

Mohan Awasthi Vs. the State of Madhya Pradesh

Mohan Awasthi Vs. the State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/1089982

Court : Madhya Pradesh

Decided On : Sep-23-2013

Appellant : Mohan Awasthi

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Amit Seth

Judgement :

1 HIGH COURT OF MADHYA PRADESH : JABALPUR WRIT PETITION
No.12077/2011 Mohan Awasthi (since deceased), through LR : Smt. Pushpa
Awasthi Vs. State of M.P. & others

Present : Honble Shri Justice K.K. Trivedi
Shri

Amit Seth, learned Counsel for the petitioner. Shri Vivek Agrawal, learned Deputy
Advocate General, for the respondents-State.

ORDER

(23/09/2013) The claim made in the present writ petition by the petitioner is a direction to the respondents to pay interest on the retiral dues such as gratuity and pension, which was paid after a considerable delay. The original petitioner came before this Court ventilating his grievance that despite the orders passed by the

authorities, in all matters, the payment of Death-cum-Retirement Gratuity (herein after referred to as 'DCRG') and arrears of pension amounting to Rs.1,66,530/- was not made to him within time. After a considerable long delay, the said amount was paid to him. According to the original petitioner, the respondents were liable to pay the interest on the said amount, which was illegally withheld from the month of January, 2008. During the pendency of the petition, the original petitioner has died and is substituted by his widow.

2. Contesting the claim made by the original petitioner, it is contended by the respondents that on 31.07.2004 the 2 original petitioner has retired from service. A departmental enquiry was pending against the original petitioner in which ultimately penalty of withholding of 10% pension for a period of 10 years was imposed on him and the recovery was to be made from the DCRG. The original petitioner challenged the order of punishment before this Court in W.P. No.3112/2008 (S), which came to be decided on 11.08.2009. The writ petition was allowed, the order of punishment was quashed with a direction to pay the arrears of such retiral dues to the original petitioner within a period of three months but no interest was ordered by this Court. The order passed in the case of original petitioner by this Court was based on a decision which has been overruled by the Full Bench of this Court subsequently and, therefore, amount of DCRG was not paid to the original petitioner. Now since the amount has already been paid to the original petitioner, on authorization, the claim made with respect to the interest is misconceived and not sustainable. It is, thus, contended that the petition is liable to be dismissed.

3. After hearing learned Counsel for the parties at length and after examining the record, it is clear that the original petitioner was entitled to all the amount on his retirement on 31.07.2004, which was to be paid in terms of the provisions of Madhya Pradesh Civil Services (Pension) Rules, 1976. However, in the garb of a departmental enquiry such an amount was not paid to the original petitioner within time. An order of penalty was issued on 24.12.2007 and the departmental enquiry was closed. The amount of DCRG was not to be withheld in full. The original petitioner was to be paid only the provisional pension during the pendency of the departmental enquiry and to the extent the amount was withheld, the order was

passed by way of penalty. Ten percent amount of pension, which was withheld, was not required to be recovered from the DCRG in any manner. No excess payment was made to the original petitioner towards 3 the pension as the provisional pension was not the full pension. This being so, the stand taken by the respondents cannot be accepted. No good reason is shown as to why the amount of DCRG was not disbursed after passing of the order in the departmental enquiry on 24.12.2007. Again the order of penalty was sought to be challenged in the writ petition aforesaid, which came to be decided on 11.08.2009. If the respondents were aggrieved by any order passed by this Court in the aforesaid petition, they were required to challenge the said order before the higher forum. Even if the order was passed on a decision rendered by this Court in the case of State of Madhya Pradesh & another vs. R.L. Ogle & others, 2006(1) MPLJ412DB, and the said decision was subsequently overruled, it was open to the respondents to assail the order passed in the case of original petitioner before higher forum. Nothing was done, on the other hand they took a decision and released the DCRG and 10% pension amount withheld by way of penalty to the original petitioner vide order dated 21st March, 2011. They themselves cancelled the order of penalty, which was quashed by this Court in the writ petition filed by the original petitioner. The correspondence was done thereafter and it appears that ultimately the final payment was made with respect to the withheld amount to the original petitioner only when a contempt petition was filed before this Court. These facts have not been explained by the respondents as to why they have not taken immediate steps for release of the DCRG amount after passing of order dated 24.12.2007 imposing a penalty on the original petitioner or when the order of penalty was quashed by this Court on 11.08.2009 and why they have taken so much time to decide and to disburse the retiral dues of the original petitioner.

4. The State Government in Finance Department has issued a circular on 27th January, 2007 whereby it has been 4 said that in case there is delay caused in payment of amount of DCRG, an interest at the rate of 8% is required to be paid. Earlier the rate of interest was 12% which was reduced to 8%. It is seen from the pleadings in the writ petition, which have not been disputed, that the order of penalty was issued on 24.12.2007 that means after the order passed by the Finance Department reducing the rate of interest. This being so, it would be

necessary to direct the respondents to make payment of interest on the amount of DCRG to the petitioner with effect from 1st January, 2008 till the date of actual payment of the said amount.

5. Consequently, the writ petition is allowed in part. The respondents are directed to make payment of interest at the rate of 8% on the amount of DCRG to the petitioner with effect from 01.01.2008 till the date of actual payment made, within a period of two months from the date of receipt of copy of this order.

6. The writ petition is allowed to the extent indicated herein above. There shall be no order as to costs. (K.K. Trivedi) Judge Skc

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com