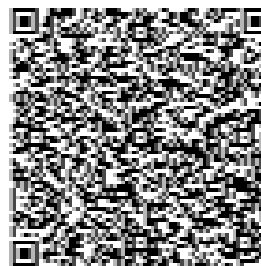


2024:PHHC:065352-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111)

LPA-1164-2024 (O&M)
Decided on : 09.05.2024

Ashok Kumar

.....Appellant(s)

Versus

Central Bank of India & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Ashok Kumar, Appellant-in-person.

Mr.Naveen Pratap Singh, Advocate, for the respondent-Bank.

G.S. Sandhawalia, Acting Chief Justice

CM-2804-LPA-2024

1. Application for condoning the delay of 11 days in filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the appellant and in view of the nominal delay. Delay of 11 days in filing the appeal is hereby condoned.

2. CM stands disposed of.

LPA-1164-2024

3. Consideration in the present appeal is to the judgment dated 21.03.2024 passed by the Learned Single Judge whereby CM-4377-CWP-2024 in CWP-8983-1991 was dismissed.

4. The Learned Single Judge declined the benefit of interest on the delayed payment of arrears of pay and allowances while noticing that the writ petition had been allowed on 12.10.2007 with all consequential benefits relating to reinstatement. The appellant was released back-wages/arrears amounting to Rs.37,07,445.61 on which he was seeking interest. In the original writ petition, there was no such prayer for interest and neither any specific order was passed. Resultantly, it was held that after the belated stage of 17 years from the date of disposal of the earlier writ petition, interest on the back-wages could not be granted since it would amount to modification of the earlier order.

5. The appellant who is appearing in person has argued that once he had been given the benefit of reinstatement and the amount had been withheld, there was scope under Article 226 of the Constitution of India for interest on the delayed payment as it would form the integral part of the relief since he had been denied the usage of the said amount.

6. A perusal of the paperbook would go on to show that prayer had been made for quashing of the proceedings of the enquiry against the appellant and for direction to reinstate the appellant with full back-wages. The writ petition, as noticed, had been allowed primarily on the ground that he had been acquitted by the Criminal Court but he had been placed under suspension. The appeal against acquittal had also been declined by this Court on 27.05.1991 but departmental proceedings had been initiated only in the year 1990 vide charge-sheet dated 16.05.1990. The Learned Single Judge had noticed that the appellant was under departmental cloud from 1978 and therefore, conscious decision to hold domestic enquiry should have been taken and there was inordinate and unexplained delay

and resultantly, the enquiry proceedings were quashed. Relevant part of the order reads as under:

“18. In the light of foregoing discussion, the present petition shall stand allowed. The enquiry proceedings shall stand quashed. If the petitioner has not attained the age of superannuation, he shall be re-instated forthwith. He shall also be entitled to all the consequential benefits relatable to re-instatement. If he has retired from service, he would obviously be entitled to only the consequential benefits.”

7. From the perusal of the above, it would be clear that no interest was directed to be paid. Apparently, LPA-246-2007 was filed before this Court by the Bank aggrieved against the said judgment, which was dismissed on 20.12.2007 in the presence of the counsel for the appellant having preferred a caveat application. The appellant could have filed cross-appeal at that point of time seeking the benefit of interest element but he chose not to do so. Resultantly, he now cannot turn around and claim the benefit of interest by filing Misc. Application after the dispute had become final. He also had the choice to file Letters Patent Appeal against the non-grant of interest but the same was not done. The respondent-Bank had chosen to file SLP(C) No.2989 of 2008 which was dismissed on 26.07.2011 and the appellant was present. Even at that stage, no relief was claimed regarding the benefit of interest while upholding the order of the Learned Single Judge and the Division Bench.

8. The appellant, thereafter, filed CWP-11438-2015, 4 years after the matter had become final seeking the benefit of interest. The Learned Single Judge held that relief claimed and not granted or any relief not claimed, would amount to non-grant of the said relief by the competent Court of law and therefore, interest could not be claimed in the subsequent

proceedings as it would amount to modifying the judgment which had attained finality upto the Apex Court. Resultantly the writ petition was held not to be maintainable and was dismissed on 11.12.2023. Relevant portion of the judgment read as under:

“8. It is a settled principle of law that any relief claimed and not granted or any relief not claimed, will amount to the non-grant of the said relief by the competent Court of law. The petitioner, who appears in person, concedes the fact that no interest was claimed for while seeking the reinstatement with consequential benefits. That being factual situation, the petitioner cannot claim the interest in the subsequent proceedings as grant of the said benefit will amount to modifying the judgment of the Coordinate Bench of this Court dated 12.10.2007, which has already attained finality upto the Hon’ble Supreme Court of India.

9. Keeping in view the above, the claim of interest in the present writ petition is not maintainable in view of the order passed by the Coordinate Bench of this Court in the earlier proceedings dated 12.10.2007 by which the benefit of reinstatement with consequential benefits was granted.

10. No ground is made out for the grant of interest as being claimed. However, the liberty is with the petitioner to file appropriate application in CWP No.8983 of 1991 in case he is aggrieved for the non-grant of the interest by the Coordinate Bench of this Court while passing order on 12.10.2007.

11. Dismissed.”

9. Thus, it is apparent that CM-4377-CWP-2024 in CWP-8983-1991 was then filed which has also been dismissed. Accordingly, we are of the considered opinion that principle of finality has to be given to the dispute once the appellant had got an order in his favour way-back on 12.10.2007 but without the grant of interest. It was open to him to agitate for the same by filing appeal or cross-objection seeking the necessary relief in the LPA filed by the Bank. Having chosen not to do so and the matter having attained finality before the Apex Court and having also got

no success in the separate writ petition which order has become final, it would not be appropriate to grant any relief on account of the application having been filed on account of the liberty given by the Writ Court. The appellant may have been prejudiced on account of the action of the Bank, however, he chose not to prefer his remedy in accordance with law at the relevant point of time. The principle of constructive res-judicata would also operate against him apart from the principle of estoppel.

13. Resultantly, in view of the above discussion, we find no reasonable ground to interfere with the order passed by the Learned Single Judge dismissing the application seeking grant of interest on delayed payment of arrears of pay and allowances. Consequently, the present appeal is hereby dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

09.05.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	