(2015) 02 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition(C) 6852/2013

Subhash Chandra Das and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Citation : (2015) 02 GAU CK 0005

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Final Decision : Disposed off

Judgement

Michael Zothankhuma, J.—Heard Mr. M. Chanda, learned counsel for the petitioners; Mr. A Gogoi, learned counsel for the respondent Nos. 1 to 4; Mr. B Gogoi, learned counsel for the respondent No. 2 and Mr. PS Bhattacharyya, learned counsel for the respondent No. 5.

2. The petitioners are retired employees of the Dhubri Municipality Board. Their case is that on 12.7.93 a Memorandum of Settlement was signed between the Govt. of Assam and the All Assam Civic Bodies Workers'' Federation regarding financial needs and requirements of Municipality Boards and Town Committees. Clauses-3,5 and 6 of the said Memorandum of Settlement are quoted below:

"3. While implementing the 74th Constitutional Amendment Act, Government will constitute State Finance Commission which will make necessary awards with respect to the financial needs and requirements of the Municipal Boards and Town Committees. The Government will see that the State Finance Commission while considering the requirements of Municipal Boards and Town Committees also adequately to take into account the various problems of Municipal employees including their salaries, provident fund, gratuity and pension etc.

5. With respect to payment of gratuity, adequate measures will be taken by the Government to ensure that such statutory obligations are duly fulfilled by all concerned authorities.

6. The Government will take steps to bring about an Ordinance for providing penal provision for non-deposit of C.P.F. amount by the concerned Municipalities/ Town Committees."

3. The petitioners retired from the Dhubri Municipality Board on various dates. They retired on 31.12.2006, 28.2.2005, 1.5.2002, 31.3.2007, 31.3.2009 and 29.2.2012 respectively. Since they were not paid their terminal benefits, they approached this Court by filing the instant writ petition praying for a direction to the respondents to release their terminal benefits like CPR, gratuity and leave encashment. The petitioners have also prayed for interest at the rate of 18% per annum on account of delayed payment of their terminal benefits. The petitioners have also stated that during the pendency of the writ petition a portion of their terminal benefits have been paid to them. However, the balance of the terminal benefits have not be paid to them despite funds having been released to the respondent No. 5 by the respondent Nos. 1,2 and 3.

4. The counsel for the respondent No. 2 has taken me to Annexure-A of the affidavit-in-opposition filed by the respondent No. 2 which is a WT message dated 27.9.2013. The WT message reads as under:

"NO.FEA(SFC) 137/2011/Pt/59 (.) KINDLY REFER TO LETTER NO. FEA(SFC)137/2013/Pt/56 DATED 12TH SEPTEMBER 2013 AND NO. FEA(SFC) 137/2013/Pt/58 DATED 12TH SEPTEMBER 2013 REGARDING SANCTION TOWARDS RELEASE OF DEVOLUTION FUND FOR FIRST QUARTER AND SECOND QUARTER UNDER THE AWARD OF THE FOURTH ASSAM STATE FINANCE COMMISSION DURING 2013-14 (.) IT IS ALREADY INSTRUCTED IN THE SANCTION LETTERS THAT SSALARY SHOULD BE DRAWN IN PRE-REVISED SCALE UNTIL FURTHER ORDERS. AS REGARDS OTHER LIABILITIES OF ULBs COMA THIS MAY BE TAKEN AS ARREAR SALARY OF THE EXISTING AND RETIRED EMPLOYEES AND TERMINAL BENEFITS OF THE RETIRED EMPLOYEES OF ULBs, IF ANY, IN PRE-REVISED SCALE OF PAY (.) THE SALARY AND OTHER LIABILITIES AS STATED ABOVE MAY BE MET OUT OF THE DEVOLUTION GRANT UNDER THE AWARD OF THE 4TH ASSAM STATE FINANCE COMMISSION AND THEIR OWN RESOURCES (.)" 5. Annexure-B to the said affidavit-in-opposition is a letter issued by the Director, Finance (Economic Affairs) Department addressed to the Accountant General (AandE), Assam which states that the Governor of Assam has sanctioned an amount of Rs. 42,84,67,168/- only for payment towards release of devolution fund for 3rd and 4th quarterly installments for ULBs in general areas under the award of 4th Assam State Finance Commission during 2013-14 in order to supplement resources of ULBs. In the said letter dated 22.1.2014 districtwise break-up of amount, bank account number etc. for each ULB is shown at Annexure-I. Serial No. 15 of the said Annexure appended to the letter dated 22.1.2014 shows that the Dhubri Municipality Board has received an amount of Rs. 96,52,870/-.

6. Page 12 of the affidavit-in-opposition filed by the respondent No. 2 which is a LSGI Form-V dated 14.8.2013 shows at serial No. 9 that the Deputy

Commissioner, Dhubri has also been allocated Rs. 1474585/- for drawal of salary and non-salary component under the Major Head "3604" for local self government institutions.

7. The counsel for the respondent No. 5 has taken me to the affidavit filed by the said respondent in which it has been stated that part payment of the petitioners'' terminal benefits have been made and that balance could not be paid due to paucity of fund and the same shall be done as and when funds are received from the Government. The respondent No. 5''s counsel has also stated that the part payments made to petitioners were made prior to filing of this writ petition and not after the writ petition had been filed. The counsel for the respondent No. 5 has also taken me to Annexure-A series of the affidavit-in-opposition to show that the petitioners were still to be paid Rs. 4,02,451/-, Rs. 2,80,200/-, Rs. 2,20,714/-, Rs. 3,19,219/-, Rs. 2,58,580/- and Rs. 4,00,000/- respectively.

8. In view of the fact that funds have been allocated to the respondent Nos. 4 and 5 by the State Government for payment of salaries and terminal benefits of retired employees, I am of the view that this writ petition can be closed with a direction to the respondent Nos. 4 and 5 to disburse the amounts mentioned in the affidavit-in-opposition filed by the respondent No. 5 to the petitioners within a period of two months from the date of receipt of a certified copy of this order.

9. The next question that arises is whether interest should be paid to the petitioners for delayed payment of their terminal benefits in view of the fact that some of the petitioners have retired long ago.

10. Considering the fact that the petitioners have suffered for a long period due to non-payment of their terminal benefits and in view of such a long duration between the legitimate expectation of getting their terminal benefits in due time and the fact that they had to approach this Court for getting their grievances redressed, it is my considered opinion that the petitioners are entitled to get some interest due to delayed payment of their terminal benefits.

11. The interest which the petitioners are entitled to is quantified at 6% simple interest per annum payable from the date when the terminal benefits became due to them and will be calculated only on the outstanding amounts mentioned in the affidavit-in-opposition filed by the respondent No. 5.

12. The counsel for the respondent Nos. 1,2 and 3 have submitted that the payment of interest may be made by the respondent Nos. 4 and 5 as the respondent Nos. 1,2 and 3 have always provided funds to the respondent Nos. 4 and 5 and it is only on account of the fault on the part of the respondent Nos. 4 and 5 that the petitioners have not been paid their terminal benefits on time.

13. Accordingly, the respondent Nos. 4 and 5 are directed to disburse to the petitioner Nos. 1 to 6 the amounts of Rs. 4,02,451/-, Rs. 2,80,200/-, Rs. 2,20,714/-, Rs. 3,19,219/-, Rs. 2,58,580/- and Rs. 4,00,000/- respectively with simple interest at the rate of 6% per annum from the date they became due till

payment within a period of two months from the date of receipt of a certified copy of this order.

14. With the aforesaid directions, the writ petition stands disposed of.

15. No cost.

