(2007) 06 AHC CK 0019

In the Allahabad High Court

Union of India (UOI) and Others APPELLANT

Vs

Smt. Mithauli Devi RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Citation : (2007) 4 AWC 3712

Hon'ble Judges : Sudhir Agarwal, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed against the judgment and order dated 24.11.2006, passed by the Central Administrative Tribunal, Allahabad Bench, by which the learned Tribunal has allowed the interest on the amount withheld unjustifiedly by the present petitioner, Union of India for a period of 9 years.

2. Shri Piyush Mishra, learned Counsel for the petitioners has submitted that the finding has been recorded by the learned Tribunal in the impugned judgment that the ex gratia payment from July, 1995 to June, 2004, i.e., for a period of 9 years has been withheld without any justification. Therefore, interest on the said amount was not payable. Learned Counsel for the petitioners has further submitted that the amount of ex gratia payment to the respondent was illegal, as her deceased husband was not entitled for pension, and therefore, the impugned judgment and order is liable to be set aside. It is further submitted by Shri Mishra that though this issue has never been agitated by the petitioner before the Tribunal, the issue being the pure question of law, he is entitled to agitate the same before this Court.

3. The case represents a very sorry state of affairs, as earlier the respondent had approached the Tribunal for quashing the impugned orders dated 02.08.1999 and 24.02.2003 by filing the Original Application No. 768 of 2003, by which she had been denied the ex gratia payment,. The said Application was disposed of vide

judgment and order dated 8th January, 2004, The Tribunal while deciding the case had taken note of the fact that during the pendency of the Application, the payment of the ex gratia had been directed and the said application was disposed of with the following directions.

Now that the respondent has already taken a decision to grant ex gratia payment to the applicant in accordance with law, Office Memorandum dated 13.05.1988, I am sure they would apply their mind to the point of delay also and in case it is so admissible under law, she may be granted the interest as well at admissible rates in accordance with law.

4. Thus, it is evident from the aforesaid judgment and order that the issue of grant of ex gratia payment had been decided by the petitioners themselves and it has not been decided by the Tribunal. Therefore, the issue agitated before us cannot be entertained.

5. So far as the impugned order dated 24th November, 2006 is concerned, admittedly, there was a delay of 9 years in making the ex gratia payment, which the respondent was entitled in view of the decision taken by the petitioners themselves. In the facts and circumstances of the case, direction for making the payment of interest is justified.

6. Interest is compensatory in character and can be recovered for withholding the payment of any amount when it is due and payable. It is different from penalty and tantamount to compensation as the person entitled for recovery has been deprived of the right to use the said amount.

7. In Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, the Hon''ble Apex Court held as under:

Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal.

8. A similar view has been reiterated in Baij Nath Gupta Vs. State of Bihar and Others, ; S.R. Bhanrale Vs. Union of India and others, ; Pratibha Processors and others Vs. Union of India and others, ; Union of India (UOI) Vs. Ujagar Lal, and Om Prakash Gargi Vs. State of Punjab and Others,

9. In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, the Hon''ble Apex Court held that interest is a compensation for forbearance from detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him.

10. Interest means, inter-alia, a compensation paid by the borrower to the lender for deprivation of the use of his money as held by Hon''ble Apex Court in Consolidated Coffee Ltd. v. Agricultural Income Tax Officer, Madikeri and Ors.

(2001) 1 S.C.C. 278 and Central Bank of India v. Ravindra and Ors. AIR 2002 S.C. 3095.

11. In Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, the Constitution Bench of the Hon''ble Apex Court observed that a person deprived of use of money to which he is legitimately entitled as of right, to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.

12. The payment of interest can be awarded by application of the statutory provisions as held by the Supreme court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, Kuil Fireworks Industries Vs. Collector of Central Excise and another, and M/S. GTC Industries Limited Vs. Union of India and Others,

13. Interest may also be awarded on equitable grounds. Vide AIR 1938 67 (Privy Council) Satinder Singh and Others Vs. Amrao Singh and Others, Laxmichand Vs. Indore Improvement Trust, Indore and Another, ; O.P. Gupta Vs. Union of India (UOI) and Others, United India Insurance Vs. Ajmer Singh Cotton and General Mills and Others, and Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi,

14. That payment of interest is obligatory on the part of that party responsible for withholding the amount legally due to another party is crystallized as law by the Apex Court in the case of Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, , as already cited above.

15. When rules are silent about payment of interest, whether an individual is entitled to grant to interest on equity basis? Answer to this question is available in Union of India (UOI) and Others Vs. Dr. J.K. Goel,

16. In J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, the Constitution Bench of the Hon''ble Apex Court overruled its earlier judgment in Associated Cement Ltd. (supra) on certain points but observed as under:

Therefore, any provision made in a Statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law.

17. In Union of India (UOI) and Others Vs. Upper Ganges Sugar and Industries Ltd., after considering various aspects of interest, the Court held that the interest can be granted on the grounds of equity or in view of the statutory requirement but where the amount has not been withheld without any justification, the equity would not apply. The Court held that in absence of any provision in the contract or any statutory provision and not justifying on equity, the interest should not be awarded.

18. Thus, the law can be summarised that the interest, being compensatory in nature, should be awarded if it is provided in the contract/agreement, or the

statutory provisions provide for it. It may also be awarded on equitable ground, provided the facts and circumstances of the case justify it and the law does not prohibit it.

19. If the instant case is examined in the aforesaid settled legal propositions, the case does not present special features warranting any interference with the impugned judgment and order of the learned Tribunal.

20. Petition is totally misconceived and accordingly dismissed.

