
(2018) 10 MP CK 0010
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1052 Of 2017

State of Madhya Pradesh & Others

APPELLANT

Vs

Ramlal Mahobia

RESPONDENT

Date of Decision : 30-10-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Interest Act, 1978 — Section 2(b), 3
Code of Civil Procedure, 1908 — Section 34

Citation : (2018) 10 MP CK 0010

Hon'ble Judges : Hemant Gupta, CJ; Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Vishal Dhagat, A.K. Pare, Ashish Shroti

Final Decision : Allowed

Judgement

Hemant Gupta, CJ

The challenge in the present appeal is to an order passed by the learned Single Bench on 06.01.2017 in W.P. No.18392/2013 (Ramlal Mahobia v. State of M.P. & others) whereby the writ petition filed by the writ-petitioner (respondent herein) claiming interest @12% per annum on the delayed payment of salary for a period of 13 months i.e. from 01.09.1997 to 10.09.1998, paid after seven years and four months, was allowed.

2. The learned Single Bench referred to a judgment of the Supreme Court rendered in Union of India etc. v. Justice S.S. Sandhawalia (Retd.) & others etc. (1994) 2 SCC 240 to hold that when reason for delayed payment is attributable to the department, therefore, an employee cannot be deprived of the benefit of interest.

3. Learned counsel for the appellants refers to an order dated 29.06.2013 passed by the Chief Conservator of Forest, officiating Conservator of Forest, Central Forest Circle, Jabalpur in pursuance of a direction of this Court to consider the

grant of interest on delayed payment of salary. In the order passed, it is mentioned that the writ-petitioner was sent on deputation to Panchayat and Rural Development Department for a period of two years in the year 1996. He was reverted back to the parent department on 30.07.1997 inter alia on the ground that he is not taking interest, putting political pressure and remaining absent from duty and misbehaving with the officials. He was posted on 11.09.1997 against his original post as Deputy Forest Ranger in Production Forest Division, Dindori but he abstained from duty. It was on 11.08.1998, he was posted as Forest Ranger in Forest Range, Dindori by recalling of earlier order dated 11.09.1997. Since he has not worked for the period 11.09.1997 to 10.09.1998, vide order dated 16.09.2004 a decision was taken to pay him wages for the said period on compassionate basis and accordingly payment was made to him in the month of December, 2004. However, it was held that he is not entitled to interest on the salary for the period he remained absent from duty.

4. During the course of hearing on 10.11.2017, this Court framed the following question for consideration:-

"Whether delay in payment of arrears of salary entitles an employee to interest and if yes, at what rate?

5. Learned counsel for the appellants-State pointed out that since the writ-petitioner has remained absent from duty and he has been paid salary as a concession, therefore, he is not entitled to interest on account of delayed payment of salary.

6. We find that in the context in which the writ-petitioner was reverted to the parent department and the fact that he has not joined the place of posting to which he was posted, disentitles the writ-petitioner to claim interest on the salary, which was granted as a concession without working on the post.

7. However, the larger question: as to whether delay in payment of arrears of salary without any fault of the employee entitles him to interest, is required to be examined.

8. Shri Shroti, learned Amicus Curiae, referred to the Interest Act, 1978 (for short "the Act") to contend that salary is a debt on which interest would be payable in terms of Section 3 of the Act and the interest at a rate not exceeding the current rate of interest for whole or part of the period can be awarded. Shri Shroti also referred to a judgment of the Supreme Court in *Secretary, Irrigation Department, Government of Orissa and others etc. v. G.C. Roy etc.*, AIR 1992 SC 732, to contend that a person deprived of the use of money to which he is legitimately entitled, is entitled to be compensated for the deprivation, call it by any name. The relevant extract from the said judgment, reads as under:-

"43. The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of

such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of S. 34, C.P.C. and there is no reason or principle to hold otherwise in the case of arbitrator;

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9. Shri Shorti, has also referred to a judgment passed by the Supreme Court in O.P. Gupta v. Union of India (UOI) and others, AIR 1987 SC 2257 wherein the Court has awarded interest @12% per annum on the delayed payment of pension. In the case of Justice S.S. Sandhawalia, a former Chief Justice of Punjab & Haryana and Patna High Court (supra), the Supreme Court did not interfere with the order of the High Court directing payment of interest @12% per annum on the balance of death cum retirement benefit, which was delayed by almost a year. However, in Civil Appeal No.3059/1991 (Union of India v. Justice S.S. Sandhawalia), the Government was given liberty to recover the amount paid along with interest @15% per annum after the expiry of three months. In its decision in Punjab State Electricity Board v. Kuldip Singh (2005) 13 SCC 362, the Court granted interest @9% per annum if the payment is not made within four weeks on the arrears of salary.

10. Shri Shrotri, learned Amicus Curiae submits that apart from the Interest Act, 1978, Section 34 of the Code of Civil Procedure, 1908 (for short 'the CPC') also empowers the civil court to grant interest.

11. We have heard learned counsel for the parties and find that if a person is deprived of use of money to which he is legitimately entitled, has a right to be compensated for the deprivation. An employee is entitled to salary and therefore, if the salary is not paid, he is entitled to compensation called, interest. However, before such interest is found to be payable, there should not be any unreasonable cause with the employer not to pay salary though the employee was working. After discharging duties as an employee, it is the right of the employee to get salary; therefore, if the salary is not paid even though the employee has worked, he is entitled to be compensated for the delay i.e. by way of interest. But, the question is how much interest is a reasonable rate of interest, which can be awarded by the Court in a writ petition under Article 226 of the Constitution of India.

12. Before considering the said aspect of the matter, it would be apt to quote the relevant provisions, which read as under:-

The Interest Act, 1978

2. Definitions. - In this Act, unless the context otherwise requires,-

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(b) "current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

Explanation - In this clause, "scheduled bank" means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949);

(c) "debt" means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;

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3. Power of court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

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The Code of Civil Procedure, 1908

34. Interest.- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to

such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I. - In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

13. The jurisdiction of the civil court to grant interest is circumscribed by Section 34 of the CPC, which contemplates that future interest at the rate not exceeding 6% per annum, as the Court may deem reasonable on the principal sum but in respect of the sum adjudged out of a commercial transaction, rate of interest may exceed 6% per annum, which shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which the moneys are lent or advanced by nationalised banks in relation to commercial transactions.

14. Admittedly, there is no stipulation in any service rule that for delayed payment of salary, an employee is entitled to interest and at what rate nor the salary is in relation to commercial transaction, therefore, the civil court is not entitled to grant future interest exceeding 6% per annum on the arrears of salary.

15. But, the question of award of interest by the writ court is not controlled or regulated by the Code of Civil Procedure. It is the Interest Act which empowers the Court to allow interest at the rate not exceeding the current rate of interest. The "current rate of interest" has been defined under Section 2(b) of the Act to mean the highest of the maximum rates at which interest may be paid on different classes of deposits other than those maintained in savings account. The current rate of interest on fixed deposits is fluctuating rate of interest but the same is neither 9% or 12% per annum for last couple of years. The highest rate of interest in the year 2016 was 7.25% per annum and in the year 2017, it was 6.75% per annum. Therefore, in terms of Section 3 of the Interest Act, the grant of interest @12% per annum will not be justified when the High Court has granted such interest to a former Chief Justice in an equitable jurisdiction.

16. Since in the present case, the writ-petitioner has not worked from 11.09.1997 to 10.09.1998 and has been paid salary as a matter of concession,

therefore, he is not entitled to interest as there was a sufficient cause with the employer not to pay salary without work.

17. Still further, the Competent Authority has passed an order of not granting interest, therefore, in exercise of power of judicial review, this Court will not substitute its opinion with that of the Authority merely because the High Court considers it appropriate to grant interest. Therefore, the present appeal is allowed. The order dated 06.01.2017 passed by the learned Single Bench to grant interest @12% per annum merely on account of delay in payment of salary which is preceded by a sufficient cause as noticed in the order under challenge cannot be sustained.

18. In view of the aforesaid, the present appeal is allowed and the Writ Petition No.18392/2013 for claiming interest is dismissed.