

Court No. - 39

Case :- SPECIAL APPEAL No. - 952 of 2019

Appellant :- Mahendra Singh Sharma

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Anubhav Chandra, Rahul Chaudhary

Counsel for Respondent :- C.S.C., Anuruddh Chaturvedi, Ganesh Datt Mishra, Sachindra Upadhyay

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Rahul Chaudhary, learned counsel for the petitioner-appellant, Sri Anuruddh Chaturvedi, learned counsel for the respondent no. 6 and Sri Ganesh Datt Mishra, learned counsel for the respondent nos. 2, 3 and 5.

2. Present intra court appeal has been filed against the order of the learned single judge dated 07.05.2019 passed in Writ A No. 55208 of 2015 (Mahendra Singh Sharma Vs. State of U.P. & 5 Others). By that order the learned single judge has dismissed the writ petition to the extent of prayer no. 3 made in the above described writ petition. For ready reference that prayer reads as below:-

"(III) Issue a writ, order or direction in the nature of mandamus commanding the respondents to make payment of interest on delayed payment of post retiral benefits and arrears of salary with effect from 31.12.2008 upto 19.08.2011."

3. Having heard the counsel for the parties and peruses the record, we find no good ground to interfere in the matter.

4. The petitioner- appellant superannuated on 31.12.2008. At that stage, his retiral dues were withheld. Accordingly, he filed writ petition no. 20469 of 2011. It came to be disposed of with the following observations, vide order dated 15.04.2021:-

"Considering the facts and circumstances, writ petition stands disposed of with liberty to the petitioner to make fresh representation with respect to his claim within a period of six weeks from today before respondent no.6, General Manager/Unit Incharge, Dugdh Utpadak Sahkari Sangh Limited,

Ramghat Road, Aligarh and in case, any such representation is made, the same shall be considered and disposed of in accordance with relevant rules by means of reasoned and speaking order by respondent no.6 within a further period of two months from the date of making of the representation. In case, the claim of the petitioner is found to be genuine and admissible under the relevant rules by respondent no.6, he shall ensure the payment within a period of six weeks from the date of passing of the order on the representation."

5. The petitioner- appellant made a representation for full payment of his retiral dues together with interest from the date of the amount becoming due till the date of actual payment. At the same time, it is undisputed that the representation made by the petitioner- appellant was first decided vide order dated 19.08.2011 quantifying retiral dues of the petitioner- appellant @ Rs. 8,77,786/-. That amount was not paid to the petitioner- appellant in the next six weeks. Therefore, the petitioner- appellant filed Civil Contempt Petition No. 4089 of 2011. In those proceedings the contempt court issued an interim direction for payment of Rs. 8,77,786/- together with interest @ 12% from 19.08.2011 till the date of actual payment. Thus, the contempt court confined the claim of interest from the date of order passed pursuant to the first direction issued by this Court dated 15.04.2011 in Writ Petition no. 20469 of 2011.

6. Thus, in the first place the writ court did not issue any direction for payment of interest. Rather, it contemplated that the amount may be first quantified and that amount be paid within six weeks from the date of quantification made.

7. Second, even before the Contempt Court, the petitioner-appellant did not claim interest for the period 31.12.2008 to 18.08.2011.

8. Third, the interim order passed by the Contempt Court dated 02.08.2014 became subject matter of challenge in intra court / Contempt Appeal No. 888 of 2013 (R.K. Bajapeyi Vs. Mohan Lal And 4 Others). Vide order dated 02.07.2013 passed by the coordinate bench, the order of the learned single judge providing for interest @ 12% was modified to provide interest @ 6%. The petitioner- appellant was represented in those proceedings as well.

9. Having failed to raise the claim for payment of interest at the stage of first writ petition being Writ Petition no. 20469 of 2011 that was decided on 15.04.2011 as also having successively failed to raise that claim in the contempt proceedings being Civil Contempt Application No. 4089 of 2011 decided in terms of order dated 02.08.2014 as modified in Special Appeal No. 888 of 2013 decided on 02.07.2013, the petitioner- appellant further failed to file any writ petition to challenge the correctness of the order dated 19.08.2011, whereby his claim for interest was subsequently rejected by the departmental authorities.

10. Not only that the petitioner- appellant did not take prompt action in that regard, even in the writ petition giving rise to the present intra court appeal there is no prayer made with respect to the order dated 19.08.2011.

11. In any case, in that view of the matter, the award of interest had attained finality in view of the facts noted above. No fresh cause of action arose to the petitioner- appellant in the year 2014 as may have given rise to a fresh writ petition.

11. For the reasons noted by the learned single judge (in the order under appeal) and for the reasons noted by us, we find no merit in the intra court appeal. It is accordingly **dismissed**. No order as to costs.

Order Date :- 12.12.2023
SK Srivastava

(Shiv Shanker Prasad,J.) . . . (S.D. Singh,J.)