

State of U.P. and ors. Vs. Ram Badan Dubey and anr.

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Court : Allahabad

Decided On : Aug-24-2004

Reported in : (2004)3UPLBEC2831

Judge : Tarun Chatterjee, C.J. and ;Vineet Saran, J.

Appeal No. : Special Appeal No. 61 of 2003

Appellant : State of U.P. and ors.

Respondent : Ram Badan Dubey and anr.

Advocate for Def. : Party-in-Person

Advocate for Pet/Ap. : Ran Vijay Singh, S.C.

Judgement :

Tarun Chatterjee, C.J. and Vineet Saran, J.

1. This Special Appeal has been filed by the State of U.P. and two others against the Judgment and Order dated 3.9.2002 passed by a learned Judge in Civil Misc. Writ Petition No. 55579 of 2000.

2. The brief facts relevant for the decision of this appeal are that the writ-petitioner Ram Badan Dubey (respondent in this appeal) was an assistant teacher in a recognized educational institution, namely, Agrasen Inter College, Allahabad. He was given notice dated 11.2.1985 that on attaining the age of 60 years he would

superannuate on 30.6.1985. The writ-petitioner, however, challenged the said notice and contended that he was entitled to continue in service upto 30.6.1986. The writ-petitioner file Civil Suit No. 331 of 1985 praying for a declaration that he was entitled to continue in service till 30.6.1985. By Judgment and Decree dated 25.2.1988 the trial Court decreed the suit with costs along with a direction to pay all privileges and arrears etc. A time-barred appeal was filed challenging the said judgment of the trial Court. The application for condonation of delay was rejected by the Appellate Court vide its order dated 27.1.1990. The judgment and order of the trial Court thus became final. The writ-petitioner thereafter ran from pillar to post for getting his arrears of salary, balance amount of pension and group insurance along with interest. Thereafter ultimately he was constrained to put the decree in execution and only after the attachment order was passed and the jeep of the District Inspector of Schools was attached, the Judgment-Debtors (appellants in this Special Appeal) paid the dues of the writ-petitioner on 13.12.1997 which was after 11-1/2 years of the retirement of the writ-petitioner on 30.6.1986. The writ-petitioner thereafter filed the writ petition claiming that he was entitled to interest for 11-1/2 years at the rate of 18% per annum and thus claimed a sum of Rs. 4,14,300/- towards interest for the delay in payment.

3. After hearing the parties the learned Judge allowed the writ petition and directed the appellants herein (Respondents in the writ petition) to jointly and severally ensure payment of a sum of Rs. 2,16,341/- towards interest amount plus Rs. 3,000/- as cost i.e., a total amount of Rs. 2,19,341/- to the petitioner by means of an account payee bank draft within a period of three months. The said order is impugned in this special appeal.

4. It may be noted that this appeal had also been filed after delay of more than three months. However, on hearing the parties and considering the averments made in the affidavits, the delay has already been condoned.

5. We have heard Sri Ran Vijai Singh, learned Standing Counsel appearing for the appellants and the Respondent, who appeared in person and have perused the record.

6. It is not disputed that the writ-petitioner was entitled to certain dues of service which were paid to him only on 31.12.1997. After considering the facts and circumstances of this case the learned Judge, while deciding the writ petition, observed as follows :-

'It appears no action was taken by the departmental authorities hence the petitioner was constrained to file the present writ petition. Pleadings contained in the writ petition show that the petitioner got his money on 13.12.1997 when decree in favour of the petitioner was put in execution and attachment proceedings were also initiated by the Civil Court. This goes to show that the department did not honour the Civil Court decree compelling the petitioner to put the same for execution and coercive measures taken when jeep belonging to the office of the District Inspector of Schools was attached.'

7. In the said judgment a categorical finding has been recorded that there was deliberate delay in payment of the arrears of salary, pension, group insurance etc. to the writ-petitioner. It has also been observed that the appellants (respondents in the writ petition) chose not to file a detailed counter affidavit rebutting the specific averments of the writ-petitioner regarding harassment at the behest of the State authorities but merely filed short counter affidavit and supplementary counter affidavits. However, it was brought on record that the writ-petitioner was paid an amount of Rs. 2,56,693/- only on 13.12.1997. The Writ Court thus found that the writ-petitioner was entitled for payment of simple interest at 12% per annum. Since there was discrepancy in the calculation of the interest amount by the writ-petitioner and the appellants, the learned Single Judge took assistance of the Section Officer of the Accounts Section in the Registry of the High Court, who was asked to calculate the amount of simple interest at the rate of 12% per annum for 11 years, instead of 11-1/2 years, which came to Rs. 1,44,227/-. The said amount of interest was calculated upto December, 1997. The Writ Court thereafter granted 10% simple interest for a period of five years from 1997 to 2002, treating the sum of Rs. 1,44,227/- to be the principal amount, which came to Rs. 72,114/- and thus held that the petitioner was entitled to payment of an amount of Rs. 2,16,341/- and also awarded cost of Rs. 3,000/-.

8. Having heard the parties and considering the facts and circumstances of this case, we are of the view that the finding of the Writ Court that the writ-petitioner (Respondent in this appeal) was entitled for payment of interest for the delay in payment of the legitimate dues of the writ-petitioner appears to be justified. A specific finding has been recorded by the Writ Court that there was no fault on the part of the writ-petitioner which could be attributed to him for the delay in making the payment. Considering the fact that despite the decree having been granted by the trial Court in favour of the writ-petitioner and the appeal filed against the same having already been dismissed in the year 1990, we see no reason why the amount was not paid immediately thereafter. A retired Government employee is not expected to litigate with the State Government for payment of his legitimate dues and even after litigation and the decree having become final, it is not expected of the State Government to withhold the payment of its retired employee for years together until the decree is put in execution and attachment orders are passed. The State Government is expected to act fairly with its employees and such unfair attitude having been adopted by the State Government does entitle the writ-petitioner for payment of interest, which has rightly been awarded.

9. However, the rate of interest awarded at 12% per annum appears to be slightly on the higher side. Considering the then prevailing market rate of interest and also the current market rate of interest, in our view, simple interest at the rate of 9% per annum for the entire period ought to have been awarded. The finding of the Writ Court that the writ-petitioner would be entitled to interest after December, 1997 is also justified. In our view, the rate of interest for such period should also be 9% per annum.

10. Since, we find that the rate of interest awarded was slightly on the higher side, in our view, after calculating the same at 9% simple interest per annum, a quantified amount of Rs. 1,75,000/- ought to be paid to the writ-petitioner towards interest for the delay in payment of his legitimate dues after his retirement, which would meet the ends of justice. It is further provided that the writ-petitioner shall also be entitled to cost of litigation, which is assessed at Rs. 5,000/- for Writ Court as well as in this appeal. Thus the writ-petitioner would be entitled to payment of Rs. 1,80,000/-.

11. This special appeal, accordingly, stands partly allowed. It is thus directed that the appellants shall jointly and severally ensure payment of an amount of Rs. 1,80,000/- to the writ-petitioner by means of an account payee bank draft within a period of three months from today. It is further provided that in case the said amount is not paid within three months, the writ-petitioner shall further be entitled to payment of interest at the rate of 9% on the said amount of Rs. 1,80,000/- from today till the date of actual payment for delay of this payment. In case the amount of Rs. 1,80,000/- is paid to the writ-petitioner within the stipulated period of three months, no further interest shall be payable by the appellants.

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