IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4044 OF 1999

Satishkumar B. Mishra ...Petitioner
Versus
Union of India & Ors. ...Respondents

Mr. Chandan Athani i/b. Mr. Vikas Mahanagare for Petitioner.
Mr. Y. R. Mishra with Mr. N. R. Prajapati for Respondents – Union of India.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

Date of Reserving the Judgment : 31 July 2018
Date of Pronouncing the Judgment : 03 August 2018

JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 29th April 1999 made by the Central Administrative Tribunal (CAT), Mumbai, dismissing petitioner's Original Application No. 205 of 1998 seeking interest on GPF subscription for the period between August 1987 and September 1992.

3] The petitioner, whilst in Government service was charged for misconduct and penalty of compulsory retirement from service was imposed upon him. The petitioner challenged this penalty by instituting Original Application No. 616 of 1990 which was disposed of by the CAT vide its judgment and order dated 7th February 1992. The penalty of compulsory retirement was set aside mainly on the technical ground that there was failure to furnish the petitioner with the copy of enquiry report. The respondents were given liberty to continue the disciplinary proceedings but after furnish of copy of enquiry report to the petitioner. The petitioner, in the meantime, was directed to be reinstated in service.

4] In pursuance of the judgment and order dated 7th February 1992, the petitioner was reinstated in service; disciplinary proceedings were continued after furnish of copy of enquiry report to the petitioner and again, penalty of compulsory retirement was imposed upon the petitioner effective from 30th June 1993.

5] The petitioner, even before the penalty of compulsory retirement could be once again imposed upon him instituted contempt petition no. 130 of 1992 alleging non implementation of the CAT's order dated 7th February 1999 with regard to payment of arrears of salary etc. This contempt petition was disposed of by the CAT by its order dated 1st September 1992 making a direction to the respondents to pay to the petitioner arrears of salary etc. from 27th July 1987 till the conclusion of disciplinary proceedings and the result thereof.

6] In pursuance of the order dated 1st September 1992, there is no dispute that arrears of salary etc. were in fact paid to the petitioner. Further, there is also no dispute that an amount of Rs.35,412/-, which was balance in the petitioner's provident fund account was also paid to the petitioner when the punishment of compulsory retirement was imposed upon the petitioner initially. However, after the penalty of compulsory retirement was set aside by the CAT by its judgment and order dated 7th February 1992 and the petitioner was reinstated in service, this amount, was recovered by the respondents from out of the arrears of salary payable to the petitioner. This recovery was not effected in lump sum but by way of deduction of Rs.800/- per month from August 1987 to 30th January 1993. Admittedly, no interest was recovered by the respondents from the petitioner on this amount.

7] The petitioner, however instituted Original Application No. 205 of 1998 seeking for interest on the amount of Rs.35,412/- from March 1988 onwards as well as on the contribution of Rs.800/- per month to the provident fund account from August 1987 to June 1993 for which lump sum recovery had been made by the respondents on the basis of setting aside of the penalty of compulsory retirement by the Tribunal. The CAT, by the impugned judgment and order dated 29th April 1999 has rejected Original Application No. 205 of 1998. Hence, the present petition.

8] Mr. Chandan Athani, the learned counsel for the petitioner submits that in terms of the proviso to Rule 11(3) of the General Provident Fund (CS) Rules, 1960 (said Rules), the petitioner is entitled to interest on such subscription payable from the month in which the pay or leave salary of the subscriber was due under the Rules, irrespective of the month in which it was actually drawn. He submits that the proviso to Rule 11(3) of the said Rules makes no distinction whatsoever depending upon whether the delay was on account of any administrative reasons as attributable to the State Government or whether the delay was on account of setting aside of the penalty of compulsory retirement at a later date by a judicial order. He submits that the Government was at fault in imposing the penalty of compulsory retirement without furnish of copy of enquiry report to the petitioner. Therefore, the delay between the years 1987-1993 is clearly attributable to the Government itself. He submits that the GPF amount was retained and utilized by the Government and therefore it is only appropriate that the Government pays interest on this amount otherwise, this would amount to unjust enrichment by the Government.

9] Mr. Athani, the learned counsel for the petitioner also placed on record communication dated 26th September 2005, which according to him, supports the plea of the petitioner in the matter of payment of interest. He refers to the penultimate paragraph of communication dated 26th September 2005 in which it is stated that the interest can be allowed when there is no delay on the part of subscriber but payment is delayed due to administrative reasons.

10] For all these reasons, the learned counsel for the petitioner submits that the impugned judgment and order is liable to be set aside and the reliefs as prayed for by the petitioner in the present petition are liable to be granted.

11] Mr. Mishra, the learned counsel for the respondents submits that Rule 11(3) or the proviso thereto is not at all attracted to the facts and circumstances of the present case. He submits that there was no delay on the part of the respondents. He submits that there was no occasion for making any payment to the petitioner until by judicial order, the penalty of compulsory retirement was set aside and liberty was granted to proceed with the enquiry after furnish of copy of enquiry report to the petitioner. He points out that when the respondents recovered the amounts already paid to the petitioner, such recoveries were done without levying any interest upon the petitioner. He therefore submits that it is the petitioner, who is seeking to unjustly enrich himself by instituting Original Application.

12] Mr. Mishra further submits that Original Application No. 205 of 1998, was barred by constructive *res judicata*. He submits that relief of interest was required to be prayed for by the petitioner in Original Application No. 616 of 1990 in which the petitioner had challenged the order of compulsory retirement. Since no such relief was applied for or in any case granted, the subsequent Original Application No. 205 of 1998 was not at all maintainable on the principles of constructive *res judicata*.

13] For all the aforesaid reasons, Mr. Mishra submits that the present petition may be dismissed.

14] Rival contentions now fall for our determination.

15] Since, the emphasis of the petitioner was on Rule 11(3) of the said Rules, the same is transcribed below for ready reference :

> *"(3) In this rule, the date of deposit shall in the case of recoveries from emoluments be deemed to*

> *be the first day of the month in which it is recovered, and in the case of amounts forwarded by the subscriber, shall be deemed to be the first day of the month of receipt, it is received on or after the fifth day of that month, the first day of the next succeeding month :*
>
> *Provided that where there has been delay in the drawal of pay or leave salary and allowances of a subscriber and consequently in the recovery of his subscription towards the Fund, the interest on such subscriptions shall be payable from the month in which the pay or leave salary of the subscriber was due under the rules, irrespective of the month in which it was actually drawn :*
>
> *Provided further that in the case of an amount forwarded in accordance with the proviso to sub-rule (2) of Rule 10, the date of deposit shall be deemed to be the first day of the month if it is received by the Accounts Officer before the fifteenth day of that month :*
>
> *Provided further that where the emoluments for a month are drawn and disbursed on the last working day of the same month, the date of deposit shall, in the case of recovery of his subscriptions, be deemed to be the first day of the succeeding month."*

16] There is no clarity as regards the applicability of Rule 11(3) to the facts and circumstances of the present case. The petitioner has failed to demonstrate as to how Rule 11(3) applies to his case, which is, quite peculiar. As noted earlier, the penalty of compulsory retirement was imposed upon the petitioner and in pursuance of the same, there is no dispute that amount of Rs.35,412/-, which was balance in his PF account was in fact paid to the petitioner. Thereafter, the CAT, by its order dated 7th February 1992 in Original Application No. 616 of 1990 sets aside the penalty of compulsory retirement for failure to supply to the petitioner copy of the enquiry report and ordered reinstatement of the petitioner together with consequential benefits. The CAT also granted liberty to the respondents to proceed with the disciplinary proceedings after furnish of copy of enquiry report to the petitioner.

17] Since, there was some hesitation in the matter of payment of arrears of salary and other dues, the petitioner filed a contempt petition and in pursuance of orders made therein, there is no dispute that the arrears of salary were in fact paid to the petitioner. Since, the penalty of compulsory retirement was set aside and the petitioner was reinstated in service, the petitioner was naturally required to return the amounts which he had received in pursuance of the order of compulsory retirement. This included the amount of Rs.35,412/- already received by the petitioner.

18] The aforesaid amount was recovered from the petitioner from out of the arrears of salary payable to the petitioner. Thereafter however, in pursuance of the liberty granted by the CAT itself, the disciplinary proceedings continued after furnish of copy of enquiry report to the petitioner. The disciplinary proceedings ended with the imposition of penalty of compulsory retirement upon the petitioner once again. On this occasion, the respondents, paid to the petitioner the balance amount in his provident fund account. To such a situation, Rule 11(3) of the said Rules cannot be said to be attracted. There is no jurisdictional error or unreasonableness in the view taken by the CAT so as to warrant interference.

19] This is also not a case of any administrative delay on the part of the respondents. The question of administrative delay would arise where, without any impediment whatsoever, the respondents delay payment of the amounts to the subscriber. It is not possible to accept the petitioner's contention that since the imposition of penalty of compulsory retirement was found to be wrong by the CAT in the first instance, the consequent delay must be regarded as a delay for administrative reasons attributable to the respondents. No sooner the amounts actually became due and payable to the petitioner, the same have been paid to the petitioner by the respondents. This is not a case of unjust enrichment as such particularly when the respondents recovered the amount from the petitioner, in pursuance of his reinstatement, without any interest thereon.

20] The communication dated 26th September 2005 is of no serious assistance to the petitioner. This is because the facts and circumstances of the present case do not indicate that the payment to the petitioner was delayed on account of any administrative reasons. In any case, such internal correspondences by which one officer communicates his views to the another officer can ordinarily not be made the basis for any claim.

21] Since, on merits, we see no good ground to interfere with the impugned judgment and order, we propose not to go into the contentions of Mr. Mishra based upon the principles of constructive *res judicata*.

22] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. This petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

CHANDKA