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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10331 OF 2015

The Administrator, U.T. of Daman ...Petitioner
Vs.
Ashok M. Sonnad & Ors. ...Respondents

Mr. Shrishailya S. Deshmukh, Advocate for the Petitioner
Mr. G.K. Masand a/w. Mr. Himanshu Shukla, Advocate
for Respondent No.1

CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.
DATED :11TH APRIL, 2017

ORDER [PER SHRI. M.S. KARNIK, J.)

1. The Petitioner viz. the Administrator of Union Territory of Daman and Diu the original Respondent No.1 before the Central Administration Tribunal, Bombay Bench, Mumbai is challenging the order dated 6th February, 2015 passed by the Tribunal in O.A. No.54 of 2014. The Tribunal has allowed the O.A. filed by the Respondent No.1 and has granted payment of interest on the delayed payment of gratuity.

2. The Respondent No.1 approached the Tribunal contending that he was placed under suspension on 6th January, 2003 upon filing of the F.I.R. by CBI on 7th November, 2002 under Prevention of Corruption Act. On 30th March 2005 the CBI filed charge memo and simultaneously charge-sheet was served on the Respondent No.1 by the Petitioner which according to the Respondent No.1 was identical to the charge-sheet filed by the CBI.

3. The Respondent No.1 was reinstated in services on 21st May, 2008 after revoking his suspension. Respondent No.1 superannuated on 30th June 2008. 13 months after his retirement the Petitioner was granted provisional pension on 16th July, 2009 with a specific note that no gratuity would be paid as per Rule 69 (1) of the CCS (Pension) Rules 1972 till the conclusion of departmental and judicial proceedings against the Respondent No.1. Respondent No.1 was acquitted of all the charges by the Special Judge of CBI Court at Daman on 25th January, 2011. The CBI informed the Petitioner of the aforesaid judgment of the CBI Court and that the Court case was treated as closed.

4. The Petitioner dropped the charges framed against the Respondent No.1 on 9th February, 2012. However, on the alleged ground of Respondent No.1 not giving information of acquisition of immovable property he was awarded a minor penalty of “Censure”. The Respondent No.1 did not challenge the said Censure order as he had already retired and as the said penalty of Censure did not come in the way of his receiving retiral benefits.

5. The Petitioner by an order dated on 12th March, 2012 treated the period of suspension from 6th January, 2003 to 21st May, 2008 as on duty for all purposes and full pay and allowances were paid to the Respondent No.1. The Petitioner also sanctioned and granted financial upgradation under ACP Scheme to the Respondent No.1 on 27th April, 2012.

6. The Petitioner paid to the Respondent No.1 a sum of Rs.7,09,184/- towards gratuity. The same was paid during the period between 16th July, 2012 and 25th July, 2012. The Respondent No.1's case in O.A. is that the gratuity was payable to

the Respondent No.1 on his superannuation on 30th June, 2008. The Respondent No.1, therefore, claims interest on delayed payment of gratuity with effect from 1st July, 2008 as per interest rates applicable to GPF deposits.

7. According to the Petitioner in view of Rule 68 of the CCS (Pension) Rules, 1972 Respondent No.1 is not entitled for interest on delayed payment of gratuity in view of the penalty of Censure imposed on him for proved charges of negligence of not giving intimation to the Government while in service for acquisition of immovable property.

8. The learned Counsel for the Petitioner relied upon Rule 68 read with Government of India decisions / guidelines dated 22nd January, 1991which reads thus:

> ***(a)*** *In such cases if the Government servant is exonerated of all charges and where the gratuity is paid on the conclusion of such proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement vide*

O.M.No.1(4)/Pen.Unit/ 82, dated the 10th January, 1983. If the payment of gratuity has been authorized after three months from the date of his retirement interest may be allowed beyond the period of three months from the date of retirement.

(b)------

(c) In case where the Government servant is not fully exonerated on the conclusion of disciplinary / judicial proceedings and where the competent authority decides to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent authority for payment of gratuity vide O.M.No.7(1) PU / 79, dated 11.07.1979. If the payment of gratuity is delayed in such cases interest will be payable for the period of delay beyond three months from the date of issue of the above mentioned orders by the competent authority".

9. The learned Counsel for the Petitioner, therefore, submits that the Disciplinary Authority having arrived at a finding that "however the charged officer cannot be absolved for the negligence of not givng intimation to the Government of acquiring immovable property while in Government service", it cannot be said that the

Respondent No.1 stood fully exonerated. The learned Counsel for the Petitioner thus submits that as the Respondent No.1 was not fully exonerated, he did not qualify for the payment of interest on the delayed payment of gratuity.

10. The learned Tribunal in para 12 of the order has observed that not giving intimation to the Government about acquisition of immovable property was not part of the charges framed. Further more the Tribunal observed that the charges framed in the Disciplinary proceeding were dropped. The learned Tribunal has come to the conclusion that there is nothing on record produced to show that not giving intimation to the Government of acquisition of immovable property was part of the charges framed in the disciplinary proceeding although it figures as a finding in the Inquiry Officer's Report.

11. We find that the view taken by the Tribunal that if the charges are dropped and the charged official is honourably discharged, no charge forming part of the charges framed survives, cannot be said to be a perverse view warranting interference.

12. It is not in dispute that the Special CBI Court honourably discharged the Respondent No.1 on 25th January, 2011. It is also not in dispute that the Respondent No.1 was paid full pay and allowances for the suspension period by treating the same a period spent on duty for all purposes. The Respondent No.1 was also granted financial upgradation under the ACP Scheme.

13. In this view of the matter the Tribunal was of the opinion that the Respondent No.1 stood fully exonerated.

14. We, therefore, do not find any error in the view taken by the Tribunal granting interest on the delayed payment of gratuity from the date following the date of retirement i.e. 1st July, 2008 till the date when the actual payment was made on 25th July, 2012 at the rate of interest payable on GPF deposits.

15. The Writ Petition is accordingly rejected with no order as to costs.

(M.S. KARNIK, J.) **(SMT. V.K. TAHILRAMANI, J.)**