund Organization. It is

further stated that on the receipt of the case of the petitioner in Feb. 2010, it was observed that an ex-post facto sanction accorded for grant of

voluntary retirement vide Govt. Order No.33-Edu of 2010 dated 15.01.2010 without mentioning anything about the weightage. The Department

had afforded the increment for 01.07.2007 as per the entry recorded in the service book. Moreover, no demand certificate in respect of

conveyance advance was also not appended with. As such the office of CEO Reasi vide letter dated 19.03.2010 was requested to furnish the

requisite details as mentioned above. The pensionary benefits of the petitioner have been authorized vide letter dated 18.06.2010, after ignoring the

benefit of weightage.

5. Heard learned counsel for both sides and gone through the contents of the petition and the objections filed. The file is taken for final disposal as

already much time has elapsed.

6. Admitted position is that request of the petitioner for voluntary retirement has been accepted w.e.f. 31.12.2006. G.P. Fund claim has been paid

to the petitioner vide letter dated 10.12.2009 written by Headmaster, Govt. High School, Laiter, Reasi. Petitioner has also been paid the State Life

Insurance. So far as case of the petitioner seeking voluntary retirement w.e.f. 31.12.2006 is concerned, respondent no.4 has stated that the same

was not forwarded by the Pension Sanctioning Authority to the office of respondent No.4 for want of necessary sanction from the Administrative

Department. Bare perusal of replies filed by respondents it is evident petitioner has been retired on 31.12.2006 and till date pension case has not

been settled. It is very sorrow affairs of state, that petitioner though retired 12 years back, still her pension case has not been settled. Her pension

and other retiral benefits have been withheld without any cause.

7. In 1999 SC 1212 in case titled Dr. Uma Agrawal vs. State of U.P. And Anr., it is held as under:-

5. We have referred in sufficient detail to the Rules and instructions which

prescribe the time- schedule for the various steps to be taken in regard

to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating

various steps atleast two years in advance of the date of retirement. If the rules/ instructions are followed strictly much of the litigation can be

avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government

servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral

benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a

prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can

certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.

6. The case before us is a clear example of department delay which is not excusable. The petitioner retired on 30.4.1993 and it was only after

12.2.1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger

to various places where the petitioner had worked. Such an exercise should have started atleast in 1991, two years before retirement. The

amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was

indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30.3.1993 seeking information

from her, an allegation which is denied by the petitioner, that cannot be an excuse for the lethargy of the department inasmuch as the rules and

instructions require these actions to be taken long before retirement. The exercise which was to completed long before retirement was in fact

started long after the petitioner''s retirement.

7. Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter

should go back. Instead, on the facts of this case, we quantify the interest payable at Rs.1 lakh and direct that the same shall be paid to the

petitioner within two months from today.

8. The writ petition is disposed of accordingly. There will be no order as to costs.

8. In AIR 2014 SC 2861 in case titled D. D. Tewari (D) Through LRS. v. Uttar Haryana Bijli Vitran Nigan Ltd. & Ors., it is held as under:-

3..........The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan

Nair[1], wherein this Court reiterated its earlier view holding that the 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 dealt with the penalty of payment of interest at the current market rate till

actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed

payments to the appellant is concerned. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any

reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved

of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic

order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned single Judge with regard to the

payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the

judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in

this appeal before this Court urging various legal grounds.

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned

single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously

withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the

appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to

be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal

principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of

pension due and the gratuity amount which are to be paid by the respondent.

5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled

in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard

to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of

entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same

shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this

appeal is allowed.

9. In view of above discussion, this petition is finally allowed with a direction to the respondents to settle and release pension, gratuity, commute

pension and other retiral benefits in favour of the petitioner in accordance with law within 6 weeks from the date of receipt of this order.

Respondents are also directed to release the salary for the period, as alleged in the petition, to the petitioner under law. It is further held that the

petitioner is entitled to interest @ 18% from the date of retirement till her pension is released.

