(2010) 12 CAL CK 0050

In the Calcutta High Court

Case No : M.A.T. No. 1127 of 2010 and C.A.N. No. 9404 of 2010

State of West Bengal and Others — APPELLANT

Vs

Sri Sheo Ram Giri — RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Citation : (2010) 4 CALLT 573 : (2011) 1 CHN 14 : (2011) 129 FLR 817

Hon'ble Judges : Sambuddha Chakrabarti, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Kanailal Samanta and Swapan Kr. Pal, for the Appellant; Tarapada Das, Mahadeb Khan and Chandan Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This Mandamus-Appeal is at the instance of the State of West Bengal and is directed against order, dated 4th March, 2010, passed by a learned Single Judge of this Court by which His Lordship disposed of a writ-application filed by a retired Headmaster of a school by directing the Director of Pension, Provident Fund & Group Insurance, West Bengal, to pay to him the interest @ 7% per annum on the sums of Rs. 8,73,537/-and Rs. 2,50,000/- respectively for the period from July 01, 2001, the date of accrual of the dues till August 03, 2009, the date of actual payment.

Being dissatisfied, the State has come up with the present appeal.

The following facts are not in dispute:

a) The writ-Petitioner, a former Headmaster of a School, retired from service on 30th June, 2001. In the past, there was dispute as regards the entitlement of the scale of pay and consequently, the amount of pension payable to the writ-Petitioner and on a writ-application filed by him, being W.P. No. 12484 (W) of 2002, a learned Single Judge of this Court directed the D.I. (S.E.), Burdwan, to pay Provisional Gratuity and Provisional Pension with a direction upon the Director of Pension & Provident Fund to sanction the final pension and gratuity due and payable to the writ-Petitioner on or before 01st February, 2003. It appears that by order dated October 10, 2002, the Director of Pension issued Pension Payment Order wherein an amount of Rs. 1,40,025.24/-was noted as overdrawal.

b) In view of such a situation, the writ-Petitioner filed another writ-application, being W.P. No. 2177 (W) of 2003 for cancellation of the said Pension Payment Order and another learned Single Judge of this Court, by order dated 1st March, 2005, directed the Appellant to place the entire matter before the University of Calcutta to decide the issue of equivalence of standard in so far as the Certificate of Institute of English, Hyderabad, granted in favour of the writ-Petitioner was concerned for the purpose of assessing his dues.

c) Subsequently, the writ-Petitioner filed a Contempt Application for enforcement of the said order and by order dated 17th July, 2008, Soumitra Pal, J. directed the D.I. (S.E.), Burdwan, the Director of Pension and the Assistant Director of Pension, Provident Fund & Group Insurance, to release the pension in terms of the earlier order.

d) Ultimately on 3rd August, 2009, the writ-Petitioner was paid the arrears of pension amounting to Rs. 8,73,537/- and the arrears of gratuity of Rs. 2,50,000/-.

e) Lastly, the writ-Petitioner filed another writ-application, being W.P. No. 23299 (W) of 2009 out of which the present appeal arises, thereby praying for direction upon the Appellants to pay interest on the amount ultimately paid.

f) By the order impugned herein, the learned Single Judge has directed payment of interest @ 7% per annum on the aforesaid amount.

Being dissatisfied, the State has come up with the present appeal.

2. Mr. Samanta, the learned Advocate appearing on behalf of the Appellant, strenuously contended before us that although the writ-Petitioner was offered the Provisional Pension and Gratuity, he refused to accept the said amount. As a result, there was delay and as such, no interest should be payable.

3. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the Appellants did not, of their own, pay the amount of arrears and gratuity immediately after his retirement, but the writ-Petitioner had to move more than one writ-application to get the amount and ultimately, on an application for contempt direction was given to pay the amount in the year 2009.

4. Thus, the amount which was payable immediately on retirement on July 1, 2001 was paid to the writ-Petitioner on 3rd August, 2009 as the outcome of the litigations initiated by the writ-Petitioner.

5. At this stage, it will be apposite to refer to the following observations of the Supreme Court in the case of Aloke Shanker Pandey v. Union of India reported in

AIR 2007 SC 1958 about the concept of grant of interest:

It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

6. We, thus, find that the aforesaid observation of the Supreme Court is the appropriate answer to the point raised by Mr. Samanta and consequently, find no reason to interfere with the order impugned in this appeal. The rate of interest awarded is also on the lower side having regard to the prevailing rate of interest available from a nationalised bank at the relevant point of time on fixed deposits. In the absence of any appeal at the instance of the writ-Petitioner, there is, however, no scope of enhancing the rate of interest in this appeal preferred by the State.

7. The appeal is accordingly dismissed with costs which we assess at 200 gms. to be payable to the writ-Petitioner within two months from today.

Sambuddha Chakrabarti, J.

8. I agree.

