
(2011) 01 MP CK 0028
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1188 of 2010

State of M.P.

APPELLANT

Vs

N.C. Jain

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) ILR (MP) 1441 : (2011) 2 JLJ 71 : (2011) 4 MPHT 479 :
(2011) 2 MPLJ 178

Hon'ble Judges : S.R. Alam, J;Ravi Shankar Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This intra-Court appeal arises from the order of the learned Single Judge dated 30-7-2010 passed in W. P. No. 25973/2003 whereby the learned Single Judge allowed the writ petition preferred by the Petitioner-Respondent and directed the Respondent-Appellants to refund the sum of Rs. 23,737/- recovered from him against interest.

It appears that the sole Respondent filed the aforesaid writ petition for issuance of a direction commanding the Appellants to refund amount of Rs. 23,737/- alleged to have been illegally recovered towards interest from his gratuity; further to pay interest at the rate of 18% per annum from the date of illegal recovery to the date of refund and further to pay interest at the rate of 12% per annum on delayed gratuity amounting Rs. 3,44,471/- for the period of 116 days which amounts to Rs. 10,644/-.

The short facts giving rise to filing the present petition are that a sum of Rs. 84,300/- was sanctioned and disbursed to the Respondent as House Building Advance for construction of his house vide order dated 19-8-1983, a copy whereof is enclosed as annexure A/4 to the writ petition. A perusal of the aforesaid order sanctioning House Building Advance would reveal that the terms and conditions for grant of loan are mentioned in para 4 of the order which

provides that the amount is to be recovered in equal monthly instalments of Rs. 290/- per month; interest on the said advance would be payable at the rate of 6.75% per annum and if any amount remained unpaid till the age of superannuation, the same was to be recovered from gratuity.

The Respondent thereafter having attained the age of superannuation retired on 31-5-2000. The Respondent, however, prior to his retirement applied for fixation of pension in the prescribed form on 2-9-1999. The Treasury Officer, Bhopal, Appellant No. 5, however, recovered a sum of Rs. 26,880/-, i.e. balance of the principal amount of house loan and Rs. 86,078/- towards interest. It further appears that the rate of interest was charged upto Rs. 25,000/- at the rate of 8.75% per annum; from Rs. 25,001 to Rs. 50,000/- at the rate of 9% per annum; from Rs. 50,001 to Rs. 75,000/- at the rate of 11% per annum; and for amount of Rs. 75,000 and above at the rate of 11.5% per annum instead of 6.75% per annum. The aggrieved Respondent, therefore, approached this Court through the aforesaid writ petition with the prayer mentioned above.

The learned Single Judge having heard learned Counsel for the parties found that the House Building Advance was sanctioned with clear stipulation that the interest would be charged at the rate of 6.75% per annum and, therefore, held that recovery of the amount on the higher rate of interest from the gratuity of the Petitioner is not justified and allowed the writ petition. The learned Single Judge further directed to refund an amount of Rs. 23,737/- together with interest at the rate of 6% to the Petitioner, which has been deducted by applying higher rate of interest than mentioned in the sanction order. The refund was directed to be made within a period of three months from the date of order. However, no interest on the delayed payment of gratuity was allowed as the delay was hardly of four months, hence the same not being inordinate the prayer for interest was not allowed.

The learned Counsel for the Appellants vehemently contended that in the order dated 19-8-1983 whereby loan was sanctioned it was clearly mentioned that the rate of interest was tentatively shown as 6.75% and, therefore, when the Finance Department enhanced the rate of interest vide circular dated 21-9-1983 the Petitioner is liable to pay accordingly.

We are not impressed with the submissions made by learned Counsel for the Appellants. Admittedly, the instalments were being deducted by the Appellants from the salary of the Respondent by applying the interest at the rate of 6.75% per annum. After his retirement the recovery is being sought from the amount of gratuity on the pretext that the amount of interest ought to have been at the rate of 11.25% per annum. There is no material on record to show that at point of time the Respondent was informed that the rate of interest has been enhanced in view of the circular of the Finance Department from 6.75% to 11.25%.

We, therefore, do not find any reason nor there is any justification to levy a higher rate of interest after retirement of the Respondent specially when as per

the case of the Appellants the rate of interest was enhanced in the year 1983 itself when the loan was sanctioned yet in the sanction order the amount of interest payable was mentioned as 6.75% per annum and the amended rate was never communicated to the Respondent nor any deduction was made by applying the same when he was in service.

That apart, the instalment and interest were being deducted by the Appellants and it is not the case of the Appellant that the same has wrongly been deducted or less rate of interest was applied on account of any suppression or concealment made by the Respondent. In the case of Kailash Singh Vs. State of Bihar and Others, the Apex Court did not approve recovery of excess payment towards salary made by the employer on account of fault on the part of employer. In the instant case also, the deduction was being made by the Appellant and, therefore, now after retirement of the Respondent it cannot be reopened or deducted from his retiral benefits on the pretext that wrong rate of interest was applied.

Thus, we do not find any reason now to recover or deduct the same from the retiral benefits or gratuity of the Respondent. We, therefore, do not find any reason to differ with the view taken by the learned Single Judge.

The appeal being without merit is accordingly dismissed.