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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 118 of 2020

(Arising out of order dated 04.05.2018 passed by the learned Single Judge in WPS No. 5157 of 2017)

- Abhay Nath Thakur S/o Late Shri Harendra Nath Thakur Aged About 65 Years R/o House No. B4(5) Sector 1, Udaya Society, Adjacent To Adrash Vidyalay, Tatibandh, Raipur 492009, District Raipur, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Via Secretary, Public Heath Engineering Department , Mantralaya , Mahanadi Bhawan , Capitol Complex, Nava Raipur Atal Nagar , Chhattisgarh. Pin - 492002.
2. Shri T.G. Kosiriya, Engineer in Chief Public Heath Engineering Department , H.O.D Building , Indravati Bhawan, Nava Raipur Atal Nagar , Chhattisgarh ,. Pin 492002.

---- Respondents

For Appellant : Mr. Tanuj Patwardhan, Advocate
For Respondents/State : Mr. Ashish Tiwari, Government Advocate

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Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

08.02.2021

1. Denial of the claim for granting interest for delay in disbursing the retirement benefits made the writ petitioner to approach this Court by way of this appeal.

2. The Appellant, pursuant to the selection and advertisement issued by the Madhya Pradesh Public Service Commission, joined the service on 12.08.1980 in the then State of Madhya Pradesh as Assistant Engineer in the Public Health Department. On attaining the age of superannuation, he came out of the service on 29.02.2016, while serving as Chief Engineering in Public Health Engineering Department

in Raipur. Though some of the retirement benefits have been stated as given, the gratuity and leave encashment benefits were not disbursed; which made the Appellant to approach this Court by filing the writ petition with the following prayers :

> "10.1 In view of the submissions made above, This Hon'ble Court may kindly be pleased to direct the Respondents to produce the records of the petitioner relating to the payment of his Pension, Pension Payment Order, Gratuity Leave Encashment.
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> 10.2 To direct the Respondents by a writ of mandamus to pay to the Petitioner the Gratuity & Leave Encashment due and payable to the petitioner on the date of his retirement.
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> 10.3 To direct the Respondents to pay to the petitioner, interest for delay in payment of Gratuity & Leave Encashment from the date of his Retirement till the date of Actual Payment and penalty as proposed by this Hon'ble Court.
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> 10.4 To hold the acts of Omission & Commission of the Respondents malafied and illegal.
>
> 10.5 Grant any other relief that this Hon'ble Court deems fit in the circumstances of the case."

3. The delay attributed on the part of the Department was sought to be rebutted by filing a return. Particulars were given as to the various payments effected after retirement; besides pointing out the outcome of the Departmental Enquiry instituted against the Petitioner. The denial of promotion during the pendency of disciplinary proceedings was the subject matter of challenge in WPS No.4042 of 2013. Pursuant to the order dated 20.03.2015 in the said writ petition, the Appellant was held as eligible to be promoted to the post of Chief

Engineer with effect from the date on which one H.S. Dhingra was promoted. Accordingly, the writ petitioner was given promotion to the post of Chief Engineer on 02.07.2015, who was continuing in the said post till retirement from the service on 29.02.2016.

4. It is brought to the notice of this Court that, prior to granting the actual promotion to the Appellant, a Departmental Enquiry was launched against him, after serving charge-sheet; which came to be finalized only on 31.12.2016 *i.e.*, after the date of superannuation from the service. Particulars of the various payments issued to the Appellant / writ petitioner were given in the affidavit, also pointing out that an Economic Offence Case was registered against the writ petitioner on 28.08.2012 bearing No. 99/2012 and that the same was pending consideration before the State Economic Offence Bureau. Reference was also made to Rule 64 of the Chhattisgarh Civil Services (Pension) Rule, 1976, which stipulates that the payment of gratuity would not be made until and unless the departmental or judicial proceedings are concluded and final orders are passed. Annexure-A/4 Circular dated 05.08.1989, issued by the erstwhile State of Madhya Pradesh is referred to, which provides that in case an enquiry is pending against the retired Government employee and in the said enquiry, there is possibility of recovery of sum against him, the payment towards the leave encashment can partly or permanently be withheld.

5. After hearing both the sides, the writ petition was disposed of as per judgment dated 04.05.2018; the operative portion of which, as contained in paragraph 6, is as follows :

> "6. In view of the aforesaid settled position of law, this Court is of the opinion that no fruitful purpose would be served in keeping the petition pending. Accordingly, the writ petition is allowed with a clear direction to the respondent State to ensure that the retiral dues payable to the petitioner should forthwith be released to him preferably within a period of 90 days from today. In the event of any delay in releasing the retiral dues beyond 90 days, the entire retiral dues shall carry interest @ 10% per annum from the date of his retirement till the date of actual payment is made."

6. The Appellant sought to review the said verdict by filing Review Petition No.73 of 2018 for not granting 'interest' on the dues payable to the writ petitioner. The said matter came up for consideration before the very same learned Judge on 14.08.2018, when it was held that denial of interest was a conscious decision and that interest was ordered to be paid only on default in making the payment within the time stipulated. It was also held that, there was 'no error apparent on the face of the record' to invoke the power of review and accordingly, the Review Petition was dismissed as per Annexure-A/2.

7. A return has been filed from the part of the State giving the sequence of events, virtually in conformity with the pleadings raised before the learned Single Judge. It is however pointed out that the State / Department had filed MCC No.756 of 2018, pointing out the

mitigating circumstances and seeking for extension of time to comply with the direction. The said MCC came up for consideration before the Court on 06.10.2018 and after hearing, a further period of 30 days was granted from the date of receipt of a copy of the order. Though the Appellant filed Contempt of Court Case No.1264 of 2018, alleging wilful disobedience on the part of the Respondents, it came to be dismissed as per order dated 08.04.2019. Objection is also raised as to the inordinate delay of 536 days in filing the appeal, pointing out that no explanation has been offered in this regard. The details of the payment already effected are given in paragraph 5 of the return, the relevant portion of which is as given below :

> "5. …........... The said Department Enquiry was concluded on 31.12.2016 that is after his retirement. Further sum of Rs.24,44,743/- and Rs.2,80,590/- has already been paid to him on 01.08.2016 and 21.11.2016 respectively in the head of G.P.F. Also the amount of Rs.27,960/- has been paid for family welfare fund on 13.01.2017 and likewise Rs.1,77,120/- has been paid on 13.09.2017 for G.I.S.
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> It was submitted that as regard the pension on receipt of No Objection Certificate from Chief Engineer, Public Health Engineering Department, Raipur dated 06.12.2017 a proposal was initiated for payment of benefit of dues to the petitioner and further proposal for issuance of no dues/no enquiry was sent and on receiving the approval the full pension will also be disbursed, provisional pension to the tune of Rs.25,780/- per month has been sanctioned. It was contended in view of Chhattisgarh Civil Service Pension Rules 1976 and further in view of circular dated 05.09.1989, as the enquiry by the State Economic Offence Bureau is pending the approval of the proposal vide Annexure A/3 is awaited, after which the remaining dues would be disbursed to the petitioner."

8. With regard to the payment of gratuity and leave encashment, the version of Appellant, as given in paragraph 9, is as follows :

> "9. That, in compliance of the direction of the Hon'ble Court vide order dated 30.06.2018 an amount of Rs.18,00,000/- was paid to the petitioner, which was 90% of the gratuity amount payable to him further vide order dated 30.06.2018 an amount of Rs.9,66,373/- was paid for leave encashment. Vide order dated 10.07.2018 Rs.35,178/- was deposited as arrears of 7^{th} pay. Vide order dated 12.06.2018 Rs.77,679/- was deposited for arrears of pension as per revised pay rules 2017. Vide order dated 10.07.2018 Rs.1,36,922/- was deposited for arrears of pension. Thus, total amount of Rs.30,16,154/- was paid to appellant by the department till 23.07.2018. However, as regards remaining 10% of the gratuity amount i.e. Rs.2,00,000/- a proposal was sent to the O/o Joint Director, Treasury, Accounts & Pension which was to be paid by the Treasury. Upon receiving the said proposal the Joint Director, Treasury has raised certain objection on 10.07.2018 which was cleared by adjusting Rs.45,277/- and for the remaining amount a proposal was again submitted on 21.08.2018."

9. The learned counsel for the Respondent/State submits that the initial period of 90 days, fixed by the learned Single Judge while passing the judgment dated 04.05.2018 in the WPS No.5157 of 2017, was subsequently enhanced by granting extension of 30 more days from the date of receipt of a copy of the order, as per order dated 06.10.2018 in MCC No. 756 of 2018. All the payments due to the Appellant / writ petitioner have been effected within the time stipulated by the Court. The liability to satisfy interest @ 10% per annum 'in the event of default' as mentioned in para 6 of the

judgment dated 04.05.2018 in WPS No. 5157 of 2017 is stated as not attracted.

10. The learned counsel for the Appellant however submits that order dated 06.10.2018 passed in MCC No. 756 of 2018 filed by the Respondents was without giving advance copy and without hearing the Appellant. But, the fact remains that the order dated 06.10.2018 passed by the learned Single Judge, allowing the MCC, granting extension of time, stands intact as it has not been sought to be reviewed (if there is an error apparent on the face of the record) or by filing any appeal.

11. In the above circumstances, we are of the view that the claim for interest is not liable to be entertained, as it has been ordered only on eventuality of delay in complying with the direction with regard to the disbursement of retirement benefits ordered by the learned Single Judge. As it stands so, there is no merit in the appeal. It stands dismissed accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Chandra