

Court No. - 18

Case :- WRIT - A No. - 5877 of 2024

Petitioner :- Ram Kumar

Respondent :- Union Of U.P. Thru. Its Secy. Deptt. Of
Telecommunications New Delhi And 2 Others

Counsel for Petitioner :- Vibhanshu Srivastava

Counsel for Respondent :- A.S.G.I., Satya Prakash Tiwari

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner, Mr. Anand Dwivedi, learned counsel for Union of India-opposite party no.1 and Ms. Nidhi Singh, Advocate holding brief on behalf of Mr. Satya Prakash Tiwari, learned counsel for opposite party nos.2 and 3.

2. Despite time having already been granted for filing of counter affidavit and stop order also having been passed on 23.09.2024, no counter affidavit has been filed till date.

3. However, since the dispute is only covered by another judgment rendered by this Court, the petition is being adjudicated upon finally at the admission stage itself.

4. Petition has been filed challenging order dated 17.12.2022, whereby petitioner's claim for grant of interest on delayed payment of privileged leave encashment has been rejected.

5. Learned counsel for petitioner submits that the aforesaid aspects have already been considered in the judgment and order dated 19.09.2024 passed by this Court in **Writ-A No.7068 of 2024, 'Raj Krishana versus Union of India and Others'**, which is quoted here-in-below :-

"1. Heard learned counsel for petitioner and Mr. Dwijendra Mishra, learned counsel for opposite parties no. 2 & 3. No one has put in appearance on behalf of opposite party no. 1.

2. Short counter affidavit filed on behalf of opposite party no. 3 is taken on record.

3. Petition has been filed challenging order dated 05.07.2024 whereby petitioner's claim for grant of interest on delayed payment of privileged leave encashment has been rejected.

4. Learned counsel for petitioner submits that it would be evident from the impugned order itself that delay in making payment of the aforesaid benefit has occasioned on account of poor financial condition of the corporation. He has adverted to judgment rendered by Hon'ble Supreme Court in the case of Indian Telephone Industries Limited and another versus Ashok Kumar Shukla and another, Special Leave to Appeal (C) No. 7939 of 2024 to submit that the aforesaid aspect has already been considered by Hon'ble Supreme Court whereafter interest has been allowed on delayed payment of leave encashment.

5. Learned counsel for opposite parties no. 2 & 3 has refuted submissions advanced by learned counsel for petitioner with the submission that the leave encashment is not a statutory right which would require payment of any interest thereupon. He has adverted to the inter office note dated 08.04.2013 brought on record as annexure no. 2 to the short counter affidavit to submit that a prohibition has been indicated with regard to payment of interest on delayed payment of privileged leave encashment. It is submitted that the aforesaid circular has not been challenged by petitioner and therefore no relief can be granted.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it quite is evident that the impugned order as denied claim for interest on delayed payment of privileged leave encashment only on the ground of poor financial condition of the corporation. The aspect of payment of privileged leave encashment to petitioner with delay has not been disputed. So far as submissions by learned counsel for opposite parties is concerned, it is evident that the aforesaid aspects has already been dealt with by Hon'ble Supreme Court in the case of Ashok Kumar Shukla (supra) in the following matter:-

"However, we cannot forget that the first petitioner is a Government of India undertaking. There was no reason for the Government of India undertaking to deny the benefit of leave encashment for a long period of 4 years and 10 months. A contention is raised by the learned Single Judge was that the interest should not be ordered to be paid, as the payment of leave encashment benefit is not a statutory payment. The said contention deserves to be rejected for the simple reason that the entitlement of the first respondent to receive the benefit of leave encashment on the date of his retirement was established. There is no reason for the Government of India undertaking like the first petitioner to withhold the said amount for a long period of 4 years and 10 months.

The learned senior counsel pointed out that even for payment of salary to the employees, the first petitioner has to look upon the Government of India to release the necessary amount. If that be so, the first petitioner can always request the Government of India to release the necessary amount so that the interest can be paid.

The learned senior counsel relied upon a Memorandum of the year 1999 which makes it clear that no interest will be payable on the amount towards leave encashment. After the Writ Court found that there was no

valid justification for not paying the leave encashment amount for a period of 4 years and 10 months, interest at the rate of 7% p.a. has been granted. We find that the Writ Court was well within its powers to do so.

Hence, there is no merit in the Special Leave Petition and the same is accordingly dismissed."

7. Upon applicability of aforesaid judgment in the present facts and circumstances, it is quite evident that the aspect that leave encashment benefit is not a statutory payment and therefore interest should not be ordered to be paid as being specifically rejected in the aforesaid judgment. It has, thereafter, been held that there was no reason for a Government Organization to withhold the benefit for a long period.

8. In the considered opinion of this Court, the aforesaid aspect and enunciation is specifically applicable in the present facts and circumstances of the case.

9. Considering aforesaid judgment rendered by Hon'ble Supreme Court of India, the aspect that challenge to the inter office note dated 08.04.2013 has not been raised by petitioner, deserves also to be rejected since the same is clearly against the dictum of Hon'ble Supreme Court of India. Even otherwise the order dated 08.04.2013 is only in the nature of the inter office notice and does not have any statutory or any other standing.

10. In view of aforesaid, exercising extra-ordinary powers of this Court under Article 226 of the Constitution of India, the inter office note dated 08.04.2013 alongwith the impugned order dated 05.07.2024 are hereby quashed by issuance of a writ in the nature of certiorari. The opposite parties no. 2 & 3 are hereby commanding by issuance of a writ in the mandamus to pay interest to petitioner at the rate of 7% per annum from the date when it was due till the date of actual payment. Such payment shall be ensured by the answering opposite parties within a period of three months from the date a certified copy of this order is served upon the concerned authority

11. Consequently, the petition succeeds and is allowed. Parties to bear their own cost."

6. This Court finds that the aforesaid judgment is squarely applicable in the present facts and circumstances of the case and therefore, the order dated 17.12.2022 is hereby quashed. It is further directed that the conditions indicated in the judgment and order dated 19.09.2024 as indicated in paragraph 10 thereof shall govern the petitioner of the present petition as well.

7. In view of aforesaid, the present petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 1.10.2024/Mohd. Sharif