

(2008) 09 MAD CK 0100

In the Madras High Court

Case No : Writ Petition No's. 16770 and 17632 to 17636 of 2008 and M.P. No's. 1+1+1+2+1 of 2008

V.S. Paulraj

APPELLANT

Vs

The Chairman, Central Board of Trustees

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 226
Interest Act, 1978 — Section 3

Citation : (2008) 8 MLJ 609 : (2009) 4 SLR 755 : (2009) WritLR 335

Hon'ble Judges : P.K. Misra, J; K. Kannan, J

Bench : Division Bench

Advocate : K.M. Ramesh, for Vijai Shankar, for the Appellant; M. Veluswami, SCGSC for K.M. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.

I. The crux of the issue:

1. The issue involved in these batch of writ petitions is the entitlement to interest for the arrears of salary and financial benefits accruing out of notional promotion from a retrospective date to an officer who is since superannuated.

II. The facts in brief:

2. The batch of writ petitions arise out of common orders passed on 19.7.2007 by the Central Administrative Tribunal, Madras Bench in

O.A.NO.367 to 371 of 2006. One batch of writ petition has been filed by the applicant before the Tribunal and another batch is filed by the

Chairman of the Central Board of Trustees, Central Provident Fund Organization. The parties are referred as petitioner and respondent in the

manner that they have been described in W.P. No. 16770 of 2008. Although several reliefs had been adverted to in the batch of O.As,. we are

however concerned only with the award of interest with reference to arrears of salary,

3. The dispute arose on account of certain proceedings which were initiated against the applicant for the alleged wrong status given with reference

to his caste at the time of his employment. The applicant had challenged the proceedings by filing O.A. No. 1087 of 1996 before the Central

Administrative Tribunal, Karnataka. Proceedings were quashed on 13.2.1998 and the Government had filed W.P. No. 16315 of 1998 before the

High Court of Karnataka. The writ petition was dismissed on 10.2.2002 and the SLP filed by the Government was also dismissed before the

Supreme Court on 2.4.2004.

4. The Departmental proceedings had a cascading effect leading to the non-consideration of the applicant for promotion. During all the time when

the proceedings were pending, some of the juniors had been promoted, the papers which were to be placed before the Departmental Promotion

Committee had not been placed, the increased scales of pay which he should have drawn if he had been promoted were not granted. The

applicant who was aggrieved by all these features filed O.A. No. 349 of 2004 for implementation of the order passed by the Tribunal and in

OA.1087/86. That Original Application was ordered on 6.1.2005. A direction contained in that order was also not complied with and therefore,

an application for contempt was filed in C.P. No. 23 of 2005. During the pendency of the petition, the arrears of salary had been partly given and

therefore the petitions were closed with a direction that the applicant could make appropriate representation. Such representation had been made

and when he found that all the reliefs which were made were not granted, he filed O.A. No. 367 of 2006 etc, batch which had culminated in the

order which is impugned before us.

5. Yet another event is of significance because during the pendency of the proceedings, the respondent had passed an order on 29.3.2007

promoting the applicant as Additional Provident Fund Commissioner with effect

from 29.6.1989. On account of the orders that were passed, the prayers in several of the O.As became infructuous and all that became necessary for the Tribunal was stated in Paragraph 42 as follows:

42. in the circumstances, the applicant whose right was vindicated by the Bangalore Bench of this Tribunal in O.A. No. 1087/1996, as upheld by

Hon"ble Apex Court and the reliefs as allowed by this Tribunal in OA. No. 349/2004 dated 6.1.2005, the onus of depriving the benefits in time to

which the applicant is entitled to being on the respondent, the respondent is responsible for not only payment of interest of all benefits but also

payment of cost of the litigation to the applicant. Hence with reference to all the arrears payable to the applicant in respect of the reliefs ordered

based on the decision of the OA.349/2004, which itself flows out of OA.1087/1996, the applicant is entitled to payment of interest at the rate of

8% p.a. from the date on which the claims are due, till the date of payment and the respondent is directed to issue appropriate orders to that effect

within a period of two months from the date of receipt of a copy of this order.

III. Interest on arrears of pay " The residual point for consideration

6. The dispute now therefore falls for consideration is only with reference to the award of interest at 8% for the amount which the applicant is

found entitled to. The contention of the applicant in his batch of writ petition is that the reduction of interest from 18% p.a. which has been

originally sought for in the application before the Central Administrative Tribunal, Karnataka ought not to have been reduced to 8% p.a.

IV. Rival contentions as regards awarding of interest

7. The contention in batch of writ petition filed by the respondent is that the award of interest itself is wrong. Counsel for the respondent argued

that the Central Administrative Tribunal wrongfully assumed that there had been an award of interest on a considered basis by the Central

Administrative Tribunal at Karnataka and therefore such an assumption itself is erroneous. There is no justification for awarding any interest. On

the other hand, the stand of the department was indicative by the fact that several of the contentions which the applicant was making before the

Tribunal were disregarded, in particular, he would refer the contentions and how they were dealt with in Paragraph 32 of the impugned order

before the Tribunal:

32. Under these circumstances, we are in full agreement with the submission made by the respondent that there was no merger and only the additional posts were created in the year 1983 and 1984 and the newly created posts were filled in accordance with the Recruitment Rules on rotas quota basis among the three eligible groups in the feeder cadre namely APFC Grade II. Accounts officer, PF Inspector Gr.I and in the process, the applicant could be promoted to APFC Grade I only in 1986 on adhoc basis after he completed the qualifying service of three years on 16.7.1986, having been appointed as APFC Grade II on 16.7.1983, he was promoted on ad hoc basis on 14.1.1986 and later given promotion as per the recent order dated 29.3.2007 with effect from 21.6.1989 and, hence, the applicant cannot seek any further remedy on the matter of his regular promotion to APFC Gr.I by using specious and imaginary arguments regarding merger, as if every recommendation of a committee has to be accepted by the Government unconditionally, a stand too strange to be entertained by any reasonable person. Thus, the OA 367/2006 is disposed of as having become infructuous in the light of the order passed by the respondents dated 29.3.2007 promoting the applicant as APFC on 29.6.1989.

8. According to him, the original order of the Central Administrative Tribunal of Karnataka, in O.A. No. 1087/1996 itself did not make any particular reference to award of interest. Although, there had been a claim for interest, the tribunal was clearly disposing of the application favourably to him by "allowing the petitions prayed for", but it was not allowed with reference to his claim for interest. He particularly made reference to explanation 11(2) of Section 34 CPC which is to the effect:

Section 34: ...Provided.... Explanation I:.... Explanation II(1):....

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

Section 34 CPC in effect states inter alia, that when the decree is silent about interest, it is deemed to be refused. He therefore points out to us that

in the order passed by the Central Administrative Tribunal in O.A. No. 1087/96, apart from the fact that relevant judgment in the O.A. is declared

as allowed as prayed for, it has not specifically made any reference to interest. He also referred to the provisions of Interest Act which contains

reference to debt or damages and sets out in Section 3 deals under the circumstances when the Court has power to award interest.

9. The argument addressed on behalf of the respondent is that there is no scope for awarding interest in a case where the petitioner had been

awarded notional promotion. According to him, the principle which is now established that even the payment of arrears is not itself favoured by

several of the decisions of the Supreme Court and wherever notional promotion is given, on the basis of "no work no pay", the arrears are not

actually given, but they were only notionally calculated to award appropriate increase in pension. Therefore, according to respondent, there is no

scope for award of interest for the arrears of salary reworked on the basis of increased scales of pay on notional promotion. V. Claim for interest

brought to focus

10. We are not merely concerned with the case of award of interest on arrears of salary in a case where notional promotion is given after the

retirement of the employee. Here is the case where it is an admitted fact that arrears have been directed to be worked out and given even in the

order in O.A. No. 1087 of 1996 and therefore there is no need to be detained on the issue whether any arrears of pay could have been granted

and interest could be worked out on that basis. It is admitted by the respondent themselves that they have accepted the judgment in so far as it

related to the payment of increased salary arising out of the promotion that he was found entitled to. As a matter of fact, subsequent to the filing of

the application, the respondents themselves have now passed an order accepting in to a portion the applicant's entitlement to promotion and

therefore on 29.3.2007, they have passed an order promoting the applicant as APXE with effect from 29.6.1989 and they have also found him

entitled to draw the additional salary that he was entitled to, being the difference of the amount which ought to have been given on the scale of pay

in the promotion post and the salary which he was actually drawing on the certain date before the promotion. The only issue is whether there was a

justification for payment of interest.

11. The course of events which have taken place from the time when

proceedings were initiated against him for alleged misconduct regarding his representation on the caste status to the ultimate orders which have been passed in 2007, one thing becomes very clear. For no fault of the applicant, he had been permelled in arduous departmental proceedings that denied to him his promotion at the relevant time, he had the ignominy of being sidelined when his junior officers were promoted above him, when the panel was drawn for promotion, his papers were not placed before the DPC, the salary which ought to have been paid to him in time were not also paid.

12. Indeed, even after the disposal of the proceedings by the Supreme Court on 2.4.2004, he had to be coming back to the Tribunal again for implementation of the order which was originally passed by the Central Administrative Tribunal, Karnataka. Several of the directions which had been issued were not complied with. A contempt application has been filed even to secure even the modicum of reliefs which the department thought fit to award to him. The proceedings which started in the year 1989 came to be concluded during the time when the proceedings were pending before the Central Administrative Tribunal, Madras Bench, when the order was passed which is the subject matter of writ petition. Therefore, for all the years, the petitioner has tossed about, as it were, by the respondent and everything, which was justifiably due to him in his service was denied to him unjustly.

13. The applicability of interest itself arises only in a cases where the Court exercises its power to award interest in a case where there is no specific reference to payment of interest. The award of interest could be a measure of damages under the Interest Act. Normally, interest need not be directed to be paid by the only fact that there is any delay in payment of salary. However, where the applicant is victimised by the pendency of the long proceedings which in the right perception of the employee, ought not to have been initiated, when there had been nothing amiss in his service records, but still he has been denied promotion which were justifiably entitled to, it is only appropriate that the provisions of the Interest Act itself are invoked to award interest. The impugned order of the Central Administrative Tribunal does not award interest on the only fact that Karnataka Bench of the Central Administrative Tribunal had "allowed the petition

as prayed for" in O.A. No. 1087 of 1996. As pointed by the counsel for the respondent, there is no specific reasoning with reference to award of interest in the order and we are not prepared to accept a contention that merely because the petition has been stated as allowed, it must be taken that even a prayer for interest had been conceded in favour of the applicant. It will be an incorrect understanding of law in view of Section 34 of CPC which principle applied even a proceedings before the tribunal where the decree is a silent on interest, interest could not be taken to have been awarded. However, we uphold the claim of interest independently of how the Tribunal's order before the Karnataka Bench could be understood. The award of interest has been made by the Madras Bench on an independent consideration and that is how even the award of interest has been reduced from 18% to 8%. If it was not merely replicating the order of Karnataka Bench, it would have also awarded 18% interest. The Tribunal states at Paragraph 42 that the respondent is responsible not only for payment of interest of all benefits, but also payment of cost of the litigation to the applicant. It refers to the relief granted by the Tribunal earlier in OA. No. 349 of 2004. that the onus of depriving the benefit in time to which the applicant was entitled to being given was on the respondent and hence the respondent was responsible. The Administrative Tribunal, Madras Bench has in its reference to the payment of interest stated in Paragraph 42 as follows:

42. In the circumstances, the applicant whose right was vindicated by the Bangalore Bench of this Tribunal in O.A. No. 1087/1996, as upheld by Hon"ble Apex Court and the reliefs as allowed by this Tribunal in OA. No. 349/2004 dated 6.1.2005, the onus of depriving the benefits in time to which the applicant is entitled to being on the respondent, the respondent is responsible for not only payment of interest of all benefits but also payment of cost of the litigation to the applicant. Hence with reference to all the arrears payable to the applicant in respect of the reliefs ordered based on the decision of the OA.349/2004, which itself flows out of OA.1087/1996, the applicant is entitled to payment of interest at the rate of 8% p.a. from the date on which the claims are due, till the date of payment and the respondent is directed to issue appropriate orders to that effect within a period of two months from the date of receipt of a copy of this order.

The Tribunal has considered the direction for interest only by virtue of the fact that earlier decision in OA. No. 349 of 2004 also adverted to the issue that the officer had been unjustly denied the benefit which he was entitled to, for no fault of his. We are of the view that there was simply no justification for the respondent to have visited the petitioner with denial of all the increments which were due to him; the promotions which were due to him and his stand stood vindicated by the ultimate order which came to be passed by the respondent, when they awarded to the applicant the notional promotion which we have referred to earlier by reference to the order dated 29.3.2007. Therefore, in a case where the applicant has spent the most part of his service only in litigation which have commenced at the instance of respondent which was found to be unjustified, when his stand stood vindicated by favourable orders before the Court, there will be nothing wrong in award of interest. On the other hand, it is to cover such instances of unjustness that the Courts are empowered to award interest under the Interest Act and the award of interest at 8% is also not high and it is in keeping with the reasonable rate of interest in the prevalent economy and the bank rate. We find that it is not a stand alone case, where a person who has been unjustly denied promotion and the financial benefits of the promotion post, to be rewarded with interest. There has been a decision in Nalini Kant Sinha Vs. State of Bihar and others, when interest at 9% was awarded on the arrears of pay for the period of wrongful suspension and there arose arrears of gratuity and pension . We are aware of the fact that while disposing of the claim by a person who claimed that he was entitled to the promotion as a Joint Secretary but when he was denied promotion, the Court said that the decision was not to be cited as a precedent. We are not referring to the said decision as a binding precedent which the decision declared it was not but we are referring to another instance where Courts have found in similar circumstances that the of interest secured just. We are independently assessing the award of interest in a case which justified such a direction. We are here being confronted with a decision of the Central Administrative Tribunal which in its discretion has thought fit to award interest, but while awarding interest it has reduced the claim for 18% interest to 8% p.a. We are now referring to this only to show that the Tribunal has consciously applied its mind and thought fit to award interest and in our limited area of

judicial review under Article 226 of the Constitution of India, we do not think that the discretion which has been made by the Central

Administrative Tribunal is wrong or in any way illegal to be judicially interfered with.

14. Counsel for the petitioner submitted two lines of authorities one as for the proposition that if there is no work, there will be no pay and no

arrears would be admissible, when notional promotion is made. He referred to a Office Memorandum dated 10.4.1989 of Ministerial of Personnel

and Training, Government of India. Para.18.4.3 establishing the above proposition and also reference to four decisions namely (i) Paluru

Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, (ii) Virender Kumar, General Manager, Northern Railways, New Delhi Vs.

Avinash Chandra Chadha and others, (iii) Union of India (UOI) and Another Vs. Tarsem Lal and Others, (iv) Harigovind Yadav Vs. Rewa Sidhi

Gramin Bank and Others, These authorities are not really applicable to the case, since we are not disposing of the case on the above issue relating

to grant of arrears as admissible when notional promotion is made. On the other hand, there is already an order directing the arrears to be paid

which has become final. We are also informed that arrears have already been paid by the petitioner.

15. The only question that we are concerned is whether the direction for payment of interest on the arrears is also admissible. The second line of

authorities is to the effect that the Executing Court cannot go behind the terms of the decree to award interest. This point has been illustrated in the

decision in Punjab State and Others Vs. Harvinder Singh, . Yet another decision which has been referred to by the counsel in Commissioner of C.

Ex., Mumbai Vs. Allied Photographics India Ltd., , a case where the question was where a Consumer Forum established under the Consumer

Protection Act has the power to award interest for dealing the allotment of plot. None of these cases, has any bearing for the issue addressed

before us. There has been admitted delay in payment of wages.

16. We examined the issue from the point of view of the fact whether interest would be payable in a case where there has been an undue delay in

the payment of arrears of pay and, when an employee is hounded without giving him the promotion which were due to him and denying him the

increased emoluments and other benefits.

VI. Present Disposition:

17. We do not think that there is any illegality or untenable nature of claim to suffer interference in our jurisdiction under Article 226 of the

Constitution. Accordingly, we dismiss the writ petition filed by the respondent in the Original Application and also dismiss the application filed by

the applicant claiming enhanced interest. In effect, we are confirming the order passed by the Central Administrative Tribunal and direct that the

interest component shall be worked out with effect from the date when the order has passed by the Tribunal in its earlier proceedings on 2.4.2004.

No costs.