IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10677-2013
Date of Decision:25.02.2015

Ramesh Kumar

... Petitioner(s)

Versus

Uttar Haryana Bijili Vitran Nigam Limited and others
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?.
2) To be referred to the Reporters or not ?.
3) Whether the judgment should be reported in the Digest ?

Present: Mr. Naveen Daryal, Advocate,
for the petitioner.

Mr. P.S.Poonia, Advocate,
for the respondents.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Article 226 of the Constitution of India for quashing the recovery order dated 25.11.2011 (Annexure P-2) and recovery order dated 01.01.2013 (Annexure P-4) issued by respondent no.3 after the retirement of the petitioner.

Brief facts of the case are to the effect that the petitioner retired on 31.01.2012 as a Circle Superintendent from the respondent-department and he is now drawing pension. The petitioner submitted his pension papers on 01.07.2011 i.e. six months prior of his retirement. The department issued 'no due certificate' to the petitioner. It is further averred that the department withheld the gratuity and commutation of pension without disclosing any reasons. No show cause notice, charge-sheet or disciplinary inquiry was pending against the petitioner prior to his retirement. The petitioner also submitted representation dated 27.04.2012 (Annexure P-4) for the release of the retiral benefits. The delay has been caused on the part of the respondents-department for releasing the gratuity and commutation of pension, amounting to ₹ 9,80,000/-. The department effected recovery of Rs.21, 246/- on account of surcharge for not depositing the amount in time with the income-tax department and ₹ 32,434/- on account of excess payment.

I have heard learned counsel for the parties and perused the record.

The controversy involved in the present writ petition has already been dealt with by the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer)*** 2014(4) Service Cases Today 138 wherein it has been held as under:

> *"9. In our view, the law laid down in Chandi Prasad Uniyal's case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of*

India. Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter. The word 'complete justice' was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in ***Prem Chand Garg v. Excise Commissioner, U.P., AIR (1963) SC 996*** *which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a Nine-Judges Bench in* ***Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 SCR 744 reiterated by a Seven Judge Bench in A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 and finally settled in the Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409.***

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special *jurisdiction and can be best described in the words of this Court in* ***Ramakant Rai v. Madab Rai, (2003) 12 SCC 395,*** *"It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself". Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of* ***Union of India v. Karnail Singh, (1995) 2 SCC 728****, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.*

11. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of ***Indian Bank v. ABS Marine Products (P) Ltd., 2006 5 SCC 72, Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381 and in State of U.P. v. Neeraj Awasthi (2006) 1***

***SCC 667**, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court have compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.*

12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

13. In that view of the above, we are of the

> *considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal.*
>
> *Ordered accordingly."*

A Coordinate Bench of this Court in CWP-1742 of 2013, titled '***Gopal Krishan vs. Uttar Haryana Bijli Vitran Nigam Limited and others'***, decided on 12.12.2014 has already dealt with the similar issue and held as under:

> *"Be that as it may be, delay has taken place in making the different payments to the petitioner on account of different service benefits. Keeping in view the given facts and circumstances of the present case noticed herein above, although some delay is certainly attributable to the petitioner but the entire delay cannot be held to be the responsibility of the petitioner alone. As per the peculiar facts and circumstances of the case, the delay seems to have occurred because of contributory negligence of both the parties.*
>
> *In view of the above and striking a balance between the parties, interest of justice would be adequately met, if the respondents are directed to pay interest @ 9% per annum to the petitioner from the date when different amounts became due till the date of actual payment.*
>
> *Consequently, the respondents are directed to do the needful within a period of three months from the date of receipt of certified copy of this order. However, if the needful is not done within the stipulated period, the*

petitioner would be entitled for interest on the delayed payment @ 12% per annum.

Resultantly with the above said observation made and directions issued, the present writ petition is partly allowed, however, with no order as to costs."

The matter in hand is squarely covered by the judgments rendered in ***Rafiq Masih's case (supra)*** and ***Gopal Krishan's case (supra).*** Accordingly, following the reasons mentioned in both the aforesaid judgments (supra), the respondents-department are directed to make the payment of due amount alongwith interest @ 9% per annum to the petitioner from the date when the amount became due till the date of actual payment. The needful shall be done within two months from the date of receipt of certified copy of this order. However, if the needful is not done within the stipulated period, the petitioner would be entitled for interest on the delayed payment @ 12 % per annum.

Disposed of in the aforementioned terms.

No order as to costs.

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25.02.2015 **(Paramjeet Singh)**
parveen kumar **Judge**