
(2002) 11 AHC CK 0112
In the Allahabad High Court
Case No : Special Appeal No. 644 of 2001

Uma Shanker Rai	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 23-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 AWC 378

Hon'ble Judges : S.K. Sen, C.J; R.K. Agrawal, J

Bench : Division Bench

Advocate : B.N. Rai, for the Appellant; S.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

S.K. Sen, C.J.—Heard Sri B.N. Singh learned counsel for the appellant-writ petitioner and Shri S.K. Rai learned additional standing counsel for the respondents.

2. There is sufficient ground to condone the delay in filing the special appeal. The delay is condoned.

3. This special appeal arises out of the order passed by the learned single Judge dated 29.8.2001, dismissing the writ petition filed for the claim for payment of disability pension.

4. The appellant was posted in Command Hospital, Calcutta, in the year 1968, when a Medical Board examined him and on confirmation of findings of the Medical Board by the Director of Medical Services, the appellant was discharged from services on 25.4.1969. The cause of discharge of the appellant was invalidment from service in medical category being unfit for further retention in service for disability. Transient Situational Disturbance".

5. The claim of the petitioner was sent to the Controller of Defence Accounts (Pension) Allahabad, vide letter dated 15.7.1969. Controller C.D.A. (Pension)

rejected the claim of the appellant vide order dated 7.8.1969 as the disability of the petitioner was neither attributable to nor aggravated by Military Service. The Record Office, Army Medical Corps, Lucknow. vide letter dated 13.8.1969 sent information to the appellant of rejection of his claim for disability pension. The appellant in the writ petition has denied the receipt of the aforesaid letter.

6. Thereafter, several letters and representations were sent by the appellant to the Record Office, Army Medical Corps as well as to C.D.A. (Pension) Allahabad. The appellant's claim in the writ petition is that he received the letter dated 3.2.1993 of Army Medical Corps, Lucknow, by hand informing that claim of the appellant for disability pension has been rejected vide letter dated 7.8.1969 of C.D.A. (Pension) whereas the appellant in paragraph 8 of the writ petition has stated that the letter dated 3.2.1993 could only be obtained by hand by the appellant in the month of February, 1995. The appellant filed the writ petition for the following reliefs ;

(1) to issue a writ, order or direction in the nature of mandamus directing the respondents to pay disability pension as well as service ailment pension of the petitioner with effect from the date of his discharge from service along with all the arrears.

(2) to issue a writ, order or direction in the nature of certiorari to quash the illegal orders dated 13.8.1969 and 3.2.1993 and give all the benefits of disability pension to the petitioner within reasonable time along with entire arrears."

7. The learned counsel for the respondents raised a preliminary objection before the learned single Judge that the writ petition is liable to be dismissed on the cause of unusual delay and laches. The learned single Judge having considered the facts in detail with regard to the explanation for delay dismissed the writ petition on the ground of unusual delay.

8. The counsel for the appellant has submitted before us that the learned single Judge was not justified in dismissing the writ petition of the appellant on account of delay and he should have decided the question of entitlement of disability pension to the petitioner on merit. The learned single Judge, without considering the said question on merit should not have dismissed the writ petition only on account of delay. He also contended that non-payment of pension or salary gives rise to a recurring cause of action and, therefore, in the event it is held that the appellant is entitled to disability pension, the appellant shall get benefit of pension in future. In support of this contention, he relied upon the following decisions :

(1) M.R. Gupta Vs. Union of India and others,

(2) Major Rajinder Singh v. Union of India and Ors. 2002 (2) ESC 164 .

9. In the case of M.R. Gupta (supra), the Supreme Court, considering the similar question with regard to case where the claim for salary was rejected by the Central Administrative Tribunal on account of fact that the fixation of salary was

not made according to the Rules, has held that such grievance really amounts to continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary. In this connection, we may take note of the relevant portion of the judgment of the Hon"ble Supreme Court, which is set out below :

"4. The Tribunal has upheld the respondent's objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12.8.1985 and by another letter dated 7.3.1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merit of the appellant's claim for proper pay fixation.

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the Rules was the assertion of a continuing wrong against him, which gives rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the Rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with Rules and to cessation of a continuing wrong if on merits his claim is Justified. Similarly, any other consequential relief claimed by him, such as promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time-barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation is a right, which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the Rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the

Rules is akin to the right of redemption, which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. See *Thota China Subba Rao v. Mattapalli Raju* AIR 1950 FC 1."

10. The Delhi High Court in the case of Major Rajinder Singh (*supra*), after considering the aforesaid decision of Hon''ble Supreme Court has held that the pensionary benefits accrue from month to month and is thus analogous to the concept of a salary which a person would be entitled during the course of his service. Thus, the principles laid down in *M.R. Gupta's* case (*supra*) apply to the case where the claim is of pension. Thus, if a person approaches the Court belatedly, the same cannot be held against him in denying the benefits of pension at least from the period he approached the Court.

11. In view of the aforesaid decision, we are of the view that the impugned judgment of the learned single Judge, dismissing the writ petition only on account of delay suffers from legal infirmity and the writ petition is required to be decided on merit. In this view of the matter, the impugned judgment and order dated 29.8.2002, passed by the learned single Judge, is set aside and the writ petition is remanded back for being decided on merit before the learned single Judge dealing with such matter. Since the counter and rejoinder-affidavit have been filed in the writ petition, which is too old, the writ petition shall be listed in the week commencing 2.12.2002,

12. In the result, the special appeal is allowed.