



2024:DHC:5485-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 11.07.2024
Judgment pronounced on: 26.07.2024

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W.P.(C) 3351/2017**NAU NIHAL SINGH RANA****.....Petitioner**

Through: Mr. A.K. Behera, Senior Advocate
with Mr. A.K. Trivedi, Mr. Dhruv
Kothari and Mr. A.P.Singh,
Advocates.

versus

UNION OF INDIA & ORS**.....Respondents**

Through: Mr. Jaswinder Singh and Ms. Shipra
Shukla, Advocates.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J.:**

1. By way of this writ petition brought under Articles 226 and 227 of the Constitution of India, the petitioner has sought setting aside of order dated 02.09.2016 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, in Original Application No.653/2015 and has also sought grant of interest on gratuity, all retirement benefits and leave encashment etc. On the basis of advance notice, respondents entered appearance through counsel.



1.1 After completion of pleadings, the predecessor bench directed Rule DB vide order dated 14.11.2017. Thereafter, vide order dated 22.10.2019, the early hearing application was allowed.

1.2 We heard learned counsel for both sides and examined the records.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The petitioner, a member of the Indian Railway Personnel Service (IRPS), while posted as Chief Personnel Officer (CPO), suspended the Assistant Personnel Officer (APO), Ms. Kuljeet Kaur on 23.09.1996 and issued against her a chargesheet for dereliction of duties.

2.2 Thereafter, on 04.10.1996, Ms. Kuljeet Kaur lodged a complaint against the petitioner before the Minister of Railways, alleging sexual harassment. Consequently, the petitioner was suspended from service on 31.10.1996 and was issued a chargesheet on four articles of charges, proposing major penalty. The Enquiry Officer in his report held the charges of sexual harassment not proved against the petitioner.

2.3 After examining the entire record, the Disciplinary Authority on 13.01.2000 passed an order holding that article of charge No. 4 stood partially established to the extent that the petitioner was found lacking leadership qualities; and on the basis of the said assessment, minor penalty of reduction of pay by one stage for six months without cumulative effect was imposed on the petitioner.



2.4 The petitioner preferred a statutory appeal on 22.02.2000 before the Appellate Authority. Since the appeal kept pending for long, the petitioner filed OA No. 22/2001 before the Central Administrative Tribunal, Principal Bench, New Delhi.

2.5 During pendency of OA No. 22/2001, after issuance of notice, the Appellate Authority on 26.12.2022 imposed enhanced punishment of removal from service on the petitioner.

2.6 The said enhanced punishment was challenged by the petitioner before the learned Tribunal but his Original Application was dismissed, so he filed Writ Petition no. 4014/2005 before this court.

2.7 By way of judgment dated 04.12.2008, allowed the said writ petition of the petitioner, thereby setting aside both the above mentioned penalties and directing grant of all consequential benefits to the petitioner.

2.8 The Special Leave Petition filed by the respondents was converted into Civil Appeal No. 1752/2010 and the same was dismissed by the Supreme Court on 27.09.2011.

2.9 In the meanwhile, on not being granted consequential benefits in terms with judgment dated 04.12.2008 of this court, the petitioner filed a Contempt Petition (C) No. 317/2009, which was finally disposed of by this court with the observation that it was not within the scope of contempt



proceedings to examine if the interest could be treated as a part of consequential benefits; however, this court granted liberty to the petitioner to seek redressal of his grievances, if any, by availing such remedies as may be permissible in accordance with law.

2.10 Thereafter, the petitioner filed OA No. 653/2015 which was dismissed by way of the order, impugned in this writ petition.

3. During final arguments, learned senior counsel for petitioner took us through the above record and contended that the impugned order is not sustainable in the eyes of law. It was argued by learned senior counsel for petitioner that view of the learned Tribunal not placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***S.K. Dua vs. State of Haryana***, (2008) 3 SCC 44 was not legally sound. Learned senior counsel also took us through records to show that the petitioner was exonerated of not just the punishment imposed by the Appellate Authority but the one imposed by the Disciplinary Authority also, and it cannot be treated to be exoneration on technical grounds. Learned senior counsel for petitioner also argued that the doctrine of *res judicata* invoked in the impugned order by the learned Tribunal does not come into play in cases of the present nature.

4. On the other hand, learned counsel for respondents supported the impugned order and contended that the present petition is devoid of merit. Learned counsel for respondents reiterated the reasoning advanced in the impugned order and emphasised that the judgment in the case of ***S.K. Dua*** (supra) would not operate in the present case since in the said case, the Supreme Court had remanded the matter. It was also argued on behalf of



respondents that since this court clearly opined in the earlier proceedings that there is no question of grant of interest, that opinion in itself would operate *res judicata* on the issue; and that while dismissing the Contempt Petition, this court did not grant liberty to the petitioner to initiate fresh proceedings to claim interest, so O.A No.653/2015 was not maintainable. In support of his arguments, learned counsel for respondents placed reliance on the judgment of the High Court of Jammu & Kashmir and Ladakh in the case of **Smt. Ranjeet Kour vs. State of J&K & Ors.**, CFA No.5/2019 decided on 02.12.2023.

5. In the above rival backdrop, it would be apposite to extract the relevant portion of the impugned order, which is as follows:

“19. From the above, what can be concluded is as follows:

- (i) The Hon'ble High Court has already held that the question of interest does not arise and consequential benefits does not include interest;*
- (ii) The judgment of the Hon'ble Supreme Court in S.K. Dua (supra) is not relevant in this case;*
- (iii) The applicant was not exonerated on merit but let off on technical ground.*

20. In view of above discussion, the OA is found to be devoid of merit and is accordingly dismissed. No costs.”

Thence, the entire issue involved in this case revolves around three aspects, viz. whether the petitioner was let off on technical grounds so as to disentitle him of the interest on retiral dues; whether the judgment of the Hon'ble Supreme Court cited above would not be relevant for present purposes; and whether claim of the petitioner for interest on retiral dues is barred by *res judicata*.

6. To begin with the first aspect as to whether the petitioner was



exonerated on technical grounds, in the judgment dated 04.12.2008 a coordinate bench of this court in Writ Petition (Civil) 4014/2005 (*which judgment was upheld by the Hon'ble Supreme Court in Civil Appeal No. 1752/2010 in detailed order dated 27.09.2011*) held thus:

"5. It is clear from the charges levelled that the basis of the fourth charge is the sexual advances alleged to have been made by the Petitioner. But since none of the charges relating to sexual harassment were proved against him, it appears to us that the allegation that the Petitioner had initiated disciplinary action against his Private Secretary on a frivolous ground with the ulterior motive of making her more pliable so that she would give in to him, must necessarily fall to the ground.

6. It also appears to us that the Railway Board appreciated this difficulty and that is why it broke up the fourth Article of Charge into three parts: the alleged sexual advances made by the Petitioner, the suspension of the Private Secretary on a frivolous ground and the ulterior motive of the Petitioner of making her more pliable so that she would give in to him. The Railway Board held that the first and third parts of the charge were not proved but held that the second part, that is, the suspension of the Private Secretary on a frivolous ground was proved. On this basis, the Railway Board held that the fourth charge was partially proved against the Petitioner. The Railway Board held that the Petitioner overreacted to a perceived intentional lapse which resulted in the charge sheet being issued to the Private Secretary. The Railway Board categorically held that it was not possible to conclude that the initiation of disciplinary action by the Petitioner was aimed at making the Private Secretary more pliable and to submit to his alleged sexual overtures.

12. As we have mentioned above, on a reading of the fourth charge, it is quite clear that the alleged cause for suspending the Private Secretary of the Petitioner was that she had spurned his alleged sexual advances. However, it was not proved that the Petitioner had made any sexual advances. Therefore, the cause for suspending the Petitioner's Private Secretary was not proved against him. Consequently, the fourth charge against the Petitioner ought to have been dropped. But for reasons that are not clear (and which we need not go into) the Railway Board split up the fourth charge and concluded that the suspension and issuance of a charge sheet to the Private Secretary was with reference to a trivial matter and an independent charge and to that extent the fourth charge against the Petitioner was proved.



19. Taking all these facts into consideration, in our opinion, it is quite clear that the appellate authority completely misdirected itself in law in upsetting the factual conclusions arrived at by the Railway Board and thereafter enhancing the punishment awarded to the Petitioner. For this reason, the order passed by the Tribunal upholding the decision of the appellate authority is required to be set aside.

20. In a situation such as this, ordinarily, we would have had to remit the case to the appellate authority for reconsideration of the matter in its correct perspective. But, we have been told that the Petitioner has since retired and has also suffered the monetary penalty that was originally imposed upon him by the Railway Board. Therefore, we do not think it appropriate to remit the matter back to the Respondents for a reconsideration of the issue. The case is about 12 years old and deserves to be given a quiet burial.

21. The writ petition is allowed, but there will be no order as to costs. The Petitioner will, however, be entitled to all consequential benefits.”

Going by the above extract of the judgment of this court, which judgment was upheld by the Hon’ble Supreme Court, we have no reason to accept the contention that the exoneration of the petitioner was only on technical grounds.

7. Coming to the argument *qua* the judicial precedent in the case of **S.K. Dua** (supra), the situation before the Hon’ble Supreme Court was that the appellant therein, few days before his retirement was served with three chargesheets and after retirement he was paid provisional pension, withholding his other retiral dues including commuted value of pension, leave encashment, gratuity etc. totalling to about Rs.12,00,000/-; that the said retiral dues were withheld till finalization of disciplinary proceedings and after conclusion thereof the same were paid to him with a delay of four years from the date of his superannuation. The Supreme Court held thus:



“13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr Quraishi from the post of Secretary, Irrigation. The said Mr Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. **The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.**

14. In the circumstances, *prima facie*, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But **even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution.** The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.”

(emphasis supplied)

We are unable to subscribe to the view of the learned Tribunal in paragraph 18 of the impugned order that **S.K. Dua** (supra) would not operate as judicial precedent in the present case because the matter therein was remanded to the High Court, clarifying that observations of the Supreme Court were *prima facie* observations. The above extract clearly shows that the Hon’ble



Supreme Court opined the grievance of the appellant to be well founded even though *prima facie*. It would not be legally sound to reject such detailed discussion in a judgment of the apex court in view of the doctrine of precedent.

8. Coming to the last argument, namely the doctrine of *res judicata*, the portion of order dated 11.12.2014 passed by this court in the Contempt Petition No.317/2009, relied upon by learned counsel for respondents is extracted below:

*“6. I am not impressed with this submission of the petitioner that he is entitled to interest on gratuity or interest on the delayed payment **having regard to the fact that this is a contempt petition.** Even the quantum of amount payable to the petitioner cannot be permitted to be adjudicated in a contempt petition. **The contempt action is to be initiated against a party only if there is disobedience and this disobedience must be contumacious, wilful and deliberate.***

*7. In the order granting consequential reliefs to the petitioner, there is no mention of payment of interest either on gratuity or on the amount of arrears payable to the petitioner by way of consequential benefits. **Therefore, this court cannot enlarge the scope of the impugned order so as to give the benefit of interest on any score to the petitioner.***

*8. Similarly, based on the same analogy, even if the petitioner is disputing the quantum of payment made to him, **that cannot be subjected to a minute analysis in a contempt petition. The petitioner is free to seek redressal on all these scores in accordance with law if his grievances still subsist.***

(emphasis supplied)

We are unable to convince ourselves that the above extract can be used to invoke the doctrine of *res judicata* in the present case.

8.1 The doctrine of *res judicata* stipulated in Section 11 of the Code of Civil Procedure comes into play in a case where a matter of fact involved in



the *lis* was a matter directly or substantially in issue in the previous litigation between the same parties. Literally speaking, the Latin expression *res judicata* means a matter already adjudged. The principle is that a matter which has already been finally decided in a judicial proceeding should not be allowed to be raised again. What is significant for operation of *res judicata* is that the matter involved in the subsequent subject *lis* must be directly or substantially in issue in the previous *lis* between the same parties or their successors.

8.2 In the present case, as is obvious, the matter as regards the petitioner's entitlement to interest on retiral dues was neither directly nor even substantially in issue in the contempt proceedings. The issue involved in the contempt proceedings was compliance by the respondents with the order directing grant of consequential benefits, namely gratuity, leave encashment etc. Whether the petitioner is or is not entitled to interest on the retiral dues or the consequential benefits was not within the scope of the contempt proceedings, which is why the learned court in order dated 11.12.2014 explicitly did not accept the submission of the petitioner *qua* entitlement to interest on gratuity or on the delayed payment.

8.3 Going by the extract of order dated 11.12.2014 quoted above, we have no doubt at all that entitlement of petitioner to interest on the retiral dues was not adjudicated, nor the same could be adjudicated in the contempt proceedings and consequently, the doctrine of *res judicata* would not come into play in the present case.



8.4 So far as the judgment in the case of **Smt. Ranjeet Kour** (supra) of the learned Single Judge of the High Court of J&K and Ladakh, relied upon by learned counsel for respondents, we find the same completely distinguishable from the present case on facts insofar as in the said case, the issue of award of interest on consequential benefits was clearly adjudicated upon by the appellate court while deciding the Letters Patent Appeal, thereby holding the appellant therein entitled to interest at a rate of 9% per annum, which direction was modified by the Hon'ble Supreme Court only to the extent of period for which the interest was payable. Therefore, in the said case nothing left to be adjudicated upon and consequently, the subsequent suit on the same cause of action was held barred by the doctrine of *res judicata*. In contrast, in the present case, the issue of interest on the retiral dues of the petitioner remained not adjudicated upon as the Contempt Court took a clear view that such adjudication would fall beyond its scope.

9. It cannot be ignored that had the petitioner not been made to face the departmental action, which ultimately failed, he would have certainly been granted all retiral dues on the day of his superannuation. It is only on account of the said failed departmental action that retiral dues of petitioner got delayed. Once this court directed payment of all consequential benefits to the petitioner, which order was upheld by even the Hon'ble Supreme Court, the respondents ought to have paid not just the retiral dues but even interest thereon at a reasonable rate on their own, instead of compelling the petitioner to undergo further rounds of litigation. Being the State, it was bounden duty of the respondents to act justifiably so as to avoid burden of this litigation on the petitioner as well as the exchequer.



10. Since no clear legislative pronouncement has been placed before us as regards rate of interest to be awarded in such cases, going by the overall facts and circumstances of this case, as well as the present day economic conditions in the country, in the present case, in the interest of justice, rate of 6% per annum would be fair and reasonable rate of interest payable to the petitioner on the retiral dues for the period from the date of his retirement till the date of actual payment thereof.

11. In view of above discussion, we are unable to uphold the impugned order, so the same is set aside and the appeal is allowed, directing the respondents to pay to the petitioner, interest on all retiral dues at a rate of 6% per annum for the period from the date of his superannuation till the date of actual payment. Besides, the respondents shall also pay to the petitioner a sum of Rs.25,000/- towards costs of litigation, estimated on conservative side. The said amounts shall be paid to the petitioner within four weeks from the date of this judgment.

**GIRISH KATHPALIA
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

JULY 26, 2024

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