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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 03.03.2022*

\+ **W.P.(C) 12849/2019**

UNION OF INDIA & ANR ..... Petitioners

Through: Mr J.K. Singh, Advocate.

versus

MANORMA DEVI ..... Respondent

Through: None.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE JASMEET SINGH
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition is directed against the order dated 04.09.2019 passed by the Central Administrative Tribunal (in short 'the Tribunal') in OA No.3371/2017.

2. The short issue involved in the writ petition is : whether the respondent is entitled to the interest on "ex gratia" monetary compensation which was, admittedly, payable to her, because of her husband dying in harness?

2.1 This is apparent, if one were to peruse the order passed on 06.12.2019, at the stage of issuance of notice in the petition:

> *"**CM.APPL 52496/2019 (Exemption)***
> *Exemption allowed, subject to all just exceptions.*
> *The application stands disposed of.*
> ***W.P.(C) 12849/2019 & CM.APPL 52495/2019 (stay)***
> *Notice limited only to the extent as to why interest be not*

> *granted only from the date when the demand for ex-gratia amount of Rs.5.0 lakhs was made.*
> *List on 22.01.2020.*
> *Subject of* [sic: to] *payment by the petitioners to the respondent of interest from the date when the demand of Rs.5.0 lakhs was made till the date of payment, the operation of the impugned order shall remain stayed."*

3. Mr J.K. Singh, learned counsel for the petitioners, informs us that interest for the period indicated in the order dated 06.12.2019 passed by the court has already been paid to the respondent.

3.1 The record shows that although the respondent has been served, she has chosen not to enter appearance either in-person or through an advocate.

3.2 We have, however, heard arguments advanced by Mr J K Singh, who appears for the petitioners and appraised the record including the impugned order.

3.3 The operative directions issued by the Tribunal, are contained in paragraph 14 of the impugned order which reads as follows :

> *"14. In view of the above discussion, the OA is allowed. The respondents are directed to pay interest at the prevailing GPF rate for the period starting from 11th September, 1998 when the order for payment of ex-gratia compensation came into force till the time the payment is actually made to the applicant. This shall be done within a period of three months from the date of receipt of a certified copy of this order. No costs."*

4. The above-mentioned directions came to be passed in the background of the following facts:

4.1 The respondent's husband was employed as a Gangman at the Northern Railway Station, Patel Nagar, Delhi. The respondent's husband, however, died, as noticed above, in harness on 26.02.1998.

4.2 The record shows that pursuant to the recommendations of the 5th Pay Commission, a circular was taken out by the Department of Pension and Pensioner's Welfare, Ministry of Personnel, Public Grievances and Pensions [hereafter referred to as "DOPPW"] on 11.09.1998, which directed payment of lumpsum compensation of Rs. 5 lakhs to the wards of government servants who died in harness, w.e.f. 01.01.1997. We are told that the compensation amount was enhanced to Rs. 10 lakhs w.e.f. 01.01.2006 i.e., pursuant to the recommendations made by the 6th Pay Commission.

4.3. Concededly, the petitioners i.e., Railway Board adopted the aforementioned circular issued by the DOPPW, *via* circular dated 05.11.1999.

4.4. It appears that the respondent, on becoming aware that she was entitled to compensation, approached the petitioner on 02.08.2013. Since there was no movement in the matter, the respondent was constrained to approach the Tribunal. This was respondent's first foray into the bastion of insensitivity shown in the matter. This action was registered as OA No. 3456/2013, and was disposed of *via* order dated 15.07.2014. The operative directions contained in the said order, being relevant, are extracted hereafter:

> "2. ***In the circumstances, the present Original Application is disposed of with direction to the respondents to give reply to the legal notice dated 2.8.2013 served upon the Divisional Railway Manager, North-Western Railway, Bikaner, the Divisional Railway Manager, North Railway, State Entry Road, New Delhi and the Section Engineer (P. Way), Northern Railway Station, Delhi Sarai Rohilla through his counsel Mr. Yogesh Sharma, within a period of eight weeks from the date of receipt of a copy of this order. While doing***

> ***so, the respondents would deal with all the points raised in the said legal notice.*** *It is also made clear that respondent No.3 would not avoid giving reply to the legal notice on the plea that the decision is to be taken by Delhi Division and if required the said authority will get relevant feedback from the Delhi Division on the issue. No costs.*" [Emphasis is ours.]

4.5. Since the petitioners continued with their earlier position i.e., of neither complying with 15.07.2014 order of the Tribunal nor paying respondent the due compensation, she approached the Tribunal by way of a contempt petition i.e., Contempt Petition No.55/2015. This contempt petition was filed in and about 09.04.2015. The contempt petition had the necessary effect on the petitioners, and, consequently, an *ex-gratia* compensation of Rs. 5 lakhs was paid to the respondent on 9/10.04.2015, albeit, excluding her claim for interest. The contempt petition was, however, closed *via* order dated 24.04.2015; although with liberty to the respondent to approach the Tribunal, if her grievance were to survive.

4.6. It is this outstanding grievance i.e., non-payment of interest, which led to the respondent approaching the Tribunal once again, via O.A. No.3371/2017. The Tribunal, *via* the impugned order, allowed the O.A. i.e., OA No.3371/2017.

5. Mr Singh, who appears on behalf of the petitioners, says that the impugned order is flawed for the following reasons :

(i) First, there is no provision for payment of interest on the *ex gratia* compensation paid to the respondent.

(ii) Second, the respondent has contributed to the delay i.e., she did not make a demand for payment of the compensation till 02.08.2013.

6. We have heard Mr Singh and perused the record.

6.1 According to us, both the submissions of Mr Singh are unsustainable.

6.2. The fact that there is no provision for payment of interest cannot be the reason for denying interest. We would have appreciated this submission, if there was a specific provision in the circular relied upon by the petitioners, to the effect, that no interest would be paid on the amount, which was to be paid as compensation *qua* employees, who died in harness. Interest is paid to a person when she/ he is, deprived of use of money. It offsets the impact of inflation which diminishes the value of money. In such situations, unless there is a bar, interest should be paid in the ordinary course. The following observations of the Supreme Court in ***Irrigation Deptt., Govt. of Orissa v. G.C. Roy*,** (1992) 1 SCC 508, articulated this rationale, while examining the power of the arbitrator to award pendent lite interest :

> "**43.** The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:
>
> (i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.........
>
> (iii)......The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.....
>
> (iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit *and* a party to the reference makes a claim for interest, the arbitrator must have the power

to award interest pendente lite. *Thawardas* [*Seth Thawardas Pherumal* v. *Union of India*, (1955) 2 SCR 48 : AIR 1955 SC 468] has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until *Jena case* [(1988) 1 SCC 418 : (1988) 1 SCR 253] almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred.

44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest *and* where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes — or refer the dispute as to interest as such — to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

6.3 Also see the observations made in ***Pickett (Administratrix of the Estate of Ralph Henry Pickett Decd.) vs. British Rail Engineering Ltd***., [1978] 3 WLR 955.

"……My Lords, I believe the reasoning of the Court of Appeal to be unsound on this point. It is based upon a fallacy; and is inconsistent with the statute.

First, the fallacy. It is assumed that because the award of damages made at trial is greater, in monetary terms, than it would have been, had damages been assessed at date of service of writ, the award is greater in terms of real value. There is here a complete non sequitur. The cash awarded is more, because the value of cash, i.e. its purchasing power, has diminished. In theory the higher award at trial has the same purchasing power as the lower award which would have been made at the date of the service of the writ: in truth, of course, judicial awards of damages follow, but rarely keep pace with, inflation so that in all probability the sum awarded at trial is less, in terms of real value, than would have been awarded at the earlier date. In theory, therefore, and to some extent in practice, inflation is taken care of by increasing the number of money units in the award so that the real value of the loss is met. The loss, for which interest is given, is quite distinct, and not covered by this increase. It is the loss which is suffered by being kept out of money to which one is entitled.

Secondly, the statute. Section 22, Administration of Justice Act 1969, amending section 3, Law Reform (Miscellaneous Provision) Act 1934, provides that the court *shall* (my emphasis) exercise its power to award interest on damages, or on such part of the damages as the court considers appropriate, "unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages." Such is the general rule laid down by the statute, which does, however, confer upon the court a discretion as to the period for which interest is given and also permits differing rates. Nothing can be clearer than the duty placed upon the court to give interest in the absence of special reasons for giving none. Inflation is an economic and financial condition of general application in our society. Its impact upon this plaintiff has been neither more nor less than upon everybody else: there is nothing special about it."

6.4 Insofar as the second submission is concerned i.e., that the respondent made a demand only on 02.08.2013, is also untenable for the reason that it was incumbent upon the petitioners to first provide her necessary information that she was entitled to receive *ex gratia* compensation, and, after the necessary formalities were fulfilled, to pay the same as per her entitlement in terms of the circular dated 05.11.1999.

7 The only other point which requires consideration, although not pressed by Mr Singh, is : as to the date from which the respondent's right to claim compensation accrued i.e., from 11.09.1998 or 05.11.1999. For this purpose, Mr Singh has drawn our attention to the circular dated 05.11.1999. The relevant part of the said circular reads as follows :

> *"Subject :* ***Payment of Ex-Gratia lumpsum compensation to families of Railway Employees.***
>
> ***(No. E(W)99/CP-1/1, dated 5.11.1999)***
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> *The question of rationalization and further liberalization of the existing schemes and guidelines regarding Ex Gratia lumpsum compensation to families of Civilian Govt. employees had been engaging the attention of the Government. In supersession of all earlier orders issued by the Govt. in so far as these relate to the payment of ex gratia lumpsum compensation in certain specified circumstances.* ***President is pleased to decide that the families of Central Government Civilian employees who dies in harness in the performance of their bonafide official duties under various circumstances shall be paid ex gratia lumpsum compensation as per Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances & Pensions' letter No. 45/55/97-P&PW(C), dated 11th September, 1998.***
>
> ***Ministry of Railways have decided that the above orders (Copy enclosed) of the Govt. shall be applicable to the Railway Servants mutatis mutandis.***
>
> *This issues with the concurrence of Finance Directorate of Ministry of Railways."* [Emphasis is ours.]

7.1 A careful reading of the aforesaid circular would show that the Ministry of Railways has decided to apply the circular of DOPPW dated 11.09.1998 '*mutatis mutandis*' to the railway servants. The expression '*mutatis mutandis*', broadly, means that the earlier regime which is contained in the first contract [in this case, the circular 11.09.1998] would apply, along with all necessary changes.[1]

7.2. Given this position, in our view, the only change that has been brought about is that instead of the DOPPW circular dated 11.09.1998, it has been replaced with the Ministry of Railways own circular dated 05.11.1999, although it would trigger in terms of the parent circular i.e., 11.09.1998. The parent circular, concededly, operates from 01.01.1997.

7.3. It is not in dispute that the respondent's husband died on 26.02.1998, and, therefore, right to ex-gratia compensation accrued in her favour, in terms of the parent circular dated 11.09.1998.

7.4. That being the position, the respondent is, in our view, entitled to the interest for the delay caused by the petitioners in payment of *ex-gratia* compensation.

8. The petitioners will, therefore, pay interest to the respondent, in terms of the impugned order passed by the Tribunal. The petitioners will, however, pay interest after adjusting the amount already paid to the respondent towards interest in terms of the order of this court dated 06.12.2019.

9. The writ petition is disposed of in the aforesaid terms.

10. The Registry will dispatch a copy of this judgment to the respondent. The petitioners will also ensure that a copy of this judgment is served on the respondent and directions issued are complied without the respondent

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[1] ***mutatis mutandis*** All necessary changes having been made; with the necessary changes <what was said regarding the first contract applies mutatis mutandis to all the later ones> (See Bryan A. Garner, 7th edition, Black's Law Dictionary)

having to approach them.

(RAJIV SHAKDHER)
JUDGE

(JASMEET SINGH)
JUDGE

MARCH 03, 2022
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Click here to check corrigendum, if any