(2018) 06 UK CK 0068

In the Uttarakhand High Court

Case No : Writ Petition No. 1640 (S/S) of 2018

Charan Singh Rautela (Male) APPELLANT

Vs

Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:
Constitution of India, 1950 — Article 14, 21

Citation : (2018) 06 UK CK 0068

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : B.P.S. Mer, D.S. Patni

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J.

The petitioner was initially appointed as Routine Grade Clerk in the erstwhile U.P. Jal Nigam as back as on 15.01.1980. Thereafter, the petitioner was

promoted as Senior Clerk and in the year 2013, he was promoted as Head Assistant and lastly promoted as Administrative Officer in the year 2017.

After attaining the age of superannuation, he retired from his services on 28.09.2017 from the post of Work Agent.

2. The contention of the petitioner before this Court is that the post retiral dues, as payable to the petitioner by way of pension, gratuity, commutation,

leave encashment and arrears of 7th Pay Commission are due to be paid to the petitioner, which despite having been sanctioned have not been paid.

3. The claim for the grant of pension, gratuity, commutation, arrears of 7th Pay Commission and leave encashment stood duly sanctioned by the

respondent on 3rd April, 2018 and 27th October, 2017.

4. The learned counsel for the petitioner has placed reliance on a judgment rendered by the Coordinate Bench of this Court on 22.11.2018 in Writ

Petition No. 75 of 2016 (S/S) as well as the judgment rendered by the Division Bench of this Court on 26.03.2018 in Writ Petition No. 113 of 2018

(S/B). What is significant to note is that even the Coordinate Bench of this Court in Writ Petition No. 75 of 2016 (supra) too directed respondent to

pay retiral dues in the light of judgment rendered by Division Bench of this Court in Writ Petition No. 494 of 2015 (S/B), wherein, under an identical

circumstance, where a claim has been raised for non-payment of retiral dues, the Court has passed directions to pay the same.

5. Learned counsel for the respondent Corporation, does not actually dispute the liability; but, he does not of course agree to the exact amount due.

His main contention is paucity of funds. He would further submit that in fact the Corporation has moved the Government and repeated demands were

made.

6. This argument may not be tenable in the light of the fact that the respondent / Nigam themselves have sanctioned the amount payable to the

petitioner. Paucity of funds under law can never be a ground to deny the sanctioned retiral dues payable to an employee which is the basis of

subsistence for him and his dependents. Non-payment of retiral dues may lead to grievous financial crisis, which cannot be permitted to persist.

7. The argument as extended by the learned counsel for the respondent that the Nigam is unable to pay the post retiral dues to the petitioner on

account of there being dearth of finance. The aforesaid issue came up for consideration before Allahabad High Court in the case of Samal Chand

Tiwari Vs. State of U.P. reported in [2006 (62) ALR 698]. The Allahabad High Court in para 6, 7 and 8 held as under :-

â??6. Thus, retiral benefits are not bounty but a right earned by the employee and thus it is deferred wages payable to a Government servant in lieu of

considerable length of service rendered by an employee to the employer.

7. The quantum of retiral benefits although is governed by statutory rules but it is clear that Government servant has a legal right to receive his retiral

benefits as soon as he retires. After retirement a Government servant is not paid any salary. Only some amount is paid in the form of retiral benefits

to provide him monetary assistance to sustain himself and his dependents with honour and dignity.

8. Non-payment of pension, therefore, amounts to denying right to earn livelihood of an employee who after retirement may need it most, since he

does not get thereafter a regular salary from the employer but at the advance age, the employee and his family is taken care by the nominal amount

paid to him as retiral benefits. The respondents have also not care to place on record the details showing as to how they claim that they do not have

sufficient funds to pay retiral benefits to the employees. It is not the case of the respondents that day-to-day functioning has hampered or the officers

of the respondents are also not getting their regular salary. No details of any expenditure etc. have been furnished by the respondents. In a vague and

evasive manner, the plea of financial crisis has been taken to deny the admitted liability. Apathy on the part of the respondents is writ large from the

facts that there is no mention in the entire counter affidavit that the retiral benefits shall be paid to the petitioner within a reasonable time. This itself

shows total inaction and arbitrariness on the part of the respondents.â??

8. Taking into consideration the impact of the judgment rendered in the case of D.S. Nakara Vs. Union of India reported in 1983 (47) FLR 42 (SC), it

has been held that the retiral benefit is a right which is earned by an employee and it has also been termed as to be deferred wages payable to the

Government servant. Meaning thereby, such a due which is payable after considering the length of service rendered by an employee and it would

always be governed by the Statutory Rules as it determines an entitlement of legal right of an employee to receive his retiral benefit as soon as he

retires. The purpose of the said arrangement under the Statute is to protect the family and the retired employee at the stage, he after his

superannuation looses every source of income so as to provide him monetary assistance to sustain him and to live with dignity and honour.

9. Owing to the aforesaid backdrop, it has been held that the retiral dues is a right which is earned by an employee who is statutorily entitled to receive

when he supernuates because thereafter he does not get a regular salary from an employee at the advance stage of his life.

10. The Honâ??ble Apex Court in the case of Municipal Council, Ratlam Vs. Vardhichan and others reported in 1980(6) FLR 601 SC, has held out

where an authority has to discharge a statutory obligation, it cannot take a stand or a plea of non-availability of regular funds for discharging a

statutory duty and in particular in those circumstances where the retiral dues takes the shape of a right earned by an employee by the length of

service.

11. From the aforesaid perspective, the Honâ??ble Apex Court in a case of Secretary, Ministry of Chemicals and Fertilizers, Government of India

Vs. Cipla Ltd. And others, reported in 2003 (7) SCC 1 and State of Gujarat and another Vs. Shri Ambica Mills Ltd., Ahmedabad and another reported

in 1974(4) SCC 656 has held that a defence of financial crunch should not be a valid defence for the State where it is bound to discharge duties which

is statutorily and constitutional in nature. The entitlement of retiral benefit of petitioner is a Fundamental Right accrued to him under Article 21 of the

Constitution of India which means a right to earn livelihood and he is entitled for the retiral benefits to receive his deferred wages in accordance with

the Rules. Non payment of the same would amount to be violative of Article 14. The Court has held as under :-

â??11. The respondents have not shown anywhere as to what efforts they have made to arrange the requisite finance for payment of retiral benefits

to the petitioner who has retired as long back as on 31st October, 2001, i.e. more than four years ago. Counter-affidavit is completely silent on this

aspect and shows the total laxity and apathy on the part of the respondents.

17. In this view of the matter, I have no hesitation in holding that non-payment of retiral benefits and others to the petitioner is arbitrary and

unreasonable. There is no valid justification for the respondents to delay payment thereof.â??

12. As such, a writ of mandamus is issued to the respondent directing him to pay the post retiral dues as explained in para 8 of the writ petition which

is quoted hereunder:

â??A. Benefit of Gross Gratuity of Rs. 10,36,464/- (in two months)

B. Arrears of 7th Pay Commission of Rs. 90,348/- (in one month)

C. Leave Encashment (300 days) Rs 6,28,160/- (within three months)

Total amount of Rs.17,54,972/-â??

13. The respondent /Nigam is directed to pay the post retiral dues to the petitioner as mentioned in paragraph No. 12 of the judgment within a period

as mentioned against each head of dues payable to the petitioner from the date of presentation of the copy of the judgment.

14. Subject to the above observations, the writ petition stands disposed of.

15. However, there would be no order as to costs.

