HIGH COURT OF TRIPURA
AGARTALA

WP(C) 1362 of 2019

Sri Samir Kumar Majumder,
son of Amulya Bushan Majumder,
resident of Joynagar, Dashamighat,
Opposite to Road No.5, Near Tripureswari Medical Hall
PO: Agartala, PS: West Agartala,
District: West Tripura

----Petitioner(s)

Versus

1. Union of India,
represented by the Secretary,
Department of Revenue, Ministry of Finance,
Government of India, 128A, North Block, New Delhi, 110001

2. The Commissioner of Goods and Service Tax,
Department of Revenue, Government of India.
Morellow Compound, MG Road, Shillong-793002

3. The Pay and Accounts Officer, Goods and Services Tax,
Department of Revenue, Government of India.
Morellow Compound, MG. Road, Crescents Shillong -793002

4. The Assistant Commissioner of Customs,
Customs Division, DHBRI, Government of India.
Dakshina Bhavan, N.S Road, Dhubri, Assam.

----Respondent(s)

For Petitioner(s)	: Mr. R. Purkayasta, Adv.
For Respondent(s)	: Mr. B. Majumder, Asst. SG.
Date of hearing and delivery of judgment and order	: 07.12.2020.
Whether fit for reporting	: NO

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order (Oral)

Heard Ms. R. Purkayastha, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned ASG appearing for the respondents.

[2] This petition under Article 226 of the Constitution of India has been filed for seeking the reliefs as follows:

(i) The compensation for amount of Rs.10lakhs for harassment and mental agony caused to the petitioner. By making delayed payment of his pension and other retiral benefits pursuing a mala fide departmental proceeding.

(ii) For providing statutory interest against his entitlement or to pay interest in the market rate coupled with penal interest from the date the entitlement were due till the date of payment. Also for the delay in payment of pension including commutation of the pension, and

(iii) For payment of an amount of Rs.50,000/- as litigation expenses.

[3] Ms. R. Purkayastha, learned counsel appearing for the petitioner has submitted that a departmental proceeding was drawn up against the petitioner malafide. Even after completion of the enquiry, the departmental authority did not take decision for bringing the logical end of the said departmental proceeding. When such deliberate stalemate started causing serious detriment of the petitioner, the petitioner was compelled to approach this court by filing the writ petition being WP(C)550 of 2017.

[4] Ms. R. Purkayastha learned counsel appearing for the petitioner has submitted that by perusal of the judgment passed in the said writ petition, it would be apparent that the petitioner was charged for not attending the office regularly. That apart, it had been

imputed that the petitioner did not look after the essential works at LCS [Land Custom Station]. He was thus charged with dereliction of duty. The petitioner was further charged for his purported failure to examine/check passengers' luggages during entering or leaving the country. The petitioner was imputed for embezzlement and misappropriation of the government money and some definite instances were referred. His action was questioned as the conduct to defraud the government revenue and causing pecuniary loss to the government. The petitioner denied the charges and the charges were thoroughly enquired into. For wanting in evidence, most of the charges were held not proved by the Enquiry Officer. When a copy of the enquiry report dated 09.01.2014 was forwarded to the petitioner, he had filed the representation and expressed grievance against some casual observations made against him in the said report. But as the final order was not passed, the petitioner had filed a representation on 29.08.2019 but no action came forth.

[5] Finally, the petitioner filed the said writ petition for expediting the departmental proceeding to its end. In the perspective fact as above, this court had occasion to direct the respondents by the judgment dated 14.12.2017, which disposed of the said petition to take the final decision. The decision as contained in the communication dated 15.12.2016 was set aside. The respondents were directed to take fresh decision based on the enquiry report. It is apparent from the said judgment that no formal disagreement to the finding of the enquiry officer was registered by the departmental

authority. From the communication dated 16.09.2014, it appeared to the court that no finding, adverse to the petitioner was raised. In view of the manifest lack of evidence, this court has directed the disciplinary authority to pass the final order within a period of thirty days from the day when the petitioner would furnish a copy of the order. It was directed that after the final decision was taken within the stipulated date, the arrears to which the petitioner was entitled shall be released within a period of two months from the date of the final decision. There is no dispute that the petitioner has retired on superannuation on 31.01.2013, before the disciplinary proceeding was concluded.

[6] It is apparent from the records that the respondents approached this court for extension of time by filing a special application being IA No.01 of 2018, which was disposed of by the order dated 21.02.2018 by allowing thirty more days from the date of the order i.e. 21.02.2018 for implementation of the judgment. It appears further that the respondents were approached by the petitioner for releasing the due. Even it was cautioned that the petitioner was being unnecessarily harassed by withholding the pension and other retiral benefit. If such benefits were not released within thirty days, the petitioner might be compelled to take appropriate action as per law. The said representation was submitted on 20.09.2019 through the engaged counsel. In reply to the representation, the respondents by their communication dated 08.11.2019 informed the said counsel that there were serious

blemish against the petitioner. As such, the department proceeding cannot be wound up. The petitioner was, no doubt, charged for violation of Rule 3 (i), (ii), (iii) and Rule 3 (2) (ii) of the CCS (Conduct) Rules 1964. In the said reply, they had denied the allegations brought by the notice. It has been further stated that those statements in the notice were misleading and not based on facts. They also stated how they had taken steps for release of due to the petitioner, but for procedural compliance, some delay took place which was completely unintentional.

[7] Ms. R. Purkayastha, learned counsel has submitted that the final order in terms of the judgment was passed on 18.10.2018 for implementation of the said judgment of the High Court as the Departmental of Legal Affairs advised them not to challenge the judgment of the High Court in the apex court. Ms. Purkayashta, learned counsel has, thereafter, submitted that even from the date of the final order, dues of the petitioner were not released within the timeframe. In installments, the respondents started to release the dues. In this regard, Ms. Purkayashta, learned counsel has referred to the statement of the respondents as appeared in their reply. The respondents have stated that pension payment order was issued on 04.01.2019. The arrears of pension to the extent of Rs.3,59,756/- for the period from 01.02.2013 to 21.12.2018 has been paid. Retirement gratuity of Rs.6,04,152/- has been paid. CGEGIS to the extent of Rs.22,084/- was paid vide the bill dated 01.02.2013. Leave encashment of Rs.5,03,460/- has been paid vide the bill dated

02.01.2019. GPF has been fully paid. Commutation of pension could not be made as according to the respondents, the petitioner has not submitted Form-4 duly attested by the District Medical Officer, as required by the Pay and Accounts officer, CGST and Customs, Shillong in order to commute his pension.

[8] Ms. Purkayastha, learned counsel has further submitted that in view of the delayed payment, the petitioner is entitled to get statutory interest as well as the compensatory interest. The petitioner, in respect of the reply filed by the respondents has stated for compliance of procedural nitty gritty, such delay did not take place. The petitioner filed the rejoinder to counteract the statements of the respondents. The petitioner has stated in the rejoinder that the departmental proceeding was kept pending for almost six years and on that pretext, all the benefits due to him were withheld and finally at the intervention of this court, the disciplinary proceeding was wound up.

[9] Ms. Purkayastha, learned counsel having referred to Section 7(3A) of the Payment of Gratuity Act, 1972 has submitted that the said provisions clearly lay down that in the event of delayed payment of gratuity, the employee concerned will be entitled to interest. Section 7(3A) reads as follows:

> **"The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable."**

It further provides:

> **"If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period**

> **specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central government from time to time for payment of long term deposits, as that Government may, by notification specify."**

Thus, Ms. Purkayastha, learned counsel has submitted that the petitioner be given interest at the statutory rate and the compensatory interest to redress the grievance for harassment.

[10] Mr. B. Majumder, learned ASG has appeared for the respondents. He has clearly submitted that since the departmental proceeding continued even after the retirement of the petitioner, the authority for passing final order got changed. It was no more with the appointing authority but with the President of India by operation of Rule 9 of the CCS (Pension) Rules, 1972. The process was duly accomplished through the hierarchal channel and for that reason, even though according to the court's order, the final order ought to have been passed on 02.03.2018 in view of the extension order, but the order was passed on 18.10.2018 after observing all required steps that delay was totally unintentional.

[11] Mr. Majumder, learned ASG has submitted that delay was bonafide and no officer can be blamed for that. Mr. Majumder, learned ASG has reiterated that serious charges were framed against the petitioner, but during the enquiry there was no conclusive evidence according to the enquiry officer. As a result while the disciplinary authority was considering the enquiry report verified by the Central Vigilance Commission, the petitioner had approached this

court. During the hearing of the said writ petition, the respondents did not place the laid down procedure for completing such enquiry. As a result, the court passed the order for passing the final order within a period of thirty days. That was not practicable. Hence, the respondents had approached this court for extension of time. But this court having observed the nature of finding returned by the enquiry officer had extended the time but for another period of thirty days. The respondents took due action as hurriedly as possible. Even then, the final order could not be passed before 18.10.2018.

[12] Mr. Majumder, learned ASG has further submitted that according to the statute, the gratuity was payable on or before 02.03.2019 i.e. thirty days from the date of retirement on superannuation. But the gratuity was paid to the petitioner on 18.01.2019 as per records. Mr. Majumder, learned ASG has further submitted that commutation of pension could not be made for the solitary reason that the petitioner has not submitted Form- 4 duly certified by the District Medical Officer or the person holding the equivalent post. For this reason, the respondents cannot be held responsible for non-payment of the commutation value till now. Having regard to the para 2 of the reply filed by the respondents, Mr. Majumder, learned ASG has submitted that except of commutation of pension, all other dues have been paid by now. The pension was released w.e.f. 01.02.2013 by the pension payment order dated 04.01.2019. Thus, it is apparent that the pension could not be released within the statutory period of six months in terms of CCS

(Pension) Rules, 1972 from the date of retirement. Due date of release of pension taking the date of the final order in the disciplinary proceeding would be 17.04.2019 or before that, it is on record and not disputed by anyone, the payment has been made much before that date. As such the statutory interest as prescribed under the CCS (Pension) Rules cannot be saddled on the respondents. In respect of the payment of GPF, leave encashment, the petitioner's grievance is also unsustainable considering the context. The petitioner should realize the legal impediment that came in the way of such release.

[13] Mr. Majumder, learned ASG has submitted that no damage can be assessed by this court in view of the probable and manifest 'blemish' against the petitioner. Such 'blemish' was leveled on the basis of the material collected during the preliminary enquiry. Lack of adequate evidence is one aspect but total absence of evidence is different. Malicious proceeding can only be structured on absence of the evidence from the very beginning. This is not the case here. This court, however, will not brood over the whether any damage can be given for harassment or for causing prejudice to the petitioner. Such claim cannot be redressed unless can be shown, it can be brought within the public action remedy and adjudged under Article 226 of the Constitution of India. However, the petitioner has not expressly asked for such relief in the writ petition.

[14] Having considered the submission of the learned counsel for the parties, the averments both in the writ petition and the reply, this court is of the view that the respondents was, in fact, definitely

deficient in making payment of the gratuity in time. As the payment of gratuity is bound by statutory rules viz Section 7 of the Payment of Gratuity Act, 1972, such payment becomes due from the date after thirty days from the date of retirement of the employee concerned. But the said payment has been made on 18.01.2019 instead of 02.03.2013. For the said period [02.03.2013 to 17.01.2019], in the considered view of this court, the petitioner is entitled to simple interest @ 7% per annum on considering the impossibility of the gratuity attachment. The said interest shall be paid by the respondents within six weeks from the date when the petitioner shall communicate this order to the appointing authority.

With the observation and direction as above, this writ petition stands partly allowed.

There shall be no order as to costs.

JUDGE

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