

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Judgment delivered on: April 23, 2015

% **W.P.(C) No. 3322/2014**

R.S. JINDAL

..... Petitioner

Through: Mr. Ashwin Vaish & Mr. Vinod Pandey,
Adv.

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondents

Through: Ms. Sriparna Chatterjee, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The petitioner preferred the present writ-petition under Articles 226 and 227 of the Constitution of India against the order dated 11.09.2013 passed by Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 318/2013.
2. The brief facts stated are that the petitioner was employed with the Municipal Corporation of Delhi (MCD) as an Assistant Engineer on 06.01.1961. Subsequently, he was promoted to the post of Executive Engineer on 22.09.1967 and further promoted as Superintending Engineer on 05.09.1974. He was transferred from MCD to the respondent

department i.e. Delhi Development Authority (DDA) on deputation to the post of SE (civil) on 22.05.1975 where he was promoted to the post of Chief Engineer w.e.f. 02.04.1984 and on his attaining 50 years of age, he was compulsorily retired vide order dated 23.12.1985.

3. Aggrieved from the aforesaid order of compulsory retirement, the petitioner preferred a Writ Petition before the Hon'ble High Court of Delhi and the compulsory retirement order was set aside vide order dated 15.12.1986. Thereafter, the respondent i.e. DDA preferred a SLP (No.2117 of 1987) before the Hon'ble Supreme Court of India, wherein, the direction was given to the respondent to pay full salary and other allowances of the petitioner till the disposal of the Special Leave Petition and consequently, the order dated 15.12.1986 was stayed.

4. The petitioner subsequently made a representation to the DDA to allow him to resume his duties. On his representation, the same was allowed vide order No. 2371 dated 21.06.89. The petitioner attained superannuation on 31.12.1993. The Special Leave Petition filed by the respondent before the Hon'ble Supreme Court of India was finally decided on 08.09.1994 by setting aside the impugned judgment dated 15.12.1986 with a direction that the salary and allowances already paid to the petitioner shall not be recovered.

5. Further, a dispute arose between the petitioner and the respondent when the respondent, vide order dated 15.12.1995 treated the period of

petitioner's compulsory retirement till his superannuation i.e. from 23.12.1985 to 31.12.1993 as re-employment period, which was not to be counted for computing pension or any other retiral benefits. The petitioner aggrieved by the said order filed a Writ Petition (No. 2300/1997) before the Hon'ble High Court of Delhi wherein, the petitioner's relief claimed was partly allowed vide order dated 17.12.2002. The respondent i.e. DDA aggrieved by the aforesaid order preferred an appeal (LPA Nos. 702-03 of 2003 & C.M. Nos. 1699/2003 and 827/2007) and, this Court vide order dated 12.10.2007 set aside the aforesaid order dated 17.12.2002. The petitioner aggrieved by the said order filed a Special Leave Petition i.e. (Civil) No(s). 5450-5453/2008 before the Hon'ble Supreme Court and the same was dismissed vide order dated 14.03.2008.

6. The petitioner thereafter made a representation to the respondent for payment of pension and retirement benefits dated 15.10.2008 and the said representation was allowed by the respondent vide order dated 12.11.2009 (No. F.9(30)75/PB-I/2483) whereby the respondent allowed the plea of the petitioner for treating the period w.e.f. 23.12.1985 to 31.12.1993 as qualifying service for calculation of pension. Accordingly, an amount of Rs. 11,84,175/- as arrears of pension, Rs. 1,10,550/- as gratuity was paid on 30.03.2010 and a further sum of Rs. 89,440/- by way of leave encashment was paid on 24.09.2010.

7. The petitioner thereafter, all of a sudden again made a representation to the DDA claiming therein, that he is entitled to interest on delayed payments.
8. Subsequently, the petitioner filed an O.A. No. 318/2013 before the learned Central Administrative Tribunal and the learned Tribunal vide order dated 11.09.2013 rejected the claim of the petitioner. Hence, the present Writ.
9. The learned counsel for the petitioner has submitted that the petitioner superannuated on 31.12.1993 and the respondent deliberately and intentionally did not pay the pension and other retiral benefits as per the rules within the stipulated period. Consequently, he is entitled to the interest arising out of the delayed period.
10. On the other hand, the learned counsel for the respondent has drawn our attention to the decision of the Division Bench of this Court dated 12.10.2007 and his representation made to the Department to show that the Department at no point of time was in default in dealing with petitioner's file of pension and other retiral benefits.
11. It is evident from the facts and circumstances that factually, there was no negligence on the part of the respondent. On the request of the petitioner, his retiral benefits were accorded on 30.03.2010 and 24.09.2010, and the petitioner himself had not claimed any interest in his representation or at any point of time till the making of such payments.

The present litigation is an imposed litigation on behalf of petitioner which is devoid of merit.

12. The petitioner is claiming interest on aforementioned sums of 11,84,175/-, Rs. 1,10,550/- and Rs. 89,440/- which were paid to him on account of retiral benefits. The interest claimed is on the basis of non-payment of the same by the Department (DDA) after his superannuation on 31.12.1993.

13. It is pertinent to mention here that the Interest Act, 1978, does not define the term 'interest'. It only talks about the 'rate of interest'. In the absence of specific definition, assistance may be taken from external aids of interpretation to define the term 'interest'. The dictionary meaning of 'interest', as defined by Oxford English Dictionary, Sixth Edition, Volume 1 is as follows:

"Money charged for the use of money lent or for not having to repay a debt, according to a specified ratio."

Stroud's Judicial Dictionary, Seventh Edition, 2008, Volume 2. P. 1385, defines the term 'interest' as follows:

"Interest is compensation paid by the borrower to the lender for deprivation of the use of his money."

14. The concept of interest evolved with the growth of agricultural produce and later with the passage of time, the economies became more dynamic with real growth possibilities/opportunities and it is in this scenario that the birth of lending institutions took place in the socio-

economic sphere ignoring the pressure of Islamic civilisation where *Quran* explicitly forbids charging of interest. The School of Salamanca expounds and supports the charging of interest. Charging of interest is a consideration as a premium paid for the risk taken by the loaning party.

15. The Hon'ble Supreme Court of India in the case of ***Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa, AIR 2015 SC 865*** defined the term interest in para 43 as follows:

“43.... ‘interest’ would be the return of compensation for the use or retention by one person of a sum of money belonging to or owed to another. It may be understood to mean the amount which one has contracted to pay for the use of borrowed money. It is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it could be said to be a charge, for the use of forbearance of a particular amount of money. In this sense, it is a compensation allowed in law for use of money belonging to another or for the delay in paying the said money after it has become payable.”

16. The petitioner was appointed as an Assistant Engineer on 22.09.1961 and was compulsorily retired vide order dated 23.12.1985. Aggrieved by this order, he filed a Writ Petition No.168/1986, which was allowed and aggrieved by the same, the respondent Department preferred a SLP (Civil) No. 2117/1987 before the Hon'ble Supreme Court of India and the Apex Court directed the respondent to make the payment of salary and other allowances pending disposal of SLP and the impugned order of the Division Bench of this Court was stayed.

17. In the meanwhile, it was the petitioner who approached the respondent for resuming his duties and accordingly, the respondent allowed the same and this situation continued till the petitioner attained the actual age of superannuation on 31.12.1993.

18. Thereafter, the petitioner preferred a Writ Petition No. CW 2300/1997 and CM 4720/1997 for taking into account, the period of compulsory retirement till his superannuation i.e. from 23.12.1985 to 31.12.1993 for calculation of pension which was partly allowed. The respondent, thereafter preferred an appeal, LPA No. 702-03 of 2003 wherein the Division Bench of this Court passed the following order dated 12.10.2007:

“35. In view of the above, we allow the present Appeal and set aside the judgment dated 17th December, 2002. It is held that for the period 23rd December, 1985 till 31st December, 1993, the respondent will not be entitled to any pension/retirement benefits as during this period he has been paid full payment and allowances. For the period w.e.f. 1st January, 1994, the respondent will be entitled to pension and retirement benefits. It is apparent that DDA has already paid the said amount in terms of the order dated 8th September, 1994 passed by the Supreme Court and as per time fixed in the Order dated 4th August, 1995. The Appeal is accordingly allowed but in the facts and circumstances of the case there will be no order as to costs.”

19. Aggrieved by the Order of this Court in LPA-No. 702-03/2003, the petitioner again preferred a Special Leave Petition No. 5450-5453/2008 before the Hon'ble Supreme Court of India which was dismissed by the Apex Court. In totality, the order of this Court dated 12.10.2007 attained finality. Subsequently, the petitioner at his instance proposed an offer of settlement of all outstanding dues against the respondent.

20. After looking into the facts and circumstances and after due deliberation, the petitioner was paid Rs. 11,84,175/- and Rs. 1,10,550/- on 30.03.2010 and Rs. 89,440/- on 24.09.2010 and the petitioner after receiving this amount, thought to claim interest on the delayed payment.

21. The whole dispute hinges around whether the amount so received from the respondents by the petitioner as pensionary benefits is attached with the interest?

The answer is partly yes.

22. The petitioner factually was compulsorily retired on 23.12.1985 in public interest. The petitioner's order of compulsory retirement was upheld by the Hon'ble Supreme Court of India in Civil Appeal No. 793/1987 vide order dated 08.09.1994 giving liberty to the petitioner to move an application for fixation of pension as per rules. The said order is reproduced as under:

"We find that the permission sought for and request made are reasonable. Accordingly, the judgment of the

High Court of Delhi dated December 15, 1986 is set aside. The respondent is permitted to withdraw the writ-petition and is accordingly dismissed as withdrawn. Since, the respondent was reinstated pursuant to the order of the Division Bench and he continued in service till he attained the age of superannuation by performing the duties of his office during that period, we direct that the salary paid to him during that period shall not be recovered. However, it would be open to the respondent to make application to the authorities for fixing his pension, it would be open to authorities to fix such pension according to rules.”

23. Later, after another round of litigation for calculation of petitioner's pension, the petitioner and the respondent both agreed that the petitioner's services shall be counted till 31.12.1993 for calculation of his pension. The question arises as to why it has so happened in the present case. It seems that the petitioner after withdrawing his Civil Appeal No. 793 of 1987, and after another round of litigation, later in 2008, gave a fresh representation for calculation of his retirement benefits to the respondent. The said representation is reproduced hereinunder:

Annexure P-17

R.A.D

Confidential
Urgent

To,

*The Commissioner (Personnel)
Delhi Development Authority
Vikas Sadan, New Delhi-110023*

Subject: Payment of pension and retirement benefits.

Dear Madam,

This is with reference to Order No. 199/Vig/4705, dated 05.05.2008 vide which it has been notified by your office that the Hon'ble Lt. Governor has been pleased to withdraw seven chargesheets against me in the totality of the facts and circumstances of the case.

2) In respect of the aforesaid order dated 05.05.08, I am to only submit that with the use of the vague and opaque words "totality of the facts and circumstances of the case" the DDA has sought to hide the true reason behind the withdrawal of the charge sheets pertaining to the 24 to 36 years old matters. As a matter of fact, these chargesheets had been rendered legally invalid 14 years earlier with the passing of the final judgment and Order dated 08.09.1994 by the Hon'ble Supreme Court and on the ground of the Pension Rule 9(2)(b)(ii). The allegations contained in these chargesheets had been investigated/inquired into by the competent authorities and prove to be false/not proved. Therefore, these chargesheets were liable to withdrawn by the DDA 14 years earlier itself.

3) Vide the aforesaid order dated 05.05.2008, it has also been conveyed that DDA proposes to pay pension & retirement benefits to me with effect from my de facto date of retirement i.e. 1st January, 1994. Apparently the DDA would withdraw the pension paid by it earlier with effect from the de jure date of retirement 23.12.1985 vide its order dated 16.12.1997 (copy enclosed) in compliance of the final judgment and order dated 08.09.1994 of the Hon'ble Supreme Court and the Pension Rules 83.

*4) In respect of the para 3 above, I am to submit that withdrawal of the pension already paid to me by the DDA w.e.f. de jure date of retirement 23.12.1985 would be sheer **Contempt** of the final Order & Judgment dated **08.09.1994** of the Hon'ble Supreme Court and Pension Rules **83** in compliance of which it had been paid by DDA vide its*

aforesaid order 16.12.1997, besides such withdrawal being barred under law after lapse of 11 years.

5) *I am also submit that the stand taken by DDA before the Hon'ble High Court that payment of pension w.e.f. de jure date of retirement 23.12.1985 leads to dual payment for the same service relating to the period 23.12.1985 to 31.12.1993 is absolutely wrong, misleading, gross misinterpretation and distortion of final Order and Judgment dated 08.09.1994 of the Hon'ble Supreme Court. **Most unfortunate part of the whole matter is that no authority in DDA appears to have applied his/her mind independently and dispassionately to the import of the said Judgment dated 08.09.1994 of the Hon'ble Supreme Court, the clear, unambiguous, and incontrovertible meanings of which are,***

(i) *I stood retired from service w.e.f. 23.12.1985 and therefore my date of retirement is 23.12.1985 which would govern all matters pertaining to my pension etc. including date of payment of pension.*

(ii) *On account of fortuitous circumstances, I continue to work for DDA even after retirement dated 23.12.1985 till 31.12.1993 and therefore, the Hon'ble Supreme Court ordered that salary and allowances paid by DDA to me for the post retirement period/service 23.12.1985 to 31.12.1993 would not be recovered from me and thus the Hon'ble Court directed the salary to be retained by me as compensation for the service rendered by me during the post retirement period from 23.12.1985 to 31.12.1993.*

(iii) *My pension would be fixed & paid as per rules. (Pension Rules 83 in this case according to which I am entitled to payment of pension w.e.f. date of retirement 23.12.1985).*

The critical fact that the DDA authorities have so far failed to appreciate is that the pension paid to me for the period 23.12.1985 to 31.12.1985 is not a

remuneration for the service rendered by me during this period but it is for the services rendered by me upto 23.12.1985. So it can not amount to dual payment for the same service by any stretch of imagination.

6) *However despite the aforesaid facts and law, if the DDA still insists to pay pension etc. w.e.f. 01.01.1994 only, I in order to curtail my travails accept the same provided the DDA follows the fair principles of equity and natural justice and adopts same date of retirement i.e. 01.01.1994 for both payment of pension as well as for computation of the amount of pension by considering the average emoluments as existing on 01.01.1994 and the length of qualifying service reckoned upto 01.01.1994.*

7) *As you know this matter has been hanging fire for the last more than 14 years since 08.09.1994 when the Hon'ble Supreme Court passed the final Judgment & Order in the matter. I would therefore request you to kindly obtain the formal approval of the competent authority to the above and convey the same to me at your earliest convenience.*

Thanking You.

Dated: 15.10.2008

Encl: As Above

Yours Faithfully

s/d

R.S. Jindal

Chief Engineer DDA (Retd.)

A1/13 Shakti Nagr Extension, Delhi – 110052

Tele: 98100-27108, 27309954, 27309612

24. Para 1 of the aforesaid representation shows that the petitioner was facing seven charge-sheets and the same were withdrawn on 05.05.2008.

Para 6 of the aforesaid representation (Annexure P-17) shows nothing except the proposal on behalf of the petitioner for accepting his date of retirement to be 01.01.1994 for the purpose of computation of pension and other benefits. The letter/representation dated 15.10.2008 and its consequential order dated 12.11.2009 do not make any reference to any interest which may have accrued in the favour of the petitioner.

25. The documents on record shows that both the parties were in the process of litigation and the petitioner was facing seven charge-sheets even after his superannuation on 31.12.1993 till 05.05.2008 on which date the said charge-sheets were withdrawn after due consultation and deliberation and just prior to that, the Special Leave Petition No. 5450-5453/2008 too was dismissed on 14.03.2008. In these circumstances, we find no administrative lapses on the part of the respondent i.e. DDA to attract Rule 68 of the Central Civil Services (Pension) Rules, 1972 till 05.05.2008 when all the seven charge-sheets qua against the petitioner were withdrawn by the respondent D.D.A.

26. In the instant case, the petitioner succeeded in continuing on duty even after his compulsory retirement order dated 23.12.1985 and further succeeded in acquiring pensionary benefits on 30.03.2010 and 24.09.2010. However, the respondent (DDA) should have paid all the pensionary benefits within a period of one month from 05.05.2008 as per the rules.

Since, no adjudication between the petitioner and respondent was left out

and all the disputes came to an end on the aforementioned date i.e. 05.05.2008, therefore, the petitioner is entitled to the interest @ 12% p.a from 04.06.2008 till the date of payment of amounts on 30.03.2010 and 24.09.2010. The aforesaid interest accrued @ 12% p.a in favour of the petitioner should be paid within a period of two months from the date of this judgment and consequently, the present writ petition to this extent is accordingly allowed and the impugned order dated 11.09.2013 passed by the learned Tribunal in O.A. No. 318/2013 is set aside. No order as to costs.

**I.S.MEHTA,
(JUDGE)**

**KAILASH GAMBHIR,
(JUDGE)**

APRIL 23, 2015

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