
(1999) 07 MP CK 0023
In the Madhya Pradesh High Court
Case No : Writ Petition No. 785 of 99

State of M.P. and Others

APPELLANT

Vs

R.K. Joshi and Others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 44, 64

Citation : (2000) 1 MPHT 206 : (2000) 1 MPLJ 467

Hon'ble Judges : S.P. Shrivastava, J;N.G. Karamdelkar, J

Bench : Division Bench

Advocate : K.B. Chaturvedi, Govt. Adv, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Shrivastava, J.

Feeling aggrieved by the order passed by the M.P. State Administrative Tribunal, Gwalior, whereunder allowing the application filed by the respondent No. 1 herein, the present petitioners had been directed to pay interest at the rate of 12 per cent per annum on the withheld amount of death-cum-retirement gratuity for the period from the date of retirement of the said respondent till the actual payment of the said amount, which was required to be paid within a period of three months from the date of the order, they have approached this Court by means of the present writ petition under Article 227 of the Constitution of India seeking redress praying for the reversal of the impugned order passed by the Tribunal.

We have heard the learned Government Advocate representing the petitioners as well as the respondent No. 1, who has put in appearance in the case at this stage, and have carefully perused the record.

The facts in brief, shorn of the details and necessary for the disposal of this writ petition lie in a narrow compass. Disciplinary Proceedings against the respondent No. 1 were initiated while he was holding the post of Sahayak Sanchalak,

Sthaniya Nidhi Sampariksha, Ujjain, with the service of charge-sheet upon him on 12-3-1996. The charges levelled against him were in regard to irregularities in certifying the fixation of the salary in the higher time scale of pay granted to 31 lower division clerks employed in the Vikram Vishvavidyalaya. He submitted his explanation to the charges levelled against him in 29-3-1996 denying the charges. The Enquiry Officer was appointed, who submitted his report on 4-8-1997 holding that none of the charges levelled against the respondent No. 1 had been proved. The State Government accepting the report of the Enquiry Officer exonerated him from the charges and terminated the disciplinary proceedings vide the order dated 25-10-1997.

During the pendency of the disciplinary proceedings the contesting respondent attained the age of superannuation and retired from service on 31-12-1996. Having submitted his explanation to the charges levelled against him on 29-3-1996, he had moved an application on 6-8-1996 referring to the various Government orders especially the order dated 27-1-1982 whereunder it had been directed that while proceeding with the disciplinary inquiry, taking care of the date of superannuation, the final decision should be given much before that and such disciplinary proceedings should be conducted on priority basis fixing dates for day to day hearing.

The contesting respondent No. 1 had requested that the disciplinary proceedings initiated against him be decided before his attaining the age of superannuation. The Up-Sanchalak, Sthaniya Nidhi Sampariksha, Ujjain, sent a letter dated 14-8-1996 to the State Government for issuing suitable direction for taking the decision in the disciplinary proceedings initiated against the answering respondent much before his attaining the age of superannuation.

In spite of the aforesaid request the disciplinary proceedings were not expedited and no endeavour was made so that they terminated before the date on which the contesting respondent was going to attain the age of superannuation i.e. 31-12-1996 and were concluded with the order of his exoneration from the charges levelled against him much after the date of superannuation vide the order passed by the State Government dated 20-10-1997.

Even after his exoneration from the charges levelled against him, the amount due to him towards death-cum-retirement gratuity, which ought to have been paid to him on his retirement, was paid to him on 5-3-1998.

The contesting respondent thereafter moved an application on 29-4-1998 requesting that he may be paid interest calculated at the rate of 12 per cent per annum on the amount of Rs. 86,139.00, which had been paid to him towards death-cum-retirement gratuity. The aforesaid application was, however, rejected vide the order dated 19-5-1998. The reasons for rejecting the prayer in regard to payment of interest was disclosed to be that there had been no delay on the part of the Sanchalnalaya in the matter relating to the pension papers as they could be sent only after the termination of the disciplinary proceedings initiated against

him on 27-11-1997. From a perusal of the order dated 19-5-1998 it is apparent that the pension papers relating to the contesting respondent had been sent on 29-11-1997 for final orders after termination of the disciplinary proceedings on 27-11-1997.

The aforesaid order has been quashed by the M.P. State Administrative Tribunal with the directions to which a reference has already been made hereinabove.

In support of this writ petition the learned Government Advocate has heavily relied upon Rule 64 (1) (ga) of the Madhya Pradesh Civil Services Pension Niyam, 1976, which provides that no payment towards death-cum-retirement gratuity shall be made to any Government servant till departmental or judicial proceedings are not terminated and final orders thereunder are not issued.

It may be noticed that the note appended to the aforesaid Rule provides that sanction in regard to the payment of final pension is obligatory even though the departmental or judicial proceedings were pending.

The learned counsel for the petitioners has also relied upon the Finance Department's Memorandum dated 7-11-1980 providing that in order to avoid the delay in the payment of death-cum-retirement gratuity to the retired servants, in case the delay was on account of administrative reasons and the payment is not made within six months from the date the amount of gratuity fell due and the cause of delay is attributed to administrative reasons then the amount found due was to carry an interest at the rate of 5% per annum which amount shall be recovered from the Government servant held responsible for the delay in making the payment. The rate of interest as provided in the Finance Department's memorandum dated 7-11-1980 was enhanced to 12% per annum vide the memorandum issued by the Finance Department dated 25-4-1984. The aforesaid provisions were inserted in the M.P. Civil Services Pension Rules amending the Rule 44 thereof.

The first contention urged by the learned counsel for the petitioner is that in view of Rule 64 (1) (ga) no amount towards death-cum-retirement gratuity could be paid to the contesting respondent till the conclusion of the departmental proceedings initiated against him and final orders have been passed terminating the proceedings. What has been urged is that since the disciplinary proceedings in question had terminated on 25-10-1997, no amount towards interest could be deemed to have become due till that date. The second contention urged is that the amount of interest becomes payable only in that case where the gratuity payment is not made within six months on its becoming due. What has been urged is that since payment of the gratuity amount in question could be taken to have fallen due only on 25-10-1997 when the disciplinary proceedings initiated against the respondent were terminated with the order exonerating him from the charges and the payment was actually made on 5-3-1998 within six months thereof there could be no occasion for directing the payment of interest at the rate of 12% per annum.

We have given our anxious consideration to the submissions made by the learned Government Advocate,

The provisions contained in Rule 64 (1) (ga) of the Rules, referred to hereinabove, only prohibit the actual payment of gratuity till the departmental proceedings against the Government servant are not terminated and final orders passed therein. This provision cannot by any stretch of imagination be taken to defer the date on which the amount towards death-cum-retirement gratuity falls due which in every case has to be the date of attaining the age of superannuation resulting in the cessation of the relationship of master and servant between the State and the concerned employee. A distinction has been drawn between the date on which the payment of the amount of gratuity falls due and the date on which the said amount is actually paid. The provisions contained in Rule 64 (1) (ga) of the Rules only defers the payment which falls due on the date of the retirement.

The provision in regard to the payment of interest for the period of delay at the rate of 12% per annum where the delay is caused on account of the administrative reasons as provided under the Finance Department's Memo dated 7-11-1980 as amended in 1994 secures a benefit to the employee who is ultimately held responsible for the delay as the amount of interest which is to be paid to the retiring employee on account of the delayed payment of gratuity to him has to be recovered from the employee who is ultimately found responsible for the delay. This provision protects the erring employee who is found ultimately responsible for the delayed payment as no liability for the payment of interest for a period of six months stand fastened upon him.

This benefit which stands extended to the erring employee cannot be utilised for depriving the retiring employee to get interest over that amount of gratuity the payment whereof stands wrongly withheld on account of the delay in the disposal of the disciplinary proceedings to which he is subjected although ultimately it is found that the entire disciplinary proceedings were totally misconceived and baseless and he is exonerated from all the charges levelled against him. The entire risk in regard to the liability of payment of interest being fastened upon the State on account of the prolonging of a misconceived and baseless disciplinary proceeding against a Government servant even after his retirement from service has to be the risk taken by the State itself. If such proceedings are delayed in spite of the clear directions of the State Government to ensure that in that case where the charged employee is going to attain the age of superannuation the disciplinary proceedings against him should be terminated giving it priority to the extent of proceeding with day to day hearing, responsibility has to be taken to be that of the employer-State. It is in this view of the matter that the provision for recovery of the amount of interest from the employee held responsible for the delay has been made. The aforesaid provision cannot be utilised to the prejudice of the retiring employee once he is exonerated of the charges levelled against him and in spite of the request the disciplinary

proceedings initiated against him are not terminated before his attaining the age of superannuation.

It may further be noticed that the State, the employer, is not the loser. The amount of interest which becomes payable to the retiring employee is recoverable from the Government servant found responsible for the delayed payment. However, out of the amount of interest due on the amount in question calculated from the date from which the amount fell due to be paid to the retiring employee, the erring employee, who is held responsible for the delay stands relieved of the liability in regard to the payment of interest only for a period of six months. This is a concession made by the State which goes in favour of the erring employee found ultimately responsible for the delay. It has no affect on the right of the retiring employee to get the interest for the period elapsing between the date when the amount becomes due for payment and the date on which it is actually paid to him.

It must not be lost sight of that provision for the payment of interest is in effect secures payment of compensation to indemnify a person and it should normally be equivalent or substitute of equal values. Non-payment of interest and depriving a person of the usufruct of the amount due to him has to be taken as unjust and unfair.

We are of the considered opinion that the provisions in question which are sought to be relied upon by the learned Government Advocate have to be viewed in a manner which would advance the object behind them. The State Government itself had taken a decision to provide payment of interest for the period of delay in making the payment of the amount due to a retiring employee. It is not the case of the petitioner that the amount had not become due on the date of retirement of the respondent No. 1. It is also not the case of the petitioner that for the continuance of the misconceived disciplinary proceedings which ultimately resulted in the order exonerating the respondent No. 1 from all the charges levelled against him he was responsible in any manner. Further, on the own showing of the petitioner, but for the delay in concluding the disciplinary proceedings he would have been paid the amount on the date when it fell due.

As has already been noticed hereinabove the respondent No. 1 was not responsible for the delay in the disciplinary proceedings and had in fact requested that it should be concluded before his attaining the age of superannuation but the employees of the State Government themselves prolonged the same. It is for the State Government to fix the responsibility of the erring employee and recover the amount of interest from him in accordance with law and its policy decision.

It may be noticed that the Apex Court in its decision in the case of Dr. Uma Agrawal v. State of U.P. and Anr., Writ Petition (Civil) No. 771 of 1995, decided on 22nd March, 1999 had observed that the necessity for prompt payment of the retirement dues to a government servant immediately after his retirement could

not be over-emphasised and it would not be unreasonable to direct that there would be a liability to pay penal interest on these retirement benefits. It was further indicated that 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. The Apex Court had clearly indicated that 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.

In the aforesaid view of the matter we are of the considered opinion that the contentions urged in support of the writ petition, noticed hereinabove, are clearly without any merit and are not at all acceptable.

We are further of the opinion that the present one is not a fit case for the intervention of equity.

Considering the facts and circumstances as brought on record in their totality we are clearly of the opinion that no justifiable ground has been made out for any interference in the impugned order passed by the Tribunal.

This writ petition being devoid of merits deserves to be and is hereby dismissed.