IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.308 of 2018
In
Civil Writ Jurisdiction Case No.538 of 2015

==

Sanjay Kumar Singh S/o Sri Shivnath Singh R/o 265, Civil Lines, Near Head office, P.S. Kotwali, District - Azamgarh (U.P.)

... ... Appellant/s

Versus

1. The State of Bihar
2. The Home Commissioner, Bihar, Patna
3. The Special Secretary, Home (Police) Dept. Govt. of Bihar, Old Secretariat, Patna
4. The Director (Prosecution), Patna, Bihar
5. The Director, Provident Fund, Patna, Bihar
6. The District Provident officer, West Champaran, At Bettiah
7. Officer Incharge Personal Claims Settlement Wing, Dept. of Finance, Patna, Bihar
8. The Collector - cum - District Magistrate, West Champaran at Bettiah

... ... Respondent/s

==

Appearance :

For the Appellant/s : Mr. Arun Kumar Tiwari, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, A.C. to A.A.G. 3

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-12-2018

Heard Sri Arun Kumar Tiwary, learned counsel for the appellant and Sri Suman Kumar Jha, learned Assisting Counsel to AAG-III.

This appeal questions the correctness of the judgment dated 5th February, 2018 of the learned Single Judge whereby the prayer for award of interest as against delayed payment of G.P.F. has been denied. Learned counsel submits that there was no default on the part of the appellant and not only this, after the appellant had tendered his resignation on 14th November, 1998. the request for release of the amount of G.P.F. had been communicated to the Provident Fund Commissioner, Patna by the District Magistrate of Gonda (U.P.) to expedite the said payment which had been withheld for long. Learned counsel submits that the said request had preceded the acceptance of the resignation of the appellant which came to be communicated on 11th November, 2005 with effect from 14.11.1998. In this background, it is contended that the appellant was, for the first time, after a long drawn correspondence intimated and called upon to fill up a form by the respondents for the payments that were due to him under his G.P.F. account.

The appellant, dissatisfied with the extent of payments made and also denial of certain other monetary benefits as well as service benefits, filed C.W.J.C. No. 10444 of 2010. That was disposed of by a learned Single Judge on 11th May, 2011 by the following judgment :-

> "Petitioner's grievance in this writ application is confined to payment of his monetary benefits and other service benefits for the period from 14.09.1990 to 14.11.1998 during which he was in the service of the State of Bihar, and for a direction that his service details may be sent to the State of U.P. for being added to his service being rendered in the State of U.P.
>
> Learned counsel for the petitioner as well as learned counsel for the State of Bihar submit that after

filing of this writ application a sum of Rs. 78,286/- towards G.P.F. dues has been paid to the petitioner, which as per submission of the learned counsel for the petitioner he was received under protest as the interest has not been calculated on the amount. In respect of their grievances of the petitioner, learned counsel for the State submits that he has no instruction.

The writ application was filed on 06.07.2010 with service of two copies of the same in the office of learned Advocate General. However, till today no counter affidavit has been filed in the case.

In the circumstances, petitioner is directed to file a detailed representation before the Director (Prosecution) within four weeks from today giving details of his dues and entitlements for the period he served under the Directorate as Assistant Public Prosecutor. In the representation, he shall also request that his service record may be sent to the State of U.P. immediately. The representation of the petitioner, if filed, shall be considered and appropriate orders shall be passed on the same in accordance with law, item-wise, by the Director of Prosecution positively within a period of two weeks from the date of receipt of the representation.

The writ application is disposed of with the aforesaid observations and directions."

This was followed by a contempt application having been filed by the appellant on account of non-compliance being M.J.C. No. 4778 of 2011. That was disposed of on 23rd January, 2013 by the following orders :-

"Learned counsel for the petitioner accepts that the dues of the petitioner have been paid. However, he submits that since outstanding dues were pending for long, some interest should have been paid. He further submits

> that the service record of the petitioner has not been forwarded to the Uttar Pradesh Government.
>
> Since the dues of the petitioner have been paid, this Court is not inclined to keep the matter pending.
>
> Contempt application is accordingly disposed of with a direction to the authorities to forward the service record of the petitioner to the Uttar Pradesh Government as early as possible."

The appellant then preferred a review application for review of the judgment dated 11th May, 2011, which was disposed of granting liberty to the appellant to file a fresh petition. The order dated 26.09.2014 passed by the learned Single Judge is extracted hereinunder :-

> "This interlocutory application has been filed for condonation of delay in filing this review application.
>
> For the reasons stated in the I.A., the same is allowed. Delay, if any, in filing this review application is condoned.
>
> Petitioner has filed this application for review of the order dated 11.05.2011 passed in CWJC No. 10444 of 2010 by which writ application was disposed of with direction to the petitioner to file a detailed representation before the Director (Prosecution) within four weeks giving details of his dues and entitlements for the period he served under the Directorate as Assistant Public Prosecutor.
>
> Learned counsel for the petitioner submits that petitioner only seeks liberty to file fresh writ application in the matter.
>
> Liberty is granted. The review application is disposed of accordingly."

It is thereafter that the appellant preferred the writ petition giving rise to the present appeal seeking the reliefs of commanding the respondents to award interest on the G.P.F. amount and to transmit the service records of the petitioner that had not been transmitted to his present employer till date.

The learned Single Judge, after having examined the aforesaid claim, recorded that the petitioner has confined his relief only towards the claim of his G.P.F. interest amount and then held that in view of the law laid down by this Court in the full bench decision reported in 2015(1) PLJR 568, Ram Gulam vs. State of Bihar, since the appellant had failed to move an appropriate application as per the Bihar General Provident Fund Rules, 1948, he was not entitled for the interest as claimed by him. The learned Single Judge observed that since there was no formal application, which came to be filled up by the appellant for the first time on 17.10.2010, he cannot claim any interest on the G.P.F. amount. The petition was accordingly dismissed. Hence this appeal.

Learned counsel relying on the observations made in the Full Bench decision of Ram Gulam (supra) submits that there was no default on the part of the appellant, inasmuch as, his resignation was accepted only in November, 2005 and, therefore, there was no occasion for him for making any request prior to that even though the formal request had already been communicated way back in 2001 through the District Magistrate, Gonda which document has not been denied by the respondents. It is the contention of the learned counsel for the appellant that the said communication of the year 2001 by the District Magistrate, Gonda amounted to registering the demand in respect of the payment of G.P.F. and, consequently, since the said demand had been made way back in 2001 long before the pronouncement was made by the Full Bench, then the said demand should be treated to be a valid demand in law irrespective of the observations made by the Full Bench in the case of Ram Gulam (supra).

Learned counsel, therefore, contends that payment of G.P.F., being the obligation of the State and its officials, invites the payment of interest if it has been unjustifiably withheld for no fault on the part of the appellant.

In the above background, it is urged that the learned Single Judge having not examined these aspects, the impugned judgments deserves to be set aside and the relief as prayed for be granted.

Learned counsel for the State, however, submits that in view of the ratio of the Full Bench decision in the case of Ram Gulam (supra), the absence of moving of a formal application having been found to be a sine qua non for payment of interest, the claim of the appellant has been rightly declined by the learned Single Judge as no directions could have been given contrary to the judgment in the case of Ram Gulam (supra). It is submitted that the legal position is absolutely clear that the obligation of payment rests on the State Government, but the same is dependent upon the moving of an application within a period of six months of the date of entitlement and it is only then that interest becomes awardable. Otherwise, according to the ratio of the Full Bench decision, there would be no liability of payment of interest if the application has been moved beyond the said period.

We have considered the submissions raised and we have also perused the Bihar General Provident Fund Rules, 1948. It is undisputed that the petitioner did quit his services on 14th November, 1998, but his resignation was accepted in November, 2005. In between the request for release of his G.P.F. amount had been made in the year 2001 under the letter of District Magistrate, Gonda, copy whereof has been filed as Annexure-2 to the I.A. application moved on behalf of the appellant. The same is extracted hereinunder :-

"कार्यालय- जिला मजिस्ट्रेट, गोण्डा

सेवा में,

भविष्य निधि आयुक्त
वित्त विभाग, पन्त भवन
बेली रोड, पटना।

प्रेषित,

जिला मजिस्ट्रेट, गोण्डा
महोदय,

सादर अवगत कराना है कि सहायक अभियोजन अधिकारी श्री संजय कुमार सिंह दिनांक ३-५-९९ से जनपद गोण्डा में नियुक्ति है। इनके द्वारा अवगत कराया गया कि पूर्व में ५ अक्टूबर, १९९० से सहायक लोक अभियोजन के पद पर जनपद राँची में कार्यरत थे। उ0प्र0 में सहायक अभियोजन अधिकारी पद पर चयनित होने के उपरान्त इनके द्वारा सहायक लोक अभियोजन के पद से मुक्ति जनपद बेतिया से नियुक्ति के मध्य किया गया।

श्री सिंह द्वारा यह भी अवगत कराया गया है कि दिनांक ०५.१०.९० से १४.११.९९ तक उनके वेतन से जी०पी०एफ० की कटौती की गयी परन्तु उक्त धनराशि का भुगतान अभी तक उन्हें नहीं किया गया है। जिससे उनकी आर्थिक स्थिति ठीक नहीं है।

श्री संजय कुमार सिंह सहायक अभियोजन अधिकारी का प्रार्थना पत्र अग्रसारित करते हुए अपेक्षा की जाती है कि उनके भविष्य निधि की धन राशि देने के आदेश पारित करने का कष्ट करें।

जिला मजिस्ट्रेट
गोण्डा

पत्रांक-आ
दिनांक मई, २००१"

The acceptance of resignation on 11th November, 2005 is also on record which has been accepted with effect from 14.11.1998. It is, thus, clear that from 1998 till the year 2005, there was an indefinite state and for which neither the petitioner nor his employer can be blamed inasmuch as it was the Government of Bihar which took seven years to accept the resignation of the appellant. It is also noticeable that the Service Book of the appellant has not been transmitted to the present employer of the appellant till date. This situation may be pathetic and may be reprehensible on the part of the respondent-State, but the fact remains that after the resignation was accepted in the year 2005, the appellant does not appear to have moved any application or even a formal application for the purpose of release of his G.P.F. amount as communicated in the year 2001. The formal application admittedly was moved in the year 2010. Thus, there is no valid explanation as to why the appellant did not choose to move an application after his resignation was accepted in November, 2005. This default, therefore, is on the part of the appellant and not on behalf of the respondents. The Full Bench judgement in the case of Ram Gulam (supra) relied on approved the ratio of the Division Bench in the case of State of Bihar vs. Ram Pavitra Singh reported in 2010(3) PLJR 906. The said judgement of the Division Bench deserves notice a little in detail and for that we may gainfully extract paragraph nos. 10 and 12 thereof. The same is quoted hereinunder :-

"10. In the factual premises of this case there would be no need to go into the question of interpretation of **Rule 14 of the G.P.F. Rules or to the circulars dated 09.05.1988 and 05.03.2001,** inasmuch as the State Government has repeatedly insisted that the delay by the authority in making payment of provident fund would not deprive the employee in getting the benefit of payment of interest. This aspect of the matter in fact has been clarified by the Finance Commissioner of the State of Bihar in his circular dated 05.03.2001 while explaining the scope of the earlier circular dated 6th May, 1988 on the subject wherein it has been clearly stipulated that the interest beyond a period of six months will not be paid only in such case where the application was filed after a period of six months. In this context from the reading of the circular dated 05.03.2001 it is quite explicit that if after receipt of the application for final withdrawal of G.P.F. the delay in payment is on account of administrative lapses on the part of the Drawing and Disbursing /sanctioning authority, the interest will be paid upto the date of payment and the amount of interest paid in excess of the period of six months will be recovered from the concerned erring officials.

12. We, however, having decided this case on its facts would modify the impugned order to the extent that neither of the two circulars of the Finance Department being notification dated 6th May, 1988 (Memo No. 3373) nor the subsequent clarificatory circular contained in the Finance Commissioner's letter dated 05.03.2001 (Annexure-'B' and 'B/2' to the counter affidavit) are bad in law or in fact by themselves provide denial of statutory interest for the period after expiry of six months of the retirement of the incumbent and till the date of filing of the application in all events. **Both the aforesaid circulars in fact are valid circulars under the normal circumstances and are inconfirmity with Rule 14 of the Bihar G.P.F. Rules inasmuch as the incumbents at the time of their retirement are always expected to file not only their pension papers in prescribed proforma in terms**

of Rule 189 of Bihar Pension Rules but also their application for final withdrawal of G.P.F. in terms of Rule 29 read with its Annexure-A in the prescribed proforma under G.P.F. Rules."

A perusal of the said paragraphs would indicate that the Division Bench took into consideration the Circulars and the clarificatory note of the Finance Commissioner of the State of Bihar dated 6th May, 1988 and 5th of March, 2001 and after noticing the same, the Division Bench observed that it is clearly stipulated that the interest beyond the period of six months will not be paid only in such cases where the application was filed after a period of six months. A challenge had also been raised to the consequential action in pursuance of the said circulars, but no relief was prayed for quashing of the said circulars in the said petition. Nonetheless, upon an examination of the circulars, the Division Bench came to the conclusion that the circulars are valid and under the normal circumstances are in conformity with Rule-14 of the Bihar General Provident Fund Rules,1948 inasmuch as the incumbents at the time of quitting their services are expected to file not only their pension papers, but also their application for final withdrawal of the General Provident Fund in terms of Rule 29 read with Annexure-A in the prescribed proforma under the G.P.F. Rules.

It is the said ratio which has been approved by the Full Bench in the case of Ram Gulam (supra) and, accordingly, the Full Bench in paragraph-14 held as follows :-

> "14. In our opinion, the law is clear. The view expressed by this court in the matter of Bidya Devi (supra) is not sustainable. It is indeed the duty of the State Government to remit the amount of provident fund standing to the credit of a Government servant on the date of his retirement or soon thereafter but not without a formal application. It is trite that whether any application is received or not, the State Government must remit the amount of provident fund to the Government servant. Until the amount is remitted to the Government servant, the State Government is under obligation to credit interest at the statutory rate. The said obligation extends to six months from the month in which the payment becomes due. **<u>After the expiry of the said period of six months, if the State Government has not received the application for withdrawal of the provident fund amount, the State Government is under no obligation to pay interest over the outstanding amount of the provident fund.</u>** However, if the State Government has received the application for withdrawal of the provident fund amount within the said six months, the State Government is obliged to pay interest over the amount of provident fund at statutory rate till the date the amount is paid."

Keeping in view the ratio of the aforesaid decisions, we find in the present case that after the resignation of the appellant had been accepted in the year 2005, even though the State of Bihar did not choose to communicate anything nor any such material was brought on record on the request made in the year 2001, yet the appellant also did not take any steps for moving an application for release of the amount, at least within six months of the date of acceptance of his resignation.

In this view of the matter, the communication of the year 2001 by itself will not amount to moving an application implicitly or even otherwise impliedly keeping in view the Bihar General Provident Fund Rules, 1948. Consequently, for the aforesaid additional reasons as well we are unable to decipher any ground for interfering with the judgement of the learned Single Judge and, accordingly, dismiss the appeal.

However, if the fact that the Service Book of the appellant has still been retained by the respondents is correct, then the same deserves to be dispatched forthwith and in the absence of any such action by the respondents within a period of six weeks from today, it will be open to the appellant to move an appropriate contempt application for non-compliance thereof.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Nasimul/-
K.C.Jha

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.12.2018
Transmission Date	N/A