

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WA.No.2499 of 2015 () IN WP(C). No.33808/2008

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AGAINST THE ORDER/JUDGMENT IN WP(C) NO.33808/2008 OF HIGH COURT OF
KERALA DATED 28-05-2013**

APPELLANT(S)PETITIONER:

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MAJOR V.K.SUBRAMANIAN (RETD)
CHIRAYATH HOUSE, MANCHADI BUS STOP,
KADAVU ROAD PO.
MANALUR, THRISSUR**

**BY ADVS.SRI.G.KRISHNAKUMAR
SRI.SANTHOSH P.PODUVAL**

RESPONDENT(S)/RESPONDENT:

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THE DIRECTOR GENERAL OF POSTS,
DEPARTMENT OF POSTS,
MINISTRY OF COMMUNICATIONS DAK BHAVAN, NEW DELHI-110001**

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

KRJ

ASHOK BHUSHAN, C.J

&

A.M.SHAFFIQUE, J.

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W.P(C) No.2499 of 2015

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Dated this the 3rd day of December, 2015

JUDGMENT

Ashok Bhushan, CJ

Heard learned counsel for the appellant.

2. This writ appeal has been filed against judgment dated 28.5.2013 in W.P(C) No.33808 of 2008. The appellant, who is an ex-service man, after retirement, joined Army Postal Service and he worked as Field Officer in Postal Life Insurance (PLI) of the Army Postal Service. While discharging his duties, petitioner was entitled for incentive and cash awards on the business carried on by him. Up to the year 1993, petitioner was paid incentive on the entire business procured by him. From 1994 to 2001, petitioner was paid incentives partially only to the extent of the targets given to him. Petitioner exceeded the targets and claims that he was entitled for incentive on the entire business procured by him.

3. Petitioner represented the matter. However, he was only paid incentive to the extent of targets given to him and denied incentive over and above the target. Petitioner filed the writ petition in this Court, which writ petition was disposed of by this Court on

9.10.2006 requiring the petitioner to move a representation to the third respondent for redressal of his grievance. Petitioner filed detailed representation and the Chief General Manager, Directorate of Postal Life Insurance decided the representation on 8.5.2007 opining that petitioner was entitled to receive incentive as per incentive rates prescribed by the Postal Service Board, New Delhi from time to time.

4. After order dated 8.5.2007, petitioner was immediately made payment of ₹20,97,262/- towards his balance incentives payable from 1994 to 2001 by Ext.P3 order dated 5.10.2007. Petitioner received the aforesaid amount. However, being dissatisfied, petitioner again submitted a representation praying payment of interest on the delayed payment of incentives. Petitioner also filed W.P(C) No.7552 of 2008 which was disposed of by this Court on 10.3.2008 directing to pass orders on Ext.P3 representation. Consequent to the order of this Court, Government of India again considered the issue and passed Ext.P6 order dated July, 2008. The Government of India contended that petitioner was not entitled for payment of any interest on the delayed payment. There was no prescribed due date or time limit for payment of incentive. However, the Government stated that considering the

fact that petitioner was paid incentive in arrears on the effective business procured by him, that makes him entitled for being considered for gold or silver certificate and associated cash awards. For all these years, petitioner has procured business. Petitioner thereafter filed the writ petition praying for following reliefs:

- “i) quash Exhibit-P6 order of the respondent by issuing writ of certiorari or other appropriate writ.
- ii) Direct the respondent by way of writ of Mandamus or other appropriate writ to pay such interest as may be fixed by this Hon'ble Court upon the delayed payment of the arrears of incentive sanctioned as per Ext.P3.”

5. The learned Single Judge considered the writ petition and noticing the details of the case in paragraphs (7) and (8) has dismissed the same. In paragraphs (7) and (8), the learned Single Judge observed as follows:

“7. Question mooted for decision is as to whether there was willful denial of payment of incentive due to the petitioner. It is evident from the counter affidavit that considerable amounts have already been paid for various years from 1994-95 to 2000-2001. What was denied is only the payment of incentive due on business procured over and above the target limit. Whether the target limit

fixed as applicable in the case of the petitioner is ultimately decided by the respondent through Ext.P2 order dt.8.5.2007. There is no complaint that the payment was delayed thereafter. Till Ext.P2 order was issued, the denial of payment on disputed amount was on the basis that fixation of target is applicable in the case of the petitioner. The dispute whether the target fixed is applicable or not was decided only through Ext.P2. Eventhough the petitioner had raised challenge against the denial of incentive in the year 2002 by filing W.P(C) No.1282/2002, the said writ petition was disposed of only on 9.10.2006. Therefore the respondent cannot be blamed for the delay caused after raising such dispute. As pointed out by the respondents, technically there is no time limit fixed for effecting payment of the incentive due.

8. Under the above mentioned circumstances this court is not in a position to find there was any willful latches on the part of the respondent in causing delay in payment of the incentive due to the petitioner. It is only on the basis of a genuine dispute that the incentive in excess of the target limit fixed was denied. Once it is found by the respondent that the disputed amount was liable to be paid, payment was effected along with award of certificate and cash awards. Therefore this court is of the considered opinion that interference of this court cannot be invoked

for ordering payment of any on the amount disbursed on the basis of Ext.P4. Accordingly the writ petition is hereby dismissed.”

6. Learned counsel for the appellant challenging the order contended that when petitioner was entitled for incentives on the entire business procured from 1994 to 2001, payment of only partial amount of incentives was denial of his right and when it was found that the said denial was not correct as the action has not been upheld by the Government, it is clear that petitioner is entitled for payment of interest. He has placed reliance on the judgments of the Apex Court in **S.K.Dua v. State of Haryana and Another** (2008 KHC 4047) and **Union of India v. Parmal Singh and Others** [(2009) 1 Supreme Court Cases 618].

7. We have considered the submissions of learned counsel for the appellant and perused the records.

8. There is no dispute regarding the facts between the parties.

9. It has been noted in the impugned order Ext.P2 that petitioner who was working as Field Officer was allotted targets every year by APS for procurement of business and was also intimated that business procured over and above the given targets and proposals procured from units beyond his allotted jurisdiction

should not be eligible for payment of incentive by letter dated 22.3.1993. As the action of the respondents for payment of incentives thereafter was only to the extent of targets given to him, the petitioner raised the grievance and claimed that he is entitled for incentive over and above the target and denial of such incentive was not in accordance with law.

10. Petitioner filed writ petition which was disposed of by this Court on 9.10.2006. After the order of this Court, Government of India decided the matter on 8.5.2007 and within five months, entire amount was paid by Ext.P3 dated 5.5.2007. The action of the respondents thus for not paying the incentives over and above the targets given to the petitioner was based on their understanding that petitioner is entitled for the benefit of incentives only upto the targets. It cannot be said that there was any *mala fide* intention or any extraneous reason on behalf of the respondents not to pay the incentive over and above the targets. The matter, after the order of this Court, ultimately was decided in favour of the petitioner on 8.5.2007 and entire payment was given within five months from the decision in favour of the petitioner. In the above circumstances, we are of the view that the learned Single Judge did not commit any error in taking the decision that on the payment of incentive over

and above the target, petitioner was not entitled for interest.

12. Learned counsel for the appellant has placed reliance on the judgment of the Apex Court in **S.K.Dua's** case (cited supra) and has relied on the following observation in paragraph (11):

“11.If there are Statutory rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Art. 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.”

13. The judgment in **S.K.Dua's** case (cited supra) was a case of an employee who was claiming retiral benefits. In the above context, the above observation was made that payment of interest cannot be denied. The entitlement of retirement benefits stands on

a different footing and a person becomes entitled for retirement benefits immediately after retirement and if it was withheld due to any reason which is not *bona fide* or which has no valid nexus, claim for interest cannot be denied, which is trite law. Therefore, judgment aforesaid does not help petitioner in the facts of the case.

14. The second decision relied on by the learned counsel for the appellant is ***Union of India***'s case (cited supra) wherein the Apex Court has considered the question of payment of compensation for acquisition of land under the Defence of India Act, 1962. The Apex Court in the said case held as follows:

“13. Whenever the arbitrator or the High Court increases the compensation for the acquired land, the increase relates back to the date of acquisition as they are merely doing what the Special Land Acquisition Officer ought to have done in the first instance. Therefore, interest is awardable on the increased amount also from the date of acquisition. The said general principle will not apply in two circumstances. One is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation

amount. Where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation or enhanced compensation for acquisition would require award of interest at a reasonable rate on equitable grounds. We are fortified in this view by the enunciation in *Sathindar Singh v. Umrao Single* which has been reiterated in *Hirachand Kothari v. State of Rajasthan*. ”

15. There, the Apex Court has held that interest is awardable on the increased amount also considering the date of acquisition. When determination of compensation is enhanced, such determination has to be treated as determination for value of land due to the petitioner, and on the said principle, it was held that interest was payable to a person whose land has been acquired and such payment was also as compensation for land value. Aforesaid judgment does not help the appellant in the present case.

16. In the facts of the present case where the issue was only with regard to payment of incentive over and above the targeted amount and the said amount after finally determining the entitlement was paid within five months, we are of the view that claim for interest of the petitioner has rightly been denied by the learned Single Judge.

No ground has been made to interfere with the judgment of the learned Single Judge. Writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE
JUDGE

krj.4/12/15

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P.A to Judge