
(2012) 02 AHC CK 0363
In the Allahabad High Court
Case No : Special Appeal No. 826 of 2006

U.P. Power Corporation Limited and Others	APPELLANT
Vs	
Smt. Satyabhama Devi	RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Citation : (2012) 4 ADJ 696 : (2012) 3 AWC 2828 : (2012) 135 FLR 532

Hon'ble Judges : Rakesh Tiwari, J;Dinesh Gupta, J

Bench : Division Bench

Advocate : A.K. Mehrotra, for the Appellant; Prabhakar Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record. This special appeal has been filed challenging the validity and correctness of the judgment and order dated 24.5.2006 passed in Civil Misc. Writ Petition No. 25527 of 2006: Smt. Satyabhama Devi v. State of U.P. and others, by which writ petition was disposed of directing respondents-appellants to pay entire post retiral benefit alongwith compound interest @ 10% from the due date till the date of actual payment to the respondent-petitioner, preferably within period of three months from the date of production of certified copy of the order.

2. Brief facts of the case are that petitioner's husband Late K.N. Tiwari, who was working as Junior Engineer in U.P. Power Corporation Limited at Allahabad, expired on 12.3.2001 during service period. After his death, it was duty of the respondent authorities to pay full pension, G.P.F. and time scale to his widow/respondent, but it appears that due to arbitrary action of the respondents these dues were not paid despite her repeated requests. Thereafter, she moved a representation dated 2.8.2005 before the authorities for redressal of her grievances regarding payment of post retiral and death benefits. The Managing Director, U.P. Power Corporation Limited, Lucknow by means of his office communications dated 20.1.2006 and 21.1.2006 directed the Executive Engineer,

Power Distribution, to expedite the payment of pension, G.P.F. and time scale to the petitioner. When the order of Managing Director was not acted upon the petitioner preferred writ petition No. 25527 of 2006: Smt. Satyabhama Devi v. State of U.P. and others, which was disposed of 24.5.2006. Relevant portion of the order dated 24.5.2006 reads thus:

In these circumstances, respondents are. directed to pay entire post retiral benefit to her, preferably within period of three months from the date of production of certified copy of this order. Needless to say that on total amount which is due, 10% compound interest shall be payable from the due date till the date of actual payment. As far as gratuity amount is concerned, on the said amount, statutory interest shall be payable. It is made clear that 10% compound interest which has been directed to be paid, qua the said amount it is further directed that it would be open to the respondents to recover the said amount from the employee concerned who are eventually held responsible for delay in ensuring payment of retiral dues.

3. Learned counsel for the appellant has assailed the aforesaid judgment dated 24.5.2006 impugned in the present special appeal on the ground that direction for payment of compound interest is incorrect as it has been passed without appreciating the conduct of the respondent regarding completion of certain formalities which had not been complied with by him. It is stated that for these reasons, the department is not at fault if payment of retiral cum death benefits could not be made to the heirs of the deceased employee; and that petitioner-respondent is not the only heir of the deceased employee there being other heirs also of deceased employee, therefore the direction by the writ Court for payment of compound interest @ 10% from the date it became due to the petitioner-respondent till the date of its actual payment is liable to be quashed.

4. In support of his case, learned counsel for the appellant has relied upon Annexures- A-1 to A-17 filed alongwith an affidavit in support of stay application. In the affidavit, it has been averred that petitioner did not complete the requisite formalities due to which payment of retiral benefits has been delayed for which the appellant is not responsible. It is stated by him that in the aforesaid facts and circumstances, it was not possible for the appellant to make the payment to the petitioner. It is lastly submitted that appellant is not much aggrieved by direction to pay the death cum retiral dues which the department is liable to pay as directed by the learned Single Judge in the impugned order, but aggrieved by the rate of interest directed to be paid by the department.

5. Per contra, learned counsel for the respondent has submitted that certain documents which were required to be filled up by the petitioner/respondent, were available with the department itself and asking to complete necessary formalities by the department shows that the appellant is deliberately delaying payment of retiral dues to the petitioner which was to be paid on the death of deceased employee. The department is, therefore, wholly responsible for payment of retiral benefits alongwith compound interest @ 10% as directed by

learned Single Judge.

6. Before analysing the facts and law, we note that the documents filed by the appellant alongwith affidavit and application on which heavy reliance has been placed by the counsel for the appellant for shifting the burden upon the petitioner-opposite parties in the appeal for extracting the appellant from the rigours of payment of death cum retiral dues with interest as directed by the order impugned in the appeal. On examination of documents A-1 to A-17 filed alongwith the affidavit, it is revealed that all the aforesaid documents are not only irrelevant, but have been issued by the department after the impugned judgment and do not help the case of the appellant. Hence these documents cannot be taken into account for the purpose of challenging the validity and correctness of the impugned order as they were not before the writ Court for its consideration. This feeble attempt of the appellant to shift his burden on the opposite party is in order to deny payment of interest on delayed payment of death cum post retiral dues to the heirs of the deceased employee.

7. After hearing learned counsel for the parties, on perusal of record and for all the reasons stated above, the Court is of the view that learned counsel for the appellant has not been able to show its bona fide for not paying the retiral dues to the petitioner-respondent in time, whereas as per submission of learned counsel for the petitioner-respondent, it is evident that the department has knowingly delayed payment of retiral dues. There is no illegality or infirmity in the order impugned passed in the writ petition directing appellant to pay entire death cum post retiral benefit. However, so far as compound interest @ 10% from the due date till the date of actual payment is concerned, the Court find that Smt. Satyabhama Devi- widow of the deceased employee has been harassed and made to run from pillar to post for getting death cum post retiral benefit which shows inhuman face of the appellant. Death cum post retiral benefits are means of social support and status of a Government employee so that he may not be thrown on the road after death of bread earner. In view of this, we uphold the award of interest @ 10% as directed by learned Single Judge, but this direction to pay interest is confined to the facts and circumstances of this case only and shall not be treated as a precedent. The special appeal is, accordingly, dismissed with costs of Rs. 20,000/- on the appellant which is to be paid within a period of one month from today.