S. Thakran Vs. Indraprastha Power Generation Co. Ltd and Anr

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SooperKanoon Citation : sooperkanoon.com/11902

Court : Delhi

Decided On : Dec-18-2014

Judge : Hima Kohli

Appellant : S. Thakran

Respondent : Indraprastha Power Generation Co. Ltd and Anr

Advocate for Def. : Mr. Sumit Chander, Mr. Sumeet Pushkarna

Advocate for Pet/Ap. : Mr. Vimal Wadhawan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5986/2013 Decided on:

18. 12.2014 IN THE MATTER OF: S. THAKRAN ..... Petitioner Through: Mr. Vimal Wadhawan, Advocate versus INDRAPRASTHA POWER GENERATION CO. LTD AND ANR... Respondents Through: Mr.R.K.Vats, Advocate for R-1/IPGCL Mr. Sumit Chander, Advocate for Mr. Sumeet Pushkarna, Advocate for R-2. CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.(Oral) 1. The petitioner, who was working on the post of PRO with the respondent No.1/IPGCL, has filed the present petition praying inter alia for quashing of the suspension order dated 21.11.2012 and the order dated 26.02.2013 issued by the respondent No.1/IPGCL, whereunder he was informed that pending the departmental inquiry against him, it was decided to release only the provisional pension in his favour.

The second relief sought by the petitioner is for issuing directions to the respondents to pay release his retirement benefits of pension, GPF, gratuity, leave encashment, commutation etc. as per the rules and the salary for the period w.e.f. 01.10.2012 to 05.10.2012, alongwith interest.

2. This order is in continuation of the orders dated 25.08.2014 and 01.12.2014.

3. As on date, the issue with regard to payment of pension, GPF, gratuity, leave encashment, commutation etc. does not survive for the reason that the said amounts have already been released by the respondents in favour of the petitioner. The only issue left for adjudication is the arrears of salary claimed by the petitioner w.e.f. 01.10.2012 to 05.10.2012 and the pension for the period w.e.f. 06.10.2012 to 30.11.2012.

4. Learned counsel for the petitioner draws the attention of the Court to the letter dated 05.10.2012 addressed by the Managing Director of the respondent No.1/IPGCL to the petitioner. relieving order in respect of The said letter is a the petitioner, wherein he was informed that his request for seeking voluntary retirement with immediate effect had been acceded to by condoning three months notice period and he was relieved with effect from 05.10.2012 (Forenoon). Learned counsel states that it is apparent from the aforesaid relieving letter that the petitioner had remained on the payrolls of the respondent No.1/IPGCL, till 05.10.2012. However, his salary for the period w.e.f. 01.10.2012 to 05.10.2012 has not been released and instead, the respondent has paid him pension for the said period.

5. Mr. Vats, learned counsel for the respondent No.1/IPGCL disputes the above submission and states that the petitioner was paid the salary for the months of October and November, 2012 in terms of the computation enclosed as Annexure R-4 (colly) to the affidavit dated 06.09.2014 (Page 95). As per the aforesaid computation, the respondent No.1 has treated 27 days of October, 2012 and 20 days of November, 2012 as Dies-non and paid a sum of `32,127/- to the petitioner for the said period. The explanation offered for releasing the salary to the petitioner for the months of October and November, 2012 when he had already been relieved w.e.f. 05.10.2012 is that the relieving order issued in his favour had

been kept in abeyance by the Competent Authority on account of the fact that the case had not been processed properly and the said position had been communicated to the petitioner vide letter dated 02.11.2012, but he did not join the duty and failed to submit a leave application for the period w.e.f. 05.10.2012 to 30.11.2012.

6. It is further submitted by counsel for the respondent No.1/IPGCL that vide office order dated 21.11.2012, disciplinary proceedings had been initiated against the petitioner for alleged financial irregularities and he was placed under suspension with immediate effect. Thereafter, when the matter was being processed for taking the disciplinary proceedings further, the CVC had recommended that the matter be closed as the petitioner had already been relieved and in its meeting dated 20.09.2013, the Board of Directors resolved not to take any action against the petitioner. Resultantly, an order dated 20.10.2013 was issued by the Competent Authority, conveying the displeasure of the Board of Directors to the petitioner for his acts of omissions and commissions.

7. The aforesaid explanation offered by learned counsel for the respondent No.1 does not justify non-releasing of the salary to the petitioner for the period w.e.f. 01.10.2012 to 05.10.2012 and nor does it explain the decision taken by the respondent No.1/IPGCL of treating the petitioner on its payrolls till 30.11.2012 when a relieving order had already been issued by the Competent Authority on 05.10.2012. If there was any procedural impropriety in processing the petitioners case, then the fault lies at the door of the respondent No.1/IPGCL and the petitioner cannot be blamed for the same. In the above circumstances, the stand taken by the respondent No.1/IPGCL that the petitioner ought to have joined the duties in terms of the letter dated 02.11.2012 issued to him or that he did not submit any leave application for the period w.e.f. 05.10.2012 to 30.11.2012 is found to be misconceived and is turned down.

8. The right of the petitioner to receive salary for the period from 01.10.2012 to 05.10.2012 and claim pension w.e.f. 6.10.2012 onwards is upheld. As a result, it is deemed appropriate to direct the respondent No.1/IPGCL to re-calculate the salary payable to the petitioner by treating him on duty till 05.10.2012. Adjustments shall

be given for the amounts already released by the respondent No.1 in favour of the petitioner under the head of salary for the months of October and November, 2012 as reflected in the computation attached to the affidavit dated 6.9.2014. Effective from 6.10.2012, pension shall be payable to the petitioner for the gap months till 30.11.2012.

9. At this stage, counsel for the respondent No.2 states that the petitioner was to superannuate on 30.11.2012 but he had been relieved by the respondent No.1/IPGCL prematurely and therefore his client is liable to pay the pension to the petitioner only upon his attaining the age of superannuation and if the respondent No.1/IPGCL had decided to accede to the petitioners request for relieving him earlier thereto, then it is for the IPGCL to release the pension in favour of the petitioner for the period between 6.10.2012 and 30.11.2012.

10. The aforesaid issue is required to be sorted out between the respondent No.1/IPGCL and respondent No.2, but in the first instance, respondent No.1/IPGCL shall release the entire amounts directed above, to the petitioner. If it is the stand of the respondent No.1/IPGCL that the pension payable to the petitioner for the period between 6.10.2012 and 30.11.2012 is payable by the respondent No.2, then it shall be at liberty to recover the same from it as per law. It is further directed that the respondent No.1/IPGCL will pay the petitioner interest @9% per annum on the delayed payment of the salary amount and the pension payable for the period w.e.f. 06.10.2012 till 30.11.2012, as and when the said amount had become due and payable, till realization. The said amounts shall be released in favour of the petitioner along with interest zwithin six weeks from today, failing which interest shall be payable @ 12% per annum till the entire amount is realized.

11. The petition is disposed of with litigation costs of `7,500/- imposed on the respondent No.1/IPGCL. The said amount shall be paid to the petitioner alongwith the amounts directed above. DECEMBER18 2014 rkb W.P.(C) 5986/2013 (HIMA KOHLI)