

2002 eGLR_HC 10006835,2002 (4) GCD 3032 ,2002 (2) GHJ 159

Before the Hon'ble MR JAYANT PATEL,JUSTICE

JADIBEN CHIMANLAL JADAV V. UNION OF INDIA

SPECIAL CIVIL APPLICATION No : 13254 of Year : 2000, Decided on :
22/3/2002

N.M.Kapadia, P.J.Davawala, J.S.Yadav, I.M.Pandya

MR. JAYANT PATEL J., Rule. Ms.Davawala waives service of rule on behalf of respondent Nos 1,2 3 and Mr.I.M.Pandya, Ld.AGP waives service of rule on behalf of respondent No.4. With the consent of parties matter is taken up for final hearing today.

2. The petitioner has filed this petition for appropriate direction to the respondent Nos 1,2 3 to pay interest at the rate of 18% p.a. from 1.11.1999 on Swatantra Sainik Samman Pension (hereinafter referred to as "SSS Pension"). The contention of the petitioner is that though this court as per judgment dated 19.7.99 directed the respondents to grant SSS Pension to the petitioner under SSS Pension Scheme, 1980 from the date of her application, but the same has not been paid to the petitioner within stipulated time limit. It has also been contended by the petitioner that this court passed the order on 19.7.99 in Spl.C.A.No.1727/99 wherein it has been further directed that if the respondents fail to pay the due amount as aforesaid to the petitioner within a period of two months, the petitioner shall also be entitled to interest on the due amount at the rate of 18% p.a. from the date of expiry of two months. The contention of the petitioner is that she is the widow of a freedom fighter and is compelled to approach this court for implementation of the order passed by this court.

3. I have heard Mr.Kapadia, Ld.advocate appearing for the petitioner and Ms.Davawala for respondent Nos 1,2 3 and Mr.I.M.Pandya, Ld.AGP for respondent No.4. It is contended by Mr. Kapadia that when the first order dated 21.10.99 was passed by the Under Secretary of the Govt.of India addressing to Pay Accounts Officer (Pensions Misc) the Ministry of Home Affairs, there is no reference in para 4 of the said letter that the petitioner should submit all documents duly attested by the Gazetted Officer. Further more, when the petitioner submitted the same, as per letter dated 10.12.1999 the petitioner was informed by the Senior Accounts Officer working in the Pay Accounts Office that the documents are not attested by the Gazetted Officer and therefore the petitioner was called upon to submit the documents duly attested by the Gazetted Officer. It is the submission of the petitioner that as per letter dated 16.12.1999 same were submitted and thereafter on 18.1.2000 letter was received by the petitioner that all documents are not furnished and only photographs are furnished and therefore other documents are also called for. In response to the same the petitioner addressed a letter dated 24.1.01 to the Pay Accounts Officer, the respondent No.2 herein, whereby it was reiterated that all the documents were produced and it was also stated that if the amount is not disbursed, the petitioner shall be

constrained to file petition. At that stage on 6.4.2000 the respondent No.2 instructed the Manager, State Bank of India to disburse the amount of SSS pension at the rate of Rs.1,500/-p.m. with effect from 4.3.96. However, Mr.Kapadia contended that there is no reference to disbursement of interest. The petitioner was compelled to issue notice on 18.8.2000 to the respondent No.2 as well as the Under Secretary-respondent No.1 copy whereof is at annexure "K" to the petition. Thereafter, on 11.9.2000 the respondent No.2 has passed the order of disbursement of interest at the rate of 12% p.a. It is the contention of the petitioner that though actual amount was not received the petition came to be filed.

4. This court issued notice on 26.12.2000 and in response thereto one Mr.Beniram, Under Secretary on behalf of respondent No.1 has filed affidavit in reply contending that the certified copy of the judgment was received only on 25.8.99 and the pension was sanctioned to the petitioner vide letter dated 29.10.1999. It is contended by the deponent in the affidavit in reply that there is no lapse on the part of respondent No.1 and it is also stated that the first instalment was released on 1.8.98 and prior to 1.8.98 no amount was payable.

5. Mr.Kapadia appearing for the petitioner stated that pending the petition the petitioner has received amount of approximately 40,000/- pursuant to the order passed by the Govt.of India for the disbursement of interest at the rate of 12% p.a. In the submission of Mr.Kapadia since this court had already directed to make payment of interest at the rate of 18% p.a. if the payment is not made within a period of two months from the date of receipt of certified copy of the order, appropriate direction can be given to the respondents to disburse the amount of difference of interest.

6. On behalf of respondents, Ms.Davawala contended that since there was no delay on the part of respondent authorities and since the petitioner committed delay in submitting necessary documents the petitioner would not be entitled to the amount of interest at the rate of 18% p.a. as sought to be claimed.

7. Having heard both sides, I am of the view that since in the affidavit in reply at para 8 it has been admitted that the certified copy of the order was received on 25.8.99 when once the certified copy was received on 25.8.99 it was obligatory on the part of the respondent authorities to see that payment as directed by this court in its judgment dated 19/7/99 is paid or disbursed within two months from 25.8.99 together with interest at the rate of 12%. Said period of 2 months has expired on 25.10.99. However, amount as directed by this court is not disbursed on or before 25.10.99. Once the order of this court to make payment within a period of two months from the date of receipt of certified copy of the judgment of this court is not complied with it was obligatory on the part of the respondent authorities to pay interest at the rate of 18% p.a. which has been directed by this court in its judgment dated 19.7.99. It is an admitted position that so far as the Union of India is concerned it has accepted the judgment and order dated 19.7.99 and now they can not be heard to say that they will not pay amount of interest which is ordered by this court.

8. Considering the above, it is hereby directed that the respondents shall disburse the balance amount so as to comply with the subsequent part of the judgment and order dated 19.7.99 in Spl.C.A.No.1727/99 for payment of interest at the rate of 18% p.a. and such amount shall be disbursed and paid by the respondents to the petitioner within a period of three months from

9. It will be open to the respondents to hold the inquiry regarding the aforesaid delay caused in making payment to the widow of the freedom fighter who is petitioner herein and if as an outcome of inquiry it is found that any officer/employee has committed lapse in not implementing the order passed by this court then it will be open to the respondent No.1 to recover the said amount from the salary of the concerned. The respondent No.1 is directed to

initiate such an inquiry and submit its report to this court within six months from today.

10. Ms.Davawala appearing for respondent No.1 submits that if the interest at the rate of 18% is already paid by the respondent No.1, then the respondent No.1 may not be required to make any further amount. No clarification is required on this aspect because what is ordered by this court is only 18% interest as compliance to judgment and order dated 19.7.99 in Spl.C.A.No. 1727/99 and if the payment is already made it goes without saying that no further payment is required to be made.

11. The petition is accordingly allowed. Rule is made absolute accordingly with costs which is quantified at Rs.5,000/- which shall be paid by the respondents to the petitioner within a period of three months from today together the amount as directed hereinabove. If as a result of inquiry as directed hereinabove it is found that particular officer/employee of the Union of India has committed any default in implementing the order passed by this court, it will be open to the respondent No.1 to recover the costs of Rs.5,000/- from the salary of the officer/employee concerned.

Appeal allowed"xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

