

Court No. - 25

Case :- WRIT - A No. - 6481 of 2022

Petitioner :- Om Prakash Dwivedi

Respondent :- State of U.P. through its Additional Chief Secretary, Home Department, Lucknow and another

Counsel for Petitioner :- Rakesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

1. Parties have exchanged affidavits.
2. Admit.
3. Heard forthwith.
4. Heard Mr. Rakesh Kumar Singh, learned Counsel for the petitioner and Ms. Parul Bajpai, learned Additional Chief Standing Counsel appearing on behalf of the respondents.
5. This petition has been filed, praying that a *mandamus* be issued, ordering respondent No. 2 to pay interest upon the belated payment of post-retiral benefits due to the petitioner, that are said to be a sum of ₹22,32,819/- The interest is claimed at the rate of 12% per *annum* from the date of the petitioner's retirement until realisation.
6. The petitioner was a Senior Assistant in the office of the Director General (Prosecution) Headquarters, Lucknow. He was transferred to the office of the Additional Director (Prosecution) Balrampur by a transfer order dated 27.04.2018. The petitioner assailed the transfer order by means of a writ petition, which was dismissed by the learned Single Judge *vide* order dated 15.05.2018. The petitioner appealed the order to the Division Bench, where Special Appeal No. 303 of 2018 was entertained and an interim order dated 07.06.2018 passed to the effect that the petitioner shall be not be compelled to join at the transferred place. This order is said to have been disobeyed, on

account of which, the petitioner made an application in the special appeal, seeking enforcement of the right to continue at the same place wherefrom he had been transferred. While deciding the said application, the appeal was taken on board, heard and decided *vide* order dated 20.08.2018, remanding the matter to the learned Single Judge for decision afresh on merits. While passing the order of remand, the Division Bench remarked that since nobody had joined the post, wherefrom the petitioner has been transferred from Lucknow to Balrampur, pursuant to the impugned transfer order dated 02.05.2018, he will be permitted to discharge his duties on the post till the next date of listing. The writ petition was directed to be listed before the learned Single Judge on a particular date.

7. In compliance with the judgment and order passed by the Division Bench, the petitioner was permitted to join on the post that he was originally holding with the office of the Director General (Prosecution), Lucknow. The petitioner retired from service on 31.05.2020 and asserts that he has not been paid some of his emoluments and post-retiral benefits, details of which are as follows :

- (i) Salary for 5½ months amounting to ₹3,52,978 on 11.10.2021
- (ii) Leave Encashment of 171 days amounting to ₹3,79,466 pm 02.11.2021
- (iii) Increment from 2016 to 2018 amounting to ₹6,03,687 dated 02.11.2021
- (iv) Gratuity and Sanrashikaran amounting to ₹13,61,093 dated 24.12.2021
- (v) G.I.S. dues amounting to ₹75,595 dated 14.02.2022

8. The averments in paragraph No. 12, though not precisely a para-wise reply, seems to have been answered in paragraph Nos. 12 and 13 of the counter affidavit. It would be best to quote these paragraphs *in extenso*, as these run in wholesome detail. These read :

12. That *vide* order dated 02.07.2020 the provision pension of Rs. 24,120/- and gratuity amounting to Rs. 9,31,273/- was paid to the petitioner. *Vide* order dated 09.12.2020 the provisional pension from 01.12.2020 to 31.05.2021 amounting to Rs. 26,800/- was paid and *vide* order dated 10.06.2021 provisional pension from 01.06.2021 to 30.11.2021 was paid. The copies of the aforesaid orders dated 02.07.2020, 09.12.2020 & 10.06.2021 are being annexed as **Annexure No. CA-12, Annexure No. CA-13, & Annexure No. CA-14** with this counter affidavit.

13. That so far as the payment of with held leave encashment and arrears of salary from 15.06.2018 to 02.12.2018 is concerned, the payment of the same was to be made after the final decision in the pending special appeal no. 388/2018 and W.P. No. 15821/2018 and W.P. No.13156(S/S)2018 which are still pending for final disposal. However, pursuant to the petitioner's application for making the said payment, sympathetic consideration was made on account of petitioner's ill health and economic conditions, the payment of arrears of salary from 15.06.2018 to 02.12.2018 amounting to Rs. 3,52,978/- was paid on 11.10.2021 and the arrears of annual increments from 1.07.2018 to 31.05.2018, amounting to Rs. 63,687/- were also paid vide order dated 02.11.2021 and the leave encashment of 171 days amounting to Rs.379466/- was paid vide order dated 02.11.2021 and the amount pertaining to GIS amounting to Rs. 75,595/- was paid on 14.02.2022.

9. The learned Additional Chief Standing Counsel, upon being asked by this Court why there was this delay in paying the petitioner's post-retiral dues, which ought to be paid with all promptitude as soon as the employee retires within a reasonable period of time, may be a month, two or so, it is submitted that the delay occurred on account of the petitioner's strife in resisting his transfer and the fact that he did not join at the place where he was transferred to by the respondents. Now, this can hardly be a justification to delay the payment of the petitioner's post-retiral benefits. The fact that the petitioner resisted the transfer order by moving this Court through a writ petition is not the adoption of any unlawful means. Rather, it is enforcing his rights in accordance with the Constitution and the law. The petitioner succeeded also in his endeavour and continued to remain posted in terms of the orders of the Division Bench at the place and the position that he was holding, wherefrom he was transferred by the respondents. For the said reason, no blame can be fastened upon the petitioner in assailing his transfer by the respondents or made the basis of any kind of excuse or justification to say that the belated payment of the petitioner's post retiral benefits was on that account.

10. The retirement of an employee and the payment of his post-retiral benefits are quite distinct and different, from the issue of transfer. The date of an employee's retirement is well known, and, if the employee retires without suffering any kind of punishment, that has the effect of bringing a diminution in his emoluments, there is no reason, whatsoever, to withhold the payment of his post-retiral benefits. The paperwork, that is most often cited as the cause for the

delay in processing an employee's claim regarding his post-retiral benefits, has never been accepted by Courts to be a justification for the delay. Way back in **State of Kerala and others v. M. Padmanabhan Nair, (1985) 1 SCC 429**, it was held by the Supreme Court :

1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

11. The aforesaid decision was in the context of delay in payment of pension and gratuity alone. Here also, there is a delay in payment of gratuity, besides some dues on account of arrears of salary, most of which is for the period that litigation regarding transfer was pending. There are other heads of post retiral benefits, to wit, leave encashment and group insurance, about which, there can be little justification to withhold or delay disbursement. Group Insurance dues are normally deducted from an employee's salary while serving, invested with an Insurance Corporation, who are liable to pay that amount upon the employee's retirement, by causing it to be credited to the master policyholder's account, that is to say, the employer.

12. Seen in this perspective, there does not appear to be any justification for the delay in payment of the petitioner's post-retiral dues, at the most, beyond two months after retirement. Therefore, any delay in payment of the petitioner's post retiral dues, detailed in paragraph No. 12 of the writ petition, beyond two

months, would entitle the petitioner to simple interest at the rate of 6% per *annum* until realisation.

13. In the circumstances, this writ petition **succeeds** and shall stand **allowed**. A *mandamus* is issued to the respondents to pay the petitioner simple interest at the rate of 6% per *annum* on each of the heads of dues mentioned in paragraph No. 12 of the writ petition, reckoned with effect from the date two months next after his retirement, until payment.

14. Costs easy.

Order Date :- 23.1.2024

I. Batabyal

(J.J. Munir, J.)