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Court : Delhi

Decided On : Jan-20-2006

Reported in : 127(2006)DLT514

Judge : S. Ravindra Bhat, J.

Appeal No. : W.P.(C) Nos. 20025/2004 and 13367/2005

Appellant : inder Singh

Respondent : D.T.C.

Advocate for Def. : Saroj Bidawat, Adv.

Advocate for Pet/Ap. : C. Hari Shankar and; Harpreet Singh, Advs

Disposition : Petition allowed

Judgement :

S. Ravindra Bhat, J.

1. Issue Rule. With consent of learned counsel for parties, the matter is heard finally.

2. The petitioner, an employee of the respondent DTC, was working with it since 1963. On certain allegations of having been party to a strike, his services were terminated on 18.3.1988.

3. It is alleged that the DTC, later was of the view that the order of termination required re-consideration. Accordingly, on 20th October, 1989 the petitioner was reinstated to the services. The order inter alias stated as follows: He will not be entitled to draw any compensation or salary or allowance or any financial benefit for the intervening period from his dismissal to re- appointment. He will have to promise that he will not file any such claim from management court or Agency.

The intervening period from the date of his dismissal to re-appointment shall be deemed as dice-non and this period will be taken in account for the purpose of calculating leave, bonus, increment, Provident Fund, Gratuity etc.

He will not be deprived from the benefit or prior to his dismissal period.

He will withdraw all writ and applications pending in any court, Industrial Tribunal or any arbitrator challenging dismissal order or in demand to get any relief. He will file an application to withdraw his complaint given against his dismissal before Industrial Tribunal/Labour Court.

He will not raise any dispute against his dismissal and above terms and conditions in any form.

He will have to deposit all amount which he had received as Notice Salary, scrutiny, Compensation, Gratuity, P.F. Amount at the time of dismissal under provisions of various regulations, back to the DTC otherwise this amount will be adjusted at the time of retirement without paying any benefit for intervening period.

4. Apparently, the petitioner had been given Rs. 21,658.15 towards gratuity and Rs. 23,601/- towards the amounts standing to his credit in the Employees Provident Fund account, at the time of his termination in 1988. The effect of the reinstating order was that the amount has to be refunded. In the event of the amounts being not so refunded, the DTC had imposed the condition that they would be adjusted at the time of his retirement without paying any benefit for the intervening period.

5. The claim in these proceedings is that the DTC has withheld the retrial /pensioner dues of the petitioner on the pretext that he did not refund the amount

as for the condition imposed when he was reinstated.

6. The DTC in its response has stated that an amount of Rs. 1,12,688/- is payable towards interest calculable at 12% p.a. compound interest from the date the petitioner was reinstated towards gratuity amounts, and further Rs. 1,25,145/- has been withheld on account of similar interest upon the EPF amounts lying to his credit which were also to be refunded by him. Penal interest has also been levied.

7. Learned counsel for the petitioner reiterated the submissions and averments taken in the pleadings. It was contended that the respondents have acted in an arbitrary manner in withholding the retiral dues which are justly payable to the petitioner. If the petitioner was aware that interest and penal interest would be recovered on the principal amounts, his actions might have been different.

8. Learned counsel for the respondent on the other hand submitted that one of the important conditions of reinstatement was that the petitioner had to refund all the amounts within reasonable time. He consciously chosen not to do so and therefore he had to pay interest. Reliance has also been placed upon a circular dated 25.11.1994 to say that the interest rates were being fixed from time to time and the interest at 12% per annum with 1% penal interest has been claimed on the basis of office memorandum/circular. Learned counsel also stated that prior to the issuance of this documents also the DTC was recovering the interest on all the amounts payable to its employees.

9. The relevant portions of the circular is as under:

Wherever the employees are required to refund the payments towards Death-cum-Retirement Gratuity already drawn/received from the Corporation, the same will be refunded along with interest. The rate of interest will be the rate applicable on P.F. Accumulations from time to time (at present 12% per annum compound annually) for the period from the date of receipt of the payments to the date of their refund to the Corporation. In case where after the issue the orders by the Corporation if an employee does not deposit the payments already received/drawn by him within one month of the receipt of the communication from the Corporation, a penal interest @ 1% per annum will also be charged in addition to the normal rate of

interest i.e. applicable on P.F. Accumulations from time to time.

This issues keeping in view of O.M. No. F/7/1/93 Pand PW(E) dated 25.8.94 issued by the Govt. of India, Deptt. Of Pension, Pensioners Welfare, New Delhi in supersession of all orders issued on this subject.

10. The above narrative would disclose that the petitioner willingly accepted the reinstatement order which had unambiguously indicated that he had to refund the amounts paid to him as terminal dues when the original dismissal order was issued to him. He consciously chose to keep the amount and earned interest for the intervening period. thereforee, I am of the opinion that the contention that he is not liable for interest cannot be a justified ground for intervention in these proceedings. However, having regard to the fact that the previous policy of the DTC acquired shape and all employees were put to notice about the exact rate of interest, namely, 12% per annum compounded annually and 1% penal interest w.e.f. 25.11.1994, I am of the opinion that the DTC should not recover amounts for any period prior to the issuance of that circular.

11. In view of the above discussion, a direction is issued to the respondent DTC to restrict the recovery of amounts from the terminal dues of the petitioner towards amounts which had to be refunded by him from the period 1.12.1994 till the date of his retirement subject to the adjustment as per above directions to restrict the recovery towards interest payable as well as the principal amount of Rs. 21,658/- and Rs. 23,601/-. A consequential order shall be issued to the petitioner within a period of four weeks from today. The DTC shall accordingly effect their recovery from the balance amounts payable and in case of any shortage, proportionate amount may be deducted from the pension payable to the petitioner.

12. The writ petition is allowed to the extent indicated above.