(2009) 07 SHI CK 0004

In the High Court Of Himachal Pradesh

Sudershan Doger APPELLANT

Vs

Managing Director, H.P. Small Scale Industries Export Corporation and Another RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Citation : (2009) 2 ShimLC 400

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The husband of the petitioner was working as General Manager with the respondent No. 1-Corporation. He retired on 31.5.1991. The retiral benefits though were initially released to the petitioner, but were withheld subsequently.

2. Mr. N.D. Sharma, Advocate has strenuously argued that the petitioner''s husband was entitled to get retiral benefits on his retirement i.e. 31.5.1991. However, the respondent-Corporation has released retiral benefits on 10.6.1994 without payment of any interest. According to him, his client is entitled to interest at the rate of 12% on the retiral benefits.

3. Mr. R.K. Sharma, learned Senior Additional Advocate General and Mr. Y. Paul, Advocate have strenuously argued that due to anonymous complaint i.e. Annexure-R/1 made on 3.6.1991, the retiral benefits were not released in 1991. Their further case is that when no substance was found in the complaint, the retiral benefits were released. According to them, in these circumstances, the petitioner is not entitled to any interest on retiral benefits.

4. I have heard learned Counsel for the parties and gone through the pleadings carefully.

5. The petitioner''s husband who was working as General Manager with the

respondent No. 1 retired on 31.5.1991. Initially a cheque amounting to Rs. 1,00,260/- drawn on UCO Bank, Shimla was issued to him. It was deposited by him in the bank. However, the payment was stopped by the bank on the directive issued by the respondent-Corporation. An anonymous complaint as per Annexure-R/1 was made on 3.6.1991 seeking inquiry into the allegations contained therein. The complaint was not signed. The Corporation was then advised not to take any cognizance of the same by the State. However, the fact of the matter is that the allegations contained in the complaint remained unsubstantiated and the petitioner was exonerated as per letter dated 18.5.1994. Subsequently the retiral benefits were released to him on 10.6.1994. This amount has been paid to the petitioner without any interest.

6. Their Lordships of the Hon''ble Supreme Court in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, have granted interest at the rate of 18% per annum instead of 10%. Their Lordships have held as under:

11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the Civil appeal is allowed. However, there shall be no order as to costs.

7. In R.P. Kapur Vs. Union of India and Others, their Lordships of the Supreme Court have awarded interest at the rate of 12% per annum. Their Lordships have held as under:

32. The pension and family pension shall, therefore, be re-computed on the above basis and paid to the appellant w.e.f. 25-11-1992. The other retiral benefits will also be re-fixed on the above basis w.e.f. 25-11-1992 and paid to him. The computation of the family pension shall also be done on that basis. On account of the long delay and denial of pension and retiral benefits on a wrong interpretation of the Rules, we deem it fit to award 12% interest on all the arrears payable to him on the above basis in respect of pension and all benefits. Arrears have to be computed with effect from the date of retirement on 25-11-1992. The appeal is allowed as stated above but there will be no order as to costs.

8. Accordingly, in view of the definitive law laid down by their Lordships of the Hon''ble Supreme Court, the Court is of the considered opinion that the petitioner is entitled to interest at the rate of 12% per annum on delayed payment of retiral benefits. The retiral benefits were to be paid on 31.5.1991. The same have been

paid on 10.6.1994. The respondent-Corporation has wrongly withheld the retiral benefits for about three years. The respondents have taken into consideration the anonymous complaint which remained unsubstantiated. The petitioner''s husband has taken car advance loan and house building loan from the respondent-Corporation. He has not paid a sum of Rs. 16,835/- towards these two advances. This amount has rightly been deducted by the respondent-Corporation.

9. Accordingly, the writ petition is allowed. The respondents are directed to pay the petitioner interest at the rate of 12% per annum on the delayed payment of retiral benefits (Rs. 1,00,260/-) within a period of four weeks from today. No costs.