

(1992) 06 AHC CK 0011

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20905 of 1992

Allahabad University Retired Teachers Association and Others

APPELLANT

Vs

Allahabad University and Others

RESPONDENT

Date of Decision : 24-06-1992

Acts Referred:

Citation : (1992) 3 AWC 1651 : (1992) 2 UPLBEC 1322

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant; Haider Hussain, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed by an association of retired teachers of the Allahabad University. The members of the association are 25 retired Professors of the University and some are even retired Vice-Chancellors. It is alleged in para 2 of the petition that the members of the Petitioner association are entitled to get pension and gratuity under the G.O. dated 24-12-83 (Annexure 1 to the petition). Under the aforesaid G.O. teachers who retired on or after 1-1-84 are entitled to pension and gratuity, it is alleged in para 6 that the retired teachers applied for pension under the said G.O. but to no avail.

2. In para 7 of the petition it is alleged that some of the retired teachers were allotted residential accommodation on rent by the University, while others were not given any such accommodation. Some of the retired teachers have vacated the accommodation allotted to them. However, some of the retired teachers are continuing to reside in the University accommodation, but it is claimed that they are tenant and are paying their rent regularly to the University. The prayer in this petition is that the respondents be directed to pay pension and gratuity to the retired teachers of the University.

3. A counter affidavit has been filed on behalf of the University, and I have heard Dr. R.G. Padia for the Petitioner and Shri Hyder Husain, learned Counsel for the University. As regards the claim for gratuity it has been alleged in para 4 of the counter affidavit that there is already a writ petition No. 10787 of 1991 pending in this Court where this relief has been claimed. Hence in view of the pendency of the aforesaid petition I am not inclined to go into the jurisdiction of the "Petitioner"s claim for gratuity. The said claim will be adjudicated upon in the aforesaid petition Hence I am only considering the Petitioner"s claim regarding pension.

4. In paragraphs 8 and 10 of the counter affidavit it is stated that some teachers have not vacated the accommodation allotted to them by the University even after retirement and they have not produced no dues certificate, and unless this is done the pension will not be released. In support of this contention learned Counsel for the University invited my attention to Annexure 8 of the Counter affidavit which is copy of G.O. dated 2-5-89 directing that pension to retired teachers of the University should only be paid if there are no dues against them and they have vacated the quarters which had been allowed to them by the University. Counsel also placed before me a decision of a division bench of this Court, Daya Shanker Lal v. Vice Chancellor 1992 ACJ 451 and has urged that the point canvassed in this petition has already been decided by the bench.

5. A close perusal of the aforesaid decision, however reveal that it is clearly distinguishable. That decision related to a Superintendent of a University hostel who was provided accommodation as a Superintendent. The Petitioner there did not claim that he was a tenant paying rent to the University. Hence he could only be a licensee. In the present case, however, the allegation in para 7 of the petition is that the retired teachers are tenants. Hence this question whether they are tenants or licensees has to be adjudicated upon in appropriate proceedings.

6. In D.S. Nakara and Others Vs. Union of India (UOI), of the Supreme Court observed that pension is a right and does not depend on anyone"s discretion and is not a bounty. The Court followed the Constitution Bench decision in Deokinandan Prasad Vs. The State of Bihar and Others, and State of Punjab and Another Vs. Iqbal Singh, . Hence it is not open to the University to deny pension to the retired teachers merely because they have not vacated their accommodation. The two matters cannot be linked up. It is of course open to the University to file appropriate proceedings against the retired teachers in respect of their accommodation which will be decided in accordance with law.

7. As regards the G.O. dated 2-5-89 (Annexure 8 to the counter affidavit) the condition therein that pension will only be paid if the retired teachers vacate their accommodation is clearly arbitrary (as discussed above) and is hereby quashed. However, payment of pension can validly be withheld until no dues certificate is produced by the retired teachers

8. In a division bench decision of the Lucknow Bench of this Court, Lucknow University Retired Teachers Association v. State Writ Petition No. 10578 of 1989, and Gorakhpur University Retired Teachers Association v. State Writ Petition 11705 of 1990 decided on 29-5-92 the fixation of the cut off date at 1-1-84 has been declared unconstitutional, and it has been held that all retired teachers, whether they retired before or after 1-1-84 shall be paid pension. Following this decision I direct that all retired teachers of the Allahabad University whether they retired before or after 1-1-84 shall be paid pension at the rate fixed in the G.O. dated 24-12-83 after obtaining no dues certificate. The payment shall begin within two months of production of certified copy of this judgment before the Registrar of the University, and shall be continued regularly. The writ petition is allowed. There shall be no order as to costs.