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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.05.2024

\+ W.P.(C) 3055/2016

MOHAMMED YUNUS ..... Petitioner

versus

NATIONAL THERMAL POWER COPORATION LTD & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. S. Janani, Sr. Advocate with Ms. Sharika Rai, Advocate

For the Respondents : Mr. Adarsh Tripathi, Mr. Vikram Singh Baid and Mr. Ajitesh Garg, Advocates for R-1
Mr. Sanjay Rawat, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-

> *"I. That a writ, direction or order in the nature of mandamus may be issued commanding the Respondents to pay interest @ 12% compounded annually on delayed pensionary and other post retirement benefits.*
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> *II. Direct the respondents to pay Interest at the rate of 12 percent compounded annually from 1.8.2002 to Sept. 2010 on the 1/3 commuted amount of Rs.416083/- which works out to Rs.6,14,123/- and also on the arrears of pension from August,*

2002 to Sept. 2010 compounded annually at 12% which works to Rs.2,25,734/-.

III. Direct the respondents to pay compound interest @12% per annum on the interest amount I.e. on Rs.6,14,123/- and on Rs.2,25,734/- .from 1.9.2010 to the date of payment of the amount claimed in para 1 above.

IV. Direct the respondents to pay Rs. 2,50,000/- towards legal , travel and lodging expenses.

V. That any other writ, order or direction may also be issued which this Hon'ble Court may think just and proper in the circumstances of the case."

2. It is not disputed that the petitioner had joined services of respondent no.1/NTPC on 01.03.1977 in the Ministerial Cadre as Assistant Grade II in regular capacity and in due course of time he was promoted in accordance with the rules and regulations of the Corporation/respondent no.1. In the year 1995, the respondent no.1/NTPC had conceived a Self Contributory Superannuation Benefit (Pension) Scheme also known as NTPC Pension Scheme as a welfare measure for providing social security with effect from 01.04.1995.

3. According to para 1.3.1 of the Pension Scheme, the same was made applicable to all the existing employees in the regular scales of pay as were on the roll of the Corporation as on 01.04.1995 and were deemed to be members of the Scheme from that day.

4. According to para 2.2(a) of the Pension Scheme, a specific percentage of the monthly salary based on the age of the member as on the date of his entry to the Pension Scheme was made applicable to all such members including the petitioner. Since the petitioner is stated to have been more than 48 years of age as on the cut off date, his deduction

from salary was kept at 4% of the monthly salary. The petitioner had superannuated on 31.07.2002.

5. Ms. Janani, learned Senior Counsel appearing for the petitioner submits that the petitioner had superannuated on 31.07.2002. She submits that till such time the petitioner was in service, the contribution as stipulated above was being deducted regularly every month. She further submits that in February, 2003, after the retirement of the petitioner, respondent no.1/NTPC restructured the said Pension Scheme of 1995 which was circulated *vide* the Pension Trust Communication 17/2003 dated 03.02.2003, the same was not only kept effective prospectively but also to all those members who had retired after 01.04.2002.

6. According to Ms. Janani, this obviously included the petitioner too. She submits that as a result of the revision in the Pension Scheme, the petitioner's pension which he would likely to have received post superannuation could come down from the projected sum of Rs.11,000/- to a paltry sum of Rs.1,000/-.

7. Being aggrieved thereof, the petitioner challenged the same before the Allahabad High Court. The learned Division Bench of the Allahabad High Court in Writ Petition No.740(SB)/2004 in ***Mohd. Yunus vs. National Thermal Power Corporation and Others*** by its judgment dated 17.02.2009 held that the revision in the Pension Scheme could not be made retrospectively effective and as such upheld the contention of the petitioner for applicability of the pension under the 1995 Scheme. She submits that the said judgment of the Division Bench was taken by way of an SLP to the Hon'ble Supreme Court by

the NTPC Pension Trust which is the respondent no.2 herein. The same was converted into a Civil Appeal No.8054/2011. Ms. Janani submits that the said Civil Appeal was dismissed upholding the judgment passed by the learned Division Bench of the Allahabad High Court by the Hon'ble Supreme Court in its order 09.12.2015. She submits that during the pendency of the SLP and conversion to Civil Appeal, the respondent no.2 had started releasing the pension of the petitioner *w.e.f.* August, 2010.

8. Learned Senior Counsel submits that the only relief that the petitioner seeks is the interest which would have accrued to the petitioner from the date of superannuation i.e., from 31.07.2002 till August, 2010, when the pension at correct rate was released.

9. *Per contra,* Mr. Adarsh Tripathi, learned counsel appearing for respondent no.1 vehemently opposes the prayers made in the present petition. At the outset, learned counsel submits that the doctrine of *res judicata/constructive res judicata* would be attracted to the facts of the present case.

10. He draws attention of this Court to the writ petition as filed before the Allahabad High Court which is annexed with the counter affidavit of respondent no.2, particularly to prayer (iii). According to learned counsel, the petitioner had sought, apart from others, interest at the rate of 12% p.a. He submits that thereafter by referring to the order of the Allahabad High Court as annexed P-3 to the petition particularly para 8, 9, 10 and 11 to submit that despite the learned Division Bench passing orders in favour of the petitioner, no separate order directing payment of interest at all was passed. He submits that once a court adjudicates

disputes on merits and passes an order thereon not granting a particular prayer as sought, the same at the first instance would be deemed to have been declined and two, at the second instance would be deemed to be *res judicata* so far as the present writ petition is concerned. He also urges that it would also amount to a waiver and acquiescence on the part of the petitioner.

11. The other limb of argument of the learned counsel for the respondent/NTPC is to the extent that there are a large number of writ petitions filed and pending before the Coordinate Bench of this Court on the same Pension Scheme wherein alongwith the amounts, the petitioners in those cases are also seeking interest. He submits that the present writ petition be kept pending so as to ensure there is no divergence in the decisions passed by Coordinate Bench in particular. He also submits that if this Court decides the present petition on merits in respect of the interest, it may be prejudicial to the contentions of the respondents in the other batch of matters.

12. Mr. Sanjay Rawat, learned counsel appearing for the respondent no.2/NTPC Pension Trust, adopts the arguments addressed by Mr. Tripathi. He reiterates the same submissions apart from relying upon the judgment of Hon'ble Supreme Court in ***State of U.P. vs. Arvind Kumar Srivastava***, reported in **(2015) 1 SCC 347** and ***Union of India vs. M. Murugesan*** reported in **(2022) 2 SCC 25**.

13. This Court has heard the arguments of the learned counsel for the parties as also Ms. Janani, learned Senior Counsel appearing for the petitioner and perused the records.

14. From perusal of the records as also after hearing the submissions

of the learned counsel, it appears very clear to this Court that the petitioner was entitled to pension under the 1995 Scheme which was upheld by the learned Division Bench of the Allahabad High Court in the judgment dated 17.12.2009. It is also not disputed that the said judgment was taken by way of Special Leave Petition to the Hon'ble Supreme Court. The Supreme Court converted the said SLP into a Civil Appeal No. 8054/2011 and disposed of the same *vide* the order dated 09.12.2015. It would be apposite to produce the said order hereunder:

> *"Even before this Court, learned counsel for the appellant - National Thermal Power Corporation Limited (for short 'NTPC') continues to press its claim to determine the pension of the private respondent on the basis of rules/guidelines notified on 11.2.2003. This submission has been advanced in spite of the acknowledgment, that the respondent attained the age of superannuation, and was accordingly retired from the services of the NTPC with effect from 31.07.2002.*
>
> *We are satisfied, that the retiral benefits of the private respondent stood crystallized on the date of his retirement, namely, 31.07.2002. Any rules/guidelines notified thereafter including the guidelines dated 11.2.2003 could hot have been made applicable to the private respondent.*
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> *For the reasons indicated hereinabove, we are satisfied, that the impugned order does not call for any interference.*
>
> *The instant appeals are accordingly dismissed."*

15. The said order is stated to have been further corrected *vide* the order dated 16.12.2015 which is also extracted hereunder:

> *"Paragraphs 1 and 2 of the Order dated December 09, 2015, be read as under:*
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> *"Even before this Court, learned counsel for the appellant - NTPC , Pension Trust continues to press its*

claim to determine the pension of the private respondent on the basis of rules/guidelines notified on 03.02.2003. This submission has been advanced in spite of the acknowledgment, that the respondent attained the age of superannuation, and was accordingly retired from the services of the NTPC with effect from 31.07.2002.

We are satisfied, that the retiral benefits of the private respondent stood crystallized on the date of his retirement, namely, 31.07.2002. Any rules/guidelines notified thereafter including the guidelines dated 03.02.2003 could not have been made applicable to the private respondent."

Rest of the Order shall remain unchanged."

16. From the aforesaid orders of the Supreme Court as also the learned Division Bench of the Allahabad High Court, it is ascertainable beyond cavil that the issue of petitioner being entitled to the pension under the 1995 Scheme is undisputed. The other issue that would also get crystallised is that the said pension was payable *w.e.f.* 31.07.2002 subject to certain formalities which may have to be worked out by the respondents. It is also not disputed by the respondents that the contribution from the salary of the petitioner was being deducted on account of such pension continuously from the year 1995 when the scheme was floated right upto till 31.07.2002. The law on interest payable on delayed payment of salary, arrears of salary, other payable allowances as well as pension is no more *res integra* and have been crystallised in the judgments of ***Aloka Shanker Pandey vs. Union of India,*** (2007) 3 SCC 545; ***S.K. Dua vs. State of Haryana,*** (2008) 3 SCC 44; ***State of Andhra Pradesh and Another vs. Dinavahi Lakshmi***

Kameshwari, (2021) 11 SCC 543.

17. The argument of Mr. Tripathi, learned counsel for respondent no.1/Corporation in respect of the doctrine of *res judicata/constructive res judicata,* appears to be attractive at the first blush. However, the same are found to be untenable for the reason that the payment of the interest is integral to the delay in payment of such right and entitlement of a particular individual. Even though the learned Division Bench had not passed any particular order in respect of the interest component, however the interest component, in the opinion of this Court, would be inbuilt.

18. Having regard to the fact that the judgment of the Allahabad High Court was passed on 17.12.2009, in the ordinary course while implementing, the respondents would be liable to payment of interest beyond the stipulated period for calculating such pension from the date when the petitioner superannuated i.e., 31.07.2002. Any payment of pension with delay beyond the stipulated period where the employer is required to complete the formalities, would entitle such person to interest on such delayed payments. Moreover, the Allahabad High Court did not deny such rights or entitlement of the petitioner. In the opinion of this Court the said interest was inbuilt in the final order that was passed. It appears that the respondents while challenging the said impugned judgment of the Allahabad High Court before the Supreme Court did not make any grouse on the said issue.

19. Once the judgment of the learned Division Bench was upheld by the Supreme Court, the issue finding favour with the petitioner, got crystallised.

20. The other limb of the argument of Mr. Tripathi, learned counsel for respondent no.1 regarding pendency of other matters before learned Coordinate Bench of this Court regarding petitioners therein seeking payment of pension as also interest is concerned, the said issue would not interdict the proceedings before this Court for the reason that in case the learned Coordinate Bench comes to the conclusion that the petitioners therein are entitled to payments, the said Coordinate Bench may decide the issue of interest accordingly, in the facts arising in those cases.

21. So far as this Court is concerned, since the issue of entitlement as already been agitated right uptill the Supreme Court, nothing further is required to be considered.

22. In that view of the matter, this Court allows the present writ petition.

23. The petitioner is found entitled to payment of interest at the rate of 7% per annum on and from 01.08.2002 till 01.08.2010, when the respondent had started disbursing the pension at the rates prescribed in 1995 Scheme to the petitioner. The same would be worked out within a period of eight weeks and shall be released thereafter by respondent no.2 to the petitioner within four weeks.

24. The petition is disposed of in above terms with no order as to costs.

TUSHAR RAO GEDELA, J

MAY 21, 2024
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