

(2001) 04 AP CK 0046

Andhra Pradesh High Court

Case No: Writ Petition No. 5013 of 2001

R.N. Anand

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision: April 25, 2001

Acts Referred:

- Constitution of India, 1950 - Article 300
- General Provident Fund (Central Services) Rules, 1960 - Rule 11(4), 45

Citation: (2001) 3 ALD 614 : (2001) 90 FLR 145

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: Mr. M. Ratna Reddy, Additional Sc for C.G, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

S.B. Sinha, CJ

- This writ petition arises out of an order dated 20-2-2001 passed by the Central Administrative Tribunal in OA No. 1831 of 2000 dismissing the application as not maintainable.
- "The only question which arises for consideration in this writ petition is as to whether the petitioner is entitled to any interest on the delayed payment of GPF amount.
- The basic fact of the matter is not in dispute.

The petitioner retired as Deputy Director (Elec.) SISI, Hyderabad in Small Industries Development Organisation on 31-7-1997. He was not paid the provident fund amount immediately on his retirement. Ultimately, he was paid a sum of Rs. 6,63,319/- on 7-12-1997. He made representations to the authorities for payment of interest on delayed payment of the provident fund amount. The respondents denied

the claim on the ground that the petitioner submitted the prescribed application on 10-9-1997 and the amount has been paid within three months from the said date. He filed OA No. 1618 of 1999 before the Central Administrative Tribunal claiming interest for the period the PF amount had not been paid i.e., from 1-8-1997 to 8-12-1997. The said OA was disposed of on 18-2-2000 with a direction to the petitioner to make a representation to the 6th respondent within one month and with a further direction upon the 6th respondent to finalise the amounts of the petitioner as indicated therein. Being not satisfied therewith, he also filed review application in RA No.33 of 2000 which was disposed of by the Tribunal with the following directions:

9(a) The respondent No.6 shall fix a date of meeting with the applicant on any convenient working day. He shall be in possession of the entire PF accounts of the applicant with him. He shall confront all the accounts to the applicant.

(b) After verifying the particulars of claims made by the applicant and further verifying with the records with him, the respondent No.6 should prepare minutes of the meeting.

(c) If the applicant is not satisfied with the said minutes, the applicant is at liberty to express his own views thereon. In such an event, the respondent No.6 shall place minutes of the meeting to the immediate superior officer for consideration of the claim of the applicant.

(d) If the applicant agrees with the minutes prepared by the respondent No.6, he may affix his signature in token of his acceptance of the minutes prepared by the respondent No.6. That will be the end of the matter.

(e) The respondent No.6 shall bear in mind Rule 45 of the General Provident Fund (SC) Rules and the Government of India decisions while preparing the minutes.

(f) Time for compliance is three months from the date of receipt of a copy of this order.

The petitioner contends that despite the said directions, no action has been taken to pay interest which amounted to Rs.42,852/-calculated at the rate of 18% per annum on the PF amount of Rs.6,51,153/- which became payable immediately on his retirement. He, therefore, filed OA No. 1831 of 2000 which was, however, dismissed on 20-2-2001 on the ground that as the petitioner had not complied with the directions made in the aforementioned RA No.33 of 2000, the same was not maintainable.

4. The petitioner who has appeared as party-in- person before us and ably argued his case, inter alia, submits that the PF amount having been paid on 8-12-1997, interest at the rate of 18% was payable. The petitioner has contended that in terms of Rule 34 of the Provident Fund Rules, it is the duty of the respondents to pay the said amount on the date of superannuation and as such it cannot be said that only

because the petitioner did not deposit the amount due towards demand, the interest is not payable.

5. Mr. Ratnareddy, learned Counsel appearing on behalf of the respondents, on the other hand, has drawn our attention to the counter-affidavit saying that the petitioner had been paid interest of Rs.12,759/- for delayed payment of PF amount for two months on 20-7-2000. According to the learned Counsel, the cheque towards payment of GPF amount was settled on 27-11-1997 and the cheque had been received by the petitioner on 8-12-1997. Our attention has been drawn to para 6 of the counter-affidavit which is in the following terms:

In reply to para 9 of the writ petition, I submit that the interest on GPF balance has been calculated strictly in terms of Rule 11(4) of GPF Rules and allowed interest for two months. Here also, the petitioner did not place the full particulars of the rule position for appreciation of his case. The C and AG decision (2) under Rule 11 provides that the period of six months Le., the maximum period that can be allowed for calculation of interest is to be counted after excluding the immediate succeeding month of superannuation and the interest has to be allowed up to the preceding month of final payment of GPF balance. In the instant case, the petitioner retired from service on 31-7-1997 and his GPF accumulations have been settled on 27-11-1997. According to the above rule, the petitioner is eligible for interest for the months of September and October only as the succeeding month of retirement has to be ignored and interest may be allowed up to the preceding month of final payment of GPF balance" for calculation of interest. Thus, the interest allowed for 2 months i.e., Rs.12,759/- is perfectly in order. Though, an amount of Rs.4,500/- has been recovered from the salary of the petitioner for the month of May, 1997, erroneously, the amount has been included in the final payment of Rs.6,63,319/- together with interest allowed thereon upto 31-7-1997.

6. Unfortunately, the attention of the learned Tribunal had not been drawn to the amended Rule 34, in terms whereof, an obligation has been cast on the department to pay provident fund amount on the date on which employee retires from service. Guidelines have been issued as regards the manner of payment of PF amount. The relevant provisions whereof are clauses (1) and (3) of Rule 34 which reads as follows:

(1) When the amount standing the credit of a subscriber in the fund becomes payable, it shall be the duty of the Accounts Officer to make payment as provided in sub-rule (3).

(3) Payments of the amount withdrawn shall be made in India only. The persons to whom the amounts are payable shall make their own arrangements to receive payment in India. The following procedure shall be adopted for claiming payment by a subscriber, namely:--

(i) deleted.

(ii) The Head of Office Department shall forward the details of the subscriber retiring or quitting service to the Accounts Officer indicating the recoveries effected against the advances which are still current and the number of instalments yet to be recovered and also indicate the withdrawals, if any, taken by the subscriber after the period covered by the last statement of the subscriber's account sent by the Accounts Officer. (iii) The Accounts Officer shall, after verification with the ledger account, issue an authority for the amount payable to the subscriber at least a month before the date of superannuation but payable on the date of superannuation.

7. Having regard to the amendment made to the rule, we are of the opinion that all other Government instructions must be held to have been implied repealed. Interest is payable at the rate of 12% per annum for non-payment of amount payable to the subscriber. Interest is also payable in terms of the provisions of the Provident Fund Act.

8. The short question that arises for consideration is, as to whether the petitioner is entitled to interest only for months of October and November, having regard to the fact situation involved herein.

In view of the amended Rule 34 which has come into force from 1st November, 1996, it was obligatory on the part of the respondents herein to pay provident fund on the date of retirement of the petitioner. By reason of the amended provisions, the employees are not required to file any application for payment of the provident fund. However, such applications have to be filed and clarifications are required to be made only in relation to any dispute and not otherwise.

9. Furthermore, the date of issuance of the cheque would itself be not conclusive. The law provides that interest is liable to be paid till payment is made. Such payment, having regard to the well settled principles of law, must be held to be made on the date when the amount in question is tendered to the employee concerned directly or if the same is sent through the Post office by cheque, the date on which the same is tendered to the postal authorities through the agent of the employer.

In this view of the matter we are of the opinion that the petitioner is entitled to interest for a period of three months and not two months.

10. The approach of the learned Tribunal cannot be appreciated in view of the fact that the petitioner herein had produced various materials to show that he had been making representations to the authorities for payment of his provident fund amount. With reference to the correspondence made by the petitioner, the Senior Accounts Officer (Admn.), New Delhi in his letter dated 2-9-2000 addressed to the Senior Accounts Officer, PAO, Chennai stated:

Sub:--Payment of interest on delayed payment of GPF

Please find enclosed herewith photostat copy of Sh. UN. Anand's letter dated 30-7-2000 on the above subject and to request you to supply the copies of documents to Sh. R.N. Anand as requested by him and as well as in accordance with the orders of CAT in this regard. Please ensure full cooperation to Sh. Anand.

Receipt of the letter may be acknowledged.

This issue with the approval of the Deputy Controller of Accounts.

The telegram issued by one Sri T.P. Mandal, Controller of Finance and Accounts, Calcutta to Sri R.N. Dose, Deputy Controller of Accounts, New Delhi dated 31-6-2000 reads thus:

The case has been examined de novo in the context of individual's representation dated 1-6-2000 and in consultation with No AFK and it is noticed that the amount claimed by the individual is payable to the extent of Rs.1,178/- crept in pertaining to the Statement to accounts 1996-97. The individual was allowed interest of Rs.4,710/- up to 11 of 1996 as against Rs.5,888/-. That upto 1 of 1997, a fresh calculation sheet duly recast from 1997 upto May, 2000 is enclosed for proper appraisal of the case. A cheque for Rs.662/- is being sent to the individual In final settlement of his claim and to close the case. No further claim of this account would be entertained.

11. Therefore, subsequent to the disposal of the review application on 13-6-2000, there was correspondence between various authorities on the issue in question. Therefore, the Tribunal was not correct in holding that the directions issued in the review application would operate as res judicata as against the petitioner. Further, provident fund, pension and other retrial benefits are not bounties. An employee on retirement from service is entitled to such benefits as a matter of right. Such retrial benefits must be held to be property within the meaning of Article 300A of the Constitution of India.

12. In *R. Kaput- v. Director of Inspector (Printing Publication), Income Tax 1994 2 CLR 885*, the Apex Court held:

This Court in *State of Kerala and Others Vs. M. Padmanabhan Nair*, has held as under:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but also have become under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment." The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is ending, should, in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard these circumstances, we feel that it is a fit case in which the award of 18% is

warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1998 till the date of payment.

13. Although interest is payable at the rate of 12% per annum, but having regard to the facts and circumstances of this case and keeping in view the decision of the Apex Court (supra), we are of the opinion that interest should be paid at the rate of 18% per annum for the delayed payment of GPF for a period of three months and also for the reason that the petitioner had to fight for his right by filing applications before the Tribunal as also before this Court.

The claim of the petitioner to the effect that he should be paid interest at 18% till date cannot be accepted, inasmuch as he would be entitled to the interest only for the period from 1-8-1997 to the date of payment subject to the provisions made in the GPF Rules which enables the authorities not to pay interest for one month succeeding the application and the month in which the payment had been made.

14. For the reasons aforesaid, the writ petition is allowed to the extent indicated above. The petitioner shall also be entitled to costs quantified at Rs.2,000/-.