

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2337/2016

New Delhi, this the 11th day of October, 2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Vijay Laxmi (Retd.) Age-61 years.

DDE/SP Zone

R/o -5A/10909 IInd Floor

Sant Nagar, Karol Bagh,

New Delhi-110005.

....Applicant

(Present: Mr. Manish Garg)

Versus

1. North Delhi Municipal Corporation
4th Floor, Civic Center, Minto Road
J.L.N. Marg Delhi-110002
Through its Commissioner
2. North Delhi Municipal Corporation
14th Floor, Civic Center, Minto Road
J.L.N. Marg Delhi-110002
Through Additional Commissioner (Edn.)
3. Director Primary Education
North Delhi Municipal Corporation
15th Floor, Civic Center, Minto Road
New Delhi-110002. .. Respondents

(Present: Mr. Amit Sinha for Mr.R.V.Sinha)

ORDER (ORAL)

1.0 Mr. Manish Kumar, learned counsel appeared for the applicant and Mr. Amit Sinha, learned counsel appeared as proxy counsel for Mr. R.V.Sinha, on behalf of the respondents.

2.0 It was pleaded that the applicant had retired from the post of Deputy Director Education (General) SP Zone of

NDMC on 31.07.2014 on attaining the age of superannuation. However, her retiral dues and certain amount towards unpaid salary was not paid in time. Accordingly, the applicant approached the Tribunal and preferred OA No. 3721/2014, which was decided on 05.11.2014 with the following directions:-

"4. In the circumstances, the O.A. is disposed of at the admission stage, without going into the other merits of the case, by directing the respondents to consider the representations of the applicant and to pass an appropriate speaking and reasoned orders thereon, in accordance with law, within 90 days from the date of receipt of a copy of this order. No order as to costs."

3.0 However, the respondents did not take any action on the same. Accordingly, the Contempt Petition was preferred where after, the respondents had passed the speaking order on 25.05.2015. This order indicated all the payment released in respect of past salary as well as retiral dues.

The plea of the applicant is that the details in respect of all pending payments are in para 4.6 of the OA, wherein all the payment released from Sr. No.1 to 24, wherein amount paid, due date for such payment, actual date of payment along delays in payment has been shown.

4.0 The applicant pleaded that when OA No. 3721/2014 was filed, the applicant has sought relief in respect of due

payment along with the interest. However, the applicant brought out that speaking order passed on 25.05.2015 is silent in respect of interest part.

5.0 The applicant pleaded that since the payment were made belatedly far no fault of her, due interest is also payable for the delay and in support of her claim she has quoted the two judgments of the Apex Court. (1) **State of Kerala v. M. Padmanabhan Nair** – AIR 1985 SCC -356, and (2) **Vijay L. Mehrota v. State of U.P. and others** - (2009) 9 SSC- 287.

The first judgement is to the effect that the delay, if any, in respect of issuing last pay certificate and if such delay leads to certain amounts not being paid, the fault shall be on account of the respondents. The Apex Court ordered for payment of the interest for the delayed payment. The second judgement is to the effect that interest shall be payable if there had been delay in payment of retiral dues. Accordingly, the applicant pleaded that due interest is required to be paid to her.

6.0 The respondents have brought out that the OA No.3721/2014 had sought relief in the form of interest with almost similar issues and similar prayer, which was disposed off by this Tribunal on 05.11.2014 with directions

to the respondents to consider the representations of the applicant and to pass an appropriate speaking order and reasoned orders thereon in accordance with law within 90 days from the date of receipt of copy of the order. The applicant further filed CP No. 250/2015 and the same was closed on 15.07.2015. It is on that basis, that the order dated 25.05.2015 has been issued by the respondents. The issue raised in the instant present OA, have therefore already been considered by the Tribunal.

The applicant had also earlier approached the Public Grievances Commissioner, GNCTD vide appeal No. 511/2014/PGC/DRI/NDMC, which was filed by the applicant on 31.12.2014 with similar prayers of interest on late payment and the same was closed by the PGC on 16.10.2015.

Learned counsel for the respondents stated that since the Tribunal had already decided the issue of interest and the relevant speaking order dated 25.05.2015, already takes into account the issue of interest also, the instant OA is barred by res-judicata, until the speaking order dated 25.05.2015 is also not challenged. Since this order Dt.25.5.2015 is not challenged, the question of seeking relief in the form of interest is not maintainable now.

7.0 The respondents further brought out the above two judgments quoted by the applicant (para 5 supra) are not applicable in instant case. In this context, the instant applicant herself was at fault. The respondent brought out that in the instant case, the applicant herself was working as Dy. Director of Education, and in the said capacity, she was the head of the zone of Education department who has to ensure that the salary of the entire staff is released in time and there is no office above that of the Deputy Director of Education in Education Department at zonal level who had to pass any orders for payment of salary. As the applicant herself was working as the bill drawing officer, for all the delays in salary payments, she herself is responsible as it was she herself who had to process the same.

In this context of delay, it was brought out that applicant was transferred from C.L.Zone to S.P. Zone on 11.07.2013, vide office order No.599/Admn./HQ/2013, but she joined in S.P.Zone on 18.03.2014 only i.e after more than 8 months and, she also submitted her leave application for the period w.e.f. 30.07.2013 to 14.03.2014. The leave was sanctioned on 18.07.2014 w.e.f. 15.07.2013 to 14.03.2014. As such, any delay in salary payment that has occurred, is on her accord as she herself have not signed and passed the bills in time.

8.0 As regards the payment of retirement benefits, it is submitted that the applicant retired from services on 31.07.2014 and she was required to sign on all the papers relating to retirement benefits and to complete the formalities required for release of retiral benefits. But the applicant continued to submit the representations only, instead of completing the formalities of signing the necessary documents. Thus the applicant is herself responsible for the delay caused in release of salary and retiral benefits. It is also submitted that delay in making the payment was totally attributable to the applicant herself and the applicant cannot take any advantage of her own wrongs.

9.0 The respondents also brought out that she had been taking payment of certain car allowances during her earlier posting as Assistant Director, whereas it was not due at that time. It was brought out that delay in issue of Last Pay Certificate (LPC) happened on this account as it could be issued only after issuance of the order dated 25.05.2015 after checking the records.

In view of this, there is no delay and the principle of res-judicata also applies and even otherwise interest is not payable in the instant case.

10. The applicant drew attention to one note of the respondents prepared on 25.07.2014, which reads as under:-

" This case relates to Sh./Smt./ Km. Smt.Vijay Laxmi working as Dy. Dire. Education in M.C.: Pry. Edu. Deptt., Education Department / S.P. Zone. Who is going to be retired Municipal Service on dated 31.07.2014 after attaining the age of 60 years. All the retirement benefits such as encashment of due at his/her credit on date of retirement, Gratuity , General Provident Fund, payment under General Insurance Scheme, Pension, pension commutation & Other payment of arrear if due towards his/her are to be made. In this regard, all the NO DUES CERTIFICATES from different departments of MCD have been obtained and attached in the file from page 1/c to 9/c according to which there is No RDA/Police case pending against his/her as-well-as No Dues of any Deptt. /Society is outstanding towards his /her on date of retirement.

In view of above, case of Sh./Smt./Km. Smt. Vijay Laxmi working as Dy. Dir. Education in M.C. Pry. School Du Deptt/SP2 Education Department/S.P.Zone, May kindly be sent to competent authority i.e. Dy. Comissioner/S.P. Zone for according Admn. Approval.

Note:- Dy. Commissioner is requested to affix signature on attached flagged at A.,B., C. Forms please. "

This note is signed by DDO/Education, Dy. Director Eduation/S.P. Zone and Dy. Commissioner S.P. Zone on 25.07.2014.

In view of this, the applicant pleaded that all the past issues were cleared as of 25.07.2014 and it was only thereafter that the above note was prepared by Respondents. Accordingly, delay cannot be attributed to

her. The delays are attributable on the part of the respondents and hence the interest is required to be paid.

11. The matter was heard at length. It is seen that she herself was the bill drawing officer and accordingly for all the delays in payment of salary for the period 01.05.2013 to 31.07.2014 (Sr. No.1 to 17 of para 4.6 of OA), she is herself responsible. It is also noted that she was transferred in May, 2013, an order which she carried out after lot of delay. The leave application for this period was submitted by her in July, 2014 only. Thus no interest is payable for this part.

It is also noted that nowhere have respondents brought out that any disciplinary case was pending against the applicant when she superannuated. Since salary was being paid till she superannuated, the LPC could be issued in time. In view of the note of the respondents dated 25.07.2014 (para 10 supra), the delay for preparation of LPC and payment of retiral dues, could not be attributable to the applicant. For this part of delay, the respondents are held responsible.

Accordingly, the applicant is required to be paid interest for the delay in release of retiral dues for this period.

In respect of objections of the respondents that the present OA is barred by res-judicata, the same is not acceptable since the applicant did raise the issue of interest in the OA, but despite orders by Tribunal the respondents did not decide the issue and the speaking order is totally silent on the aspect of interest on the retiral dues.

In the event for the delays in payment for the retiral dues, including leave encashment, as mentioned in the para 4.6 of OA (from Sl No. 18 to 24), the respondents are directed to pay the interest at the GPF rate of interest within a period of eight weeks of receipt of certified copy of this order.

The OA is disposed off accordingly. No order as to costs.

**(Pradeep Kumar)
Member (A)**

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