

S.K. Dua vs State Of Haryana & Anr on 9 January, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1077, 2008 (3) SCC 44, 2008 AIR SCW 689, 2008 LAB. I. C. 786, 2008 (3) SRJ 342, (2008) 5 ALLMR 23 (SC), (2008) 62 ALLINDCAS 30 (SC), 2008 (3) SERVLJ 108 SC, 2008 (1) SCALE 284, 2008 (5) ALL MR 23 NOC, 2008 (70) ALL LR 116 SOC, (2008) 116 FACLR 636, (2008) 1 ESC 89, (2008) 3 KER LT 58, (2008) 2 LAB LN 179, (2008) 3 RAJ LW 2592, (2008) 1 SCT 618, (2008) 2 SERVLR 67, (2008) 1 SCALE 284

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Bench: C.K. Thakker, D.K. Jain

CASE NO.:

Appeal (civil) 184 of 2008

PETITIONER:

S.K. DUA

RESPONDENT:

STATE OF HARYANA & ANR

DATE OF JUDGMENT: 09/01/2008

BENCH:

C.K. THAKKER & D.K. JAIN

JUDGMENT:

J U D G M E N T ARISING OUT OF SPECIAL LEAVE PETITION (C) No. 21311 OF 2005 C.K Thakker, J.

1. Leave granted.

2. This appeal is directed against an order passed by the High Court of Punjab & Haryana at Chandigarh on July 7, 2005 in Writ Petition (C) No. 10025 of 2005. By the impugned order, the High Court dismissed the petition in limine relegating the appellant writ petitioner to avail a remedy by approaching a Civil Court.

3. Facts in brief are that the appellant was working as an Engineer-in-Chief in the Department of Irrigation, Haryana. According to him, he joined the service in Irrigation Department of the erstwhile State of Punjab in August, 1961 and was allocated to the Department of Irrigation and Power in the State of Haryana. He was promoted as Engineer- in-Chief on May 31, 1996 and worked in that capacity till he attained the age of superannuation in June, 1998. The appellant had an unblemished record of service for 37 years. During the course of his duties as Head of the

Department, he submitted reports in or about April-May, 1998 to the Government highlighting certain irregularities and mal- practices said to have been committed by Mr. S.Y. Quraishi, the then Secretary, Irrigation & Power and requested the Government to make enquiry through Central Bureau of Investigation (CBI). According to the appellant, in pursuance of the complaint made by him, the Government removed Mr. Quraishi as Secretary, Irrigation allowing him to work only as Secretary, Department of Power.

4. The appellant has alleged that, as a measure of vendetta, Mr. Quraishi organized to send the appellant on deputation on May 15, 1998 to a lower and unimportant specially created post of Engineer-in-Chief, Command Area Development Agency by upgrading it just few weeks before his retirement. In addition to the said action, the appellant was served with three charge-sheets/ show cause notices in June, 1998, few days before his retirement. The appellant, however, retired on June 30, 1998 on reaching the age of superannuation. The appellant was paid provisional pension, but other retiral benefits were not given to him which included Commuted Value of Pension, Leave Encashment, Gratuity, etc. totaling to about Rs. 12 lakhs. They were withheld till finalization of disciplinary proceedings. The appellant submitted replies to the charge- sheets/ show cause notices, inter alia, denying allegations and asserting that they were uncalled for and were issued with mala fide intention and oblique motive. He further submitted that he had acted in public interest in salvaging damage likely to be caused to public exchequer. The replies submitted by the appellant were accepted by the authorities and the appellant was exonerated of all the charges. All retiral benefits were thereafter given to him between June 11 and July 18, 2002. Thus, according to the appellant though he retired in June, 1998, retiral benefits to which he was otherwise entitled, were given to him after four years of his superannuation.

5. The appellant has stated that, in the aforesaid circumstances, he was entitled to interest on the amount which had been withheld by the respondents and paid to him after considerable delay. He, therefore, made several representations. He also issued legal notice on June 3, 2005 claiming interest at the rate of 18% per annum for delayed payment. He had invited the attention of the Government to Administrative Instructions issued by the Government under which an employee is entitled to claim interest. Even otherwise, the action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution. There was, however, no reply whatsoever from the Government. The appellant as a senior citizen of 65 years of age then approached the High Court of Punjab & Haryana by filing a writ petition under Article 226 of the Constitution. But the High Court summarily dismissed the writ petition without even issuing notice to the respondents. The appellant has challenged the said order in the present appeal.

6. On October 28, 2005, notice was issued by this Court. Affidavits and further affidavits were filed thereafter and the Registry was directed to place the matter for final hearing. Accordingly, the matter has been placed before us for final disposal.

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellant contended that the High Court was totally unjustified in dismissing the writ petition in limine and the said order is liable to be set aside. He submitted that

no questions of fact, much less, disputed questions of fact were involved in the petition and the High Court was wrong in summarily dismissing it. It is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment. According to the appellant, he had always acted in the interest of the Government and saved public exchequer by inviting the attention to mal- practices committed by high ranking officers. As a measure of revenge against the appellant, charge-sheets were issued, but after considering the explanation submitted by the appellant, all proceedings against him were dropped. In view of exoneration of the appellant, the Government ought to have paid interest on retiral benefits which were given to him after long time. As per the Guidelines and Administrative Instructions issued by the Government, the appellant was entitled to such benefit with interest. The High Court ought to have allowed the writ petition of the appellant and ought to have awarded those benefits. It was, therefore, submitted that the appeal deserves to be allowed by directing the respondents to pay interest on the retiral dues payable to the appellant which were actually paid to him after considerable delay.

9. An affidavit in reply is filed by Special Secretary, Government of Haryana, Irrigation Department. In the counter affidavit which was filed in January, 2005, the deponent has stated that the appellant was paid all his retiral dues as soon as he was exonerated of the charges levelled against him. The deponent referred to the Haryana Civil Service (Punishment and Appeal) Rules, 1987 relating to benefits to which an employee is entitled and contended that after the charge-sheets were finally dropped, the appellant was paid all retiral benefits within three months from the date of dropping of the charge-sheets. But it was further stated that certain vigilance enquiries are still pending against the appellant. In the circumstances, according to the deponent, the appellant was not entitled to interest and the action taken by the Government could not be said to be illegal or otherwise unreasonable. A prayer was, therefore, made to dismiss the appeal.

10. In rejoinder affidavit, the appellant reiterated what he had pleaded in the petition for leave to appeal and submitted that the stand taken by the Government in counter- affidavit is misconceived and he is entitled to the relief prayed in the petition before the High Court and in the present appeal.

11. 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 June 30, 1998. It is also un-disputed 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 mal- practices and mis-conduct 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. 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 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.

12. To us, the plea of the learned counsel for the appellant that the High Court ought to have entered into the merits of the matter which is based on documentary evidence is well-taken. In our considered view, the writ petition ought to have been admitted by issuing Rule nisi and ought to have been decided on merits. The High Court, however, dismissed the petition by a cryptic order which reads thus:

The petitioner seeks only payment of interest on the delayed payment of retiral benefits. We, however, relegate the petitioner to avail of his remedies before the Civil Court, if so advised.

Dismissed with the above observations.

13. The order passed by the High Court, therefore, must be quashed and set aside.

14. The learned counsel for the appellant submitted that an appropriate direction may be issued to the Government to pay interest to the appellant who had retired on June 30, 1998 and about a decade has passed even thereafter. He, therefore, submitted that the matter may be finally concluded by this Court by passing appropriate orders. We would have certainly considered this aspect and prayer made by the appellant but for the fact that the High Court had not entertained the petition and it was summarily dismissed. The High Court thus was not having the affidavit on behalf of the respondent Authorities. In the affidavit filed by the State-Authorities in this Court, the stand taken by Government is that vigilance enquiries are still pending against the appellant. The said affidavit is of January, 2005. In the affidavit in rejoinder, the writ-petitioner has stated that the alleged pendency of the vigilance enquiry if any is insignificant . We are also not aware as to what has happened thereafter though considerable period has elapsed. In view of all these facts, in our opinion, it would be in the interest of both the parties that we may remit the matter to the High Court so as to enable the High Court to consider the matter on merits and pass an appropriate order in accordance with law. We are mindful that the appellant is a senior citizen and the prayer relates to interest on retiral dues paid to him after four years. Keeping in view the totality of facts and circumstances, we request the High Court to give priority to the case and decide it finally as expeditiously as possible, preferably before June 30, 2008.

15. For the foregoing reasons, the appeal is partly allowed. The order passed by the High Court is set aside and the matter is remitted to the High Court for fresh disposal in accordance with law. In the facts and circumstances of the case, however, there shall be no order as to costs.

16. Before parting with the matter, we may clarify that we may not be understood to have expressed any opinion on the merits of the matter, one way or the other. As and when the writ petition will be placed before the High Court, it will be decided on its own merits without being influenced by any observations made by us hereinabove.

Order accordingly.