(2012) 02 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) 745 of 2011

V.K. Sareen APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2012) 3 AD 283 : (2012) 187 DLT 483 : (2012) 2 SLJ 167

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; Rajesh Katyal, Advocate for UOI., for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. A very short issue, that too, in a narrow compass arises for consideration in this writ petition. The petitioner was chargesheeted for certain alleged irregularities/misconduct. This chargesheet was issued on 5th September, 2002 in respect of an incident which was 10 years old. The petitioner challenged the serving of this charge memo by filing OA before the Tribunal which was allowed vide orders dated 30th March, 2007 quashing the chargesheet. The respondents assailed that order of the Tribunal by filing Writ Petition in June, 2007. While this writ petition was pending, the petitioner retired on 30th November, 2008 on attaining the age of superannuation. However, the petitioner was not paid his retiral dues in view of the pendency of the aforesaid writ petition. Even that writ petition was ultimately decided in July, 2009. Thereafter on 7th October, 2009 the respondent passed the orders exonerating the petitioner by dropping the charges. This payment and other dues were paid to the petitioner in October, 2009.

2. According to the petitioner since he retired from service on 30th November, 2008 and the retiral dues were paid in October, 2009, on this delayed payment, the petitioner was entitled to interest as well, which was refused by the

respondents even when the petitioner represented for such a payment. This prompted the petitioner to approach the Tribunal again claiming the interest. However this O.A. of the petitioner has been dismissed by the Tribunal vide impugned order dated 8th September, 2010.

3. The Tribunal has found some justification on the part of the respondent in making delayed payment as according to the Tribunal disciplinary case had been continuing which was decided by this Court on 3rd July, 2009 and only after that the petitioner was exonerated. Within three months of that order, the respondents released the pensionary dues as well as retiral dues like gratuity and arrears due to his retirement. The petitioner feels aggrieved by this view taken by the Tribunal as according to him, the proceedings could not have been treated as pending till the decision of the High Court is rendered. According to him, the charge memo had been quashed by the Tribunal way back on 30th March, 2007, much before his retirement and even though the writ petition was filed, no stay of the order of the Tribunal was granted. Thus, as on 30th November, 2008 there was no embargo or justifiable reason for the respondent to deny the benefits.

4. The petitioner submits that in such circumstances, Rule 68 of CCS (Pension) Rules, 1972 would come into play which prescribes grant of interest on belated payment of gratuity. This Rule reads as under:-

68. Interest on delayed payment of gratuity

(1) If the payment of gratuity has been authorized later than the date when its payment becomes due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued form time to time.

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers"

5. The Tribunal has taken into consideration the aforesaid Rule and has observed that this Rule envisages that if the payment of gratuity has been authorized later than the date when payment becomes due, interest would be paid provided that such delay shall not be due to the government servant who retired from service and entitled to gratuity. According to the Tribunal, Departmental proceedings have been initiated which came to an end only on 3rd July, 2009 when the High Court upheld the order of the Tribunal and the respondents passed the order dropping of charges and exonerating the petitioner on the basis of the decision of the High Court. It is observed that gratuity could be withheld till the disciplinary case or judicial proceedings against government servant were subsisting. Therefore, observed the Tribunal, there was no delay and question of payment of interest does not arise.

6. We are not convinced with the reasoning of the Tribunal in the facts of the

present case. No doubt, the principle is correctly stated which is to the effect that if there is an administrative delay on the part of the pension sanctioning authority to the concerned employee then for such belated payment interest would be admissible. On the other hand, if the reason could not be attributed to the employer and payment was not admissible and for some administrative reason, payment of retiral benefit could not be made beyond the term of the employment then the interest is not payable. Position in this respect is explained by a Division Bench of this Court in the case of Sh. M.M. Aggarwal Vs. Union of India (UOI) and Others wherein it was held as under:

In so far as interest on delayed payment of CGEGIS fund is concerned, it is not in dispute that the money in that fund was petitioner''s own money which became due for payment on the date following the deemed date of voluntary retirement i.e. 2nd May, 1990. However, the payment was only on 12th December, 1994. Therefore, the petitioner should be held entitled to interest on this amount. We accordingly award interest at the rate of 12 per cent annum to the petitioner on the delayed payment of CGEGIS fund i.e. from 3rd May, 1990 to 12th December, 1994.

The interest on delayed payment of leave salary is claimed on the ground that the leave salary for the period from 30th November, 1988 to 2nd May, 1990 was sanctioned after a period of more than five and half years i.e. on 3rd November, 1995, and Therefore, interest should be granted to him. The petitioner had applied for leave for the aforesaid period on medical grounds when he had fallen sick. The petitioner has alleged that during this period he made several representations asking the respondents to pay the leave salary. In the reply the respondents have not denied this fact. It is admitted that medical certificates informing the sickness of the petitioner were received. The only explanation given by the respondents is that the leave could not be regularised owing to non-availability of specific decision either about his joining at Metal and Steel Factory in Ishapore or voluntary retirement and the matter was processed only after the decision of the Tribunal. This is hardly any ground to justify delay in making the payment of leave salary when the petitioner had applied for leave on the ground of sickness. In fact the dispute regarding voluntary retirement had nothing to do with the grant of leave salary. Thus there is no cogent reason given to delay the payment of leave salary, the petitioner would be entitled to interest at the rate of 12 per cent per annum for the period from 3rd May, 1990 to 3rd November, 1995

7. In the case of Ranvir Singh Vs. Union of India (UOI) and Others, this Court has held as under:-

The respondents have pleaded that there was default and delay on the part of the petitioner in submitting ''No Dues Certificate'' in respect of the official accommodation occupied by him. We feel this is not correct, as the petitioner had admittedly deposited the entire rental arrears on 3rd July, 2002. We also find that the petitioner had written letter dated 20th September, 2002 informing the respondents that he had changed his address and shifted to D-II/2209, DDA

Flats, Vasant Kunj, New Delhi. In fact, the respondents themselves had released and sanctioned a sum of Rs. 3000/- towards arrears of pay at his new address on 13th September, 2002. Strangely, the respondents did not send the pension papers to the petitioner at the new address but the same were sent at the old address on 1st November, 2002 i.e. the place from where he had already shifted. The letters were sent at an incorrect address and Therefore obviously came back undelivered but no one bothered to examine the file and send letters again at the correct address of the petitioner, which it is admitted was available with the respondents in view of the petitioner''s letter dated 20th September, 2002. To the extent indicated above, we find that the respondents were negligent and careless in not dispatching the letters for completion of the formalities at the correct/new address given by the petitioner. The respondents also took time to prepare their papers after 29th September, 2002 till pro rata pension was actually received by the petitioner on 3rd June, 2003 and gratuity and commuted pension was received on 11th December, 2002. Similarly, we find that the respondents had delayed sanctioning of provisional pension by about 68 days. It appears that respondents took considerable time to rectify and clear the paper work and ultimately the pension was deposited in the petitioner''s bank account only on 9th July, 2003 even though sanction/authorisation was made on 7th October, 2002.

x x x

Keeping in view the above facts, we feel that interest of justice and equity require that the respondents should pay interest @ 8% from 29th September, 2002 till 1st November, 2002 on gratuity and commuted portion of pension of Rs. 9,13,468/-.

8. In the present case, application of the aforesaid principle is not correctly applied. The Tribunal has simply stated that the inquiry proceedings came to an end only when the High Court dismissed the writ petition. That is wrong and a myopic view of the matter. What is ignored is that the Tribunal in earlier round of litigation had already quashed the charge memo vide orders dated 30th March, 2007. Though the writ petition was filed, there was no stay of the orders of the Tribunal in the said writ petition. Thus, on the date when the petitioner retired from service, there was no disciplinary inquiry pending against him. No doubt, writ petition was pending and had the writ petition been allowed and order of the Tribunal set aside, the inquiry could have been treated as pending. But in the interregnum, if the respondent wanted to with hold the retiral dues, it should have obtained stay of the order of the Tribunal. What emerges is that not only the Tribunal set aside the charge memo, ultimately this order of the Tribunal was even upheld by this Court when the writ petition was ultimately dismissed. Obviously, there is no fault of the petitioner in all this. Can the respondent/ employer take advantage to its own action of filing the writ petition and ultimately failing in that action? Answer should be in the negative. We, therefore, of the opinion that Rule 68 of the CCS (Pension) Rule would clearly become

applicable in the instant case.

9. In view of the above, writ is allowed, rule is made absolute. Interim order is set aside. We deem it appropriate to allow interest @ 10%. The payment shall be made within a period of two months.

10. No order as to costs.