(2016) 01 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition (SB) No. 380 of 2014

Bansidhar Joshi and Others APPELLANT

Vs

Uttarakhand Seeds and Tarai Development Corporation Ltd. and Others RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Citation : (2016) 2 CLR 542 : (2016) 150 FLR 532 : (2016) LIC 791

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : Sharad Sharma, Sr. Adv. assisted by Indu Sharma, for the Appellant; N.S. Pundir and Pradeep Joshi, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J.

1. The only issue, which is actually to be resolved by us in this case, is whether the petitioners are entitled to be paid gratuity at the rate of Rs. 10 lacs. The petitioners were employed in the respondent Corporation. It is admitted fact that they all retired prior to 2010. They have been paid gratuity at the rate of Rs. 3.5 lacs; but, it is their case that they are entitled to gratuity at the rate of Rs. 10 lacs, which is a rate to which Gratuity is enhanced by amendment in Payment of Gratuity Act. The said amendment in Payment of Gratuity Act was brought about in the year 2010 and it came into force on 24.05.2010. Petitioners had retired prior to the said date. We have heard Mr. Sharad Sharma, learned Senior Counsel appearing for the petitioners and Mr. N.S. Pundir, learned counsel appearing for the Corporation.

2. Mr. Sharad Sharma, learned Senior Counsel, would point out that Annexure No. 1 is a Government of India communication by which it is ordered that the persons, who have retired on or after 01.01.2006, will get the benefit of the sixth pay commission and the benefits under the sixth pay commission including

gratuity. It is submitted that, since this Government of India order has been adopted by the State of Uttarakhand by Annexure No. 4 dated 27.10.2008 and, what is more, since the Government decision dated 27.10.2008 has been adopted by the Corporation by payment of the benefits of pay revision, there is no justification for denying the benefit of the enhanced gratuity under the amendment to the Payment of Gratuity Act. It is also submitted that the other Corporations, like the Uttarakhand Power Corporation, have made payments in terms of the amendment.

3. Per contra, Mr. N.S. Pundir, learned counsel appearing for the respondent Corporation, would point out that the amendment to the Payment of Gratuity Act, by which the amount was enhanced from Rs. 3.5 lacs to Rs. 10 lacs, was brought into force on 24.05.2010 before which date the petitioners had already retired and the Government of Uttarakhand has also accepted the position by Annexure No. 2. Lastly, it is submitted that by Annexure No. CA4 produced along with the counter-affidavit, though there is a rejection of the representations of the petitioners, the said order has not been challenged. Mr. Sharad Sharma, learned Senior Counsel, would submit that Annexure No. CA 4 produced along with the counter affidavit cannot be treated as a rejection order; but, it is only an internal communication between two departments. This is disputed by the learned counsel for the respondents by pointing out that it has been served on the petitioners.

4. The short question, which we have to resolve, is whether the petitioners are entitled to enhanced gratuity or not. Admittedly, they have been paid gratuity at the rate of Rs. 3.5 lacs. Clauses 3.1 & 3.2 of Annexure No. 1 read as follows:

"3.1 Save as otherwise mentioned in these orders, the revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.2006. Separate orders have been issued in respect of employees who retired/died before 1.1.2006.

3.2 Where pension/family pension/Gratuity/Commutation of pension, etc. has already been sanctioned in cases occurring on or after 1.1.2006, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of Rule 70 of the CCS (Pension) Rules, 1972."

5. It is, no doubt, true that the petitioners are persons, who have retired after 01.01.2006. Therefore, in terms of the order of Government of Uttarakhand, they are entitled to the benefits of the revision, which has been carried out under the sixth pay commission. But the question is, whether they are entitled also to the benefit of the amendment carried out in the Payment of Gratuity Act much after their retirement. The Payment of Gratuity Act provided for a maximum of Rs. 3.5 lacs at the time when the petitioners retired and they have been paid in

terms thereof. After their retirement, the law was amended. The said amendment was not having retrospective effect. It is only prospective in nature. This meant to apply only to persons retired after the said date. Since the petitioners retired prior to the said date, we are of the view that the petitioners are not entitled to claim the benefit of the increased amount payable under the Payment of Gratuity Act. Petitioners cannot be permitted to rely on Clauses 3.1 & 3.2 of the Government of India communication or the adoption of the same by the Uttarakhand Government to claim enhanced gratuity, which is payable only to persons, who retired after the said date. Whatever was applicable to the petitioners in terms of the revision otherwise has been paid. That does not mean that the petitioners will be entitled to get something, which they are really not entitled in law. Consequently, we do not find any merit in the writ petition. The same is dismissed. No order as to costs.