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*** IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1097/2014**

Date of judgment: 21st August, 2015

UNION OF INDIA & ORS. Petitioners
Through: Mr. Kirtiman Singh (CGSC) with Mr. Waize
Ali Noor, Advocate

Versus

DAYA RAM Respondent
Through: Mr. A.K. Trivedi, Advocate

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

G.S.SISTANI, J.(ORAL)

1. By way of the present petition, the Petitioner seek quashing of order dated 13.09.2013 passed by the Central Administrative Tribunal in O.A. No. 94/2013, whereby the Tribunal has directed the Petitioners to pay interest to the Respondent in accordance with the rate as applicable to General Provident Fund in that particular year from the date he was due for grant of payment of retrial benefits in respect of his pre-mature retirement.
2. The brief facts of the case are that the Respondent was pre-maturely retired on 15.09.2006 vide order dated 14.06.2006 against which he instituted O.A. No. 1869/2006 before the Central Administrative Tribunal , New Delhi, which was decided vide order dated 29.05.2007 directing the Petitioner No. 2 to consider and decide the representation of the Respondent by means of reasoned order. The Petitioner No. 3 rejected the representation of the Respondents against which the Respondent filed O.A. No. 1833/2007 which

was dismissed Tribunal vide order dated 03.06.2009. The Respondent filed a Writ Petition (Civil) No. 11595/2009 challenging the aforesaid order of this Tribunal before the High Court of Delhi, which is pending consideration and adjudication while in the meantime, the Respondent filed his pension papers duly complete in all respect and duly attested by Petitioner No. 3 on 12.09.2006 and the same were forwarded to the competent sanctioning authority, i.e. Petitioner No. 2 on 04.10.2006. However, the Petitioners vide letter dated 03.03.2010 directed the respondent to submit the medical certificate for commutation and photographs for sanctioning the pension which was submitted on 15.04.2011, the Petitioners instead of granting retiral dues to the respondent directed him to apply for provisional pension against which he filed an O.A. No. 3614/2011. During the pendency of the said O.A., the Petitioners released the retirement benefits to the Respondent on 16.01.2012 and the General Provident Fund amount on 01.03.2012. Thereafter, the said O.A. was finally decided vide order dated 07.07.2012 taking note of the fact that pensionary benefits have been released to the Respondent and only issue of interest on the delayed payment was left. The Learned Tribunal directed the Respondent vide the said order to submit a representation before the competent authority and further directed the Petitioners to pass a reasoned and speaking order on the same. It was in pursuance of the order of the Learned Tribunals that the order dated 15.10.2012 was passed.

3. The Learned Counsel for the Petitioners contended that the Learned Tribunal overlooked that the pension papers submitted by the Respondent on 12.09.2006 were incomplete. The council further contended that the pension papers submitted by the Respondent on 12.09.20016 were bereft of necessary particulars and the said decision, after due process and

verification, was (after consideration of the representation of the Respondent against pre-mature retirement, as directed by the Learned Tribunal vide order dated 29.05.2007 in O.A. No. 1893/2006) communicated to the Respondent vide letter dated 24.12.2007 vide which the Respondent was asked to submit three passport size photographs. The Respondent, however, refused to comply with the said request as came to be reported by Assistant Supdt. Of Post Office, West Sub Division, Gurgaon vide communication dated 21.08.2008.

4. The Learned Counsel for the Petitioners further contended that the Tribunal failed to take note that after submission of the pension papers by the Respondent, the Petitioner authorities acted expeditiously. It is submitted that on 06.09.2011, Petitioner No. 2 was requested to issue necessary orders for sanction of pension of the Respondent and after getting the documents completed, the SPO Gurgaon sanctioned the pension of the Respondent and sent the calculation sheet to petitioner No. 2 on 13.12.2011 and upon the receipt of the same, Petitioner No. 2 informed the Post Master, Gurgaon, to make arrangement for payment of pension to the Respondent. Thereafter, on 06.02.2012, SPO, Gurgaon informed that payment of DCRF and commutation of pension had been paid to the Respondent on 16.01.2012. Further, on 01.03.2012, leave encashment, CGEIS and General Provident Fund final payment also stood paid to the Respondent.
5. On the other hand, the Learned Counsel for the Respondent argued that the Petitioners are liable to pay interest at the rate of 18% on delayed payment of retiral dues of the Respondent as he retired w.e.f. 15.09.2006 vide order dated 14.06.2006 whereas pensionary benefits were released to him on 16.01.2012 and 01.03.2012, whereas the challenge before this court was in relation to his pre-mature retirement. Therefore, the pendency of the Writ

Petition (Civil) No. 11595/2009 filed by the Respondent before the Hon'ble High Court could not act an impediment to the decision in the instant case. The Learned Counsel further contended that all the papers duly completed and countersigned by the Petitioner No. 3 and the Respondent was, however, made to ride a merry-go-round by calling for papers once again, which was already submitted by him. The pensionary benefits were released only after the Respondent has filed O.A. No. 3614/2011 before the Learned Tribunal. The learned counsel contends that the Respondent is entitled for grant of interest on delayed payment of retiral dues, which has been delayed on account of revengeful attitude of the Petitioner authorities.

6. After taking into consideration the submissions of Learned Counsel for both the parties, the sole question arises in the present case for our consideration is whether the direction of the Learned Tribunal to grant interest to the Respondent at the same rate as applicable to General Provident Fund in that particular year from the date he was due for grant of payment of retiral benefits in respect of his pre-mature retirement is just and proper?
7. In the case of *S.K. Dua v. State of Haryana and Others: (2008) 3 SCC 44*, the Hon'ble Supreme Court was confronted with the similar questions. Here petitioner, the Chief Engineer, had been send on deputation to a lower and unimportant post, especially created for him. The Petitioner retired on 30.06.1998 whereas the retirement benefits were given to him between June 11 and July 18, 2002. The Petitioner claimed interest on delayed payment of retirement benefits. This Hon'ble High Court dismissed the Petitioner's Writ Petition in limine. The Respondent in that case had taken a plea that vigilance inquiry was still pending against him. Yet the Hon'ble Supreme Court took a view that:

“13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr Quraishi from the post of Secretary, Irrigation. The said Mr Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.

14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be

well founded that he would be entitled to interest on such benefits. 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 Articles 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.”

8. In the case of **Vijay L. Mehrotra v. State of U.P.: (2001) 9 SCC 687**, the Hon’ble Apex Court has dealt with the same issue and observed that:

“3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.”

The Hon’ble Apex Court further held that there was no justification for withholding of pension for month and directed the payment of interest at similar of 18%. In Para 4 of the said judgment, the Apex Court held that:

“4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments.”

9. In the case of **Gorakhpur University v. Shitla Prasad Nagendra (Dr): (2001) 6 SCC 591**, the petitioner being a University Professor, who retired on 30.06.1990, was not given his pension. The part of his pension was adjusted against due and remaining amounts were withheld for the reason that he was not vacating his quarter. The Hon’ble Supreme Court held in this regard as follows:-

5. We have carefully considered the submission on behalf of the respective parties before us. The earlier decision pertaining to this very University, reported in S.N. Mathur [(1996) 2 ESC 211 (All)] is that of a Division Bench, rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in R. Kapur [(1994) 6 SCC 589 : 1995 SCC (L&S) 13 : (1994) 28 ATC 516] which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan Nair [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] and Som Prakash[(1981) 1 SCC 449 : 1981 SCC (L&S) 200 : AIR 1981 SC 212] . This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights

acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant University on the decision reported in Wazir Chand [(2001) 6 SCC 596 : JT 2000 Supp (1) SC 515] does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the university authorities regularly

accepted the rent at normal rates every month from the petitioner till the quarters were vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarters and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself

was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to have vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.

10. In this aspect the Rule 83 (1) of CCS (Pension) Rules, 1972, provides the date on which the pension of the Respondent became due and Rule 68 provides for the interest on delayed payment of gratuity which as per the Government of India O.M. dated 25.08.1994 is to be at par with the General Provident Fund rate of interest.

“83. Date from which pension becomes payable

(1) Except in the case of a Government servant to whom the provisions of Rule 37 apply and subject to the provisions of 1[Rules 9 and 69] a pension other than family pension shall become payable from the date on which a Government servant ceases to be borne on the establishment.

(2) Pension including family pension shall be payable for the day on which its recipient dies.

68. Interest on delayed payment of gratuity

[(1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to GPF amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.]

(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate offices and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of [administrative reasons or lapse], the Secretary of the Ministry or the Department shall sanction payment of interest.

(3) The Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity ^[on account of administrative lapses].

(5) Deleted by G.I., Dept. of P. & P.W., Notification No. 7/10/89-P. & P.W. (F), dated the 28th November, 1991,

published as G.S.R. 677 in the Gazette of India, dated the 7th December, 1991 and takes effect from the date.”

11. In ***Gorakhpur University case (supra)***, the Hon’ble Apex Court had enhanced the rate on which the interest was to be paid on the entire pension and provided fund to 18% from 10% awarded by the Tribunal.
12. On perusal of facts and submissions of both the counsel for the parties, we are in consonance with the view of the Learned Tribunal that the Respondent was entitled to receive his payment of pension w.e.f. 15.09.2006, at the same rate as applicable on General Provident Fund in that particular year from the date he was due for grant of payment of retiral benefits in respect of his premature retirement. However, the Petitioners took contradictory and dylatric stands regarding pension to be paid to the Respondent. Therefore it is conclusively found that there was more than reasonable delay in the payment of pension to the Respondent and the Respondent is not responsible for the delay.
13. Hence, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

AUGUST 21, 2015

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