(1998) 08 AHC CK 0123

In the Allahabad High Court

Case No : C.M.W.P. No. 30428 of 1997

Dr. Shitla Prasad Nagendra — APPELLANT

Vs

Gorakhpur University, Gorakhpur and others — RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Citation : (1998) 3 AWC 2367

Hon'ble Judges : D.S. Sinha, J;Bhagwan Din, J

Bench : Division Bench

Advocate : Dr. R.G. Padia and Prakash Padia, for the Appellant; S.C. and Dilip Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.S. Sinha, J.—Heard Dr. R.G. Padia, learned Senior Advocate appearing for the petitioner. Sri Dilip Gupta, learned counsel representing the respondents No. 1, 2 and 3 and Sri S.G. Hasnain, learned Additional Chief Standing Counsel appearing for the respondents No. 4 and 5.

2. The grievance of the petitioner is that he has not been paid his pension for the period between 1st July, 1990 and 30th September, 1997. He also complains that the other retiral benefits, such as provident fund, have not been paid.

3. The reason for withholding the pension and the other retiral benefits , given by the respondents is that penal house rent in respect of the house occupied by the petitioner during the tenure of service and thereafter is due from the petitioner.

4. The petitioner, a Professor of Gorakhpur University, retired from service on 30th June, 1990. But, continued to occupy the official residence till 25th March, 1996. It is not disputed that he could retain the house for a period of four months after retirement, i.e., upto 31st October, 1990. Thereafter, he was liable to pay penal rent in respect of the occupation of the house.

5. The Court is not adjudicating upon the question whether penal rent for the

alleged unauthorised occupation of the house is realisable from the petitioner or not? What concerns the Court is whether the pension and other retiral benefits payable to the petitioner can be withheld on account of the alleged dues towards penal rent for the alleged unauthorised occupation of the house.

6. In Sri S.N. Mathur v. Gorakhpur University, Gorakhpur and others, Civil Misc. Writ Petition No. 2172 of 1996, a Division Bench of this Court considered the identical question, at length and in detail, and after examining the decisions of the Hon''ble Supreme Court rendered in R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another 19941 6 SCC 589 and Som Prakash v. Union of India , held that pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any dues outstanding against the retired employee.

7. Thus, withholding of the pension of the petitioner for the period between 1st July, 1990 and 30th September, 1997 and of the other retiral benefits, such as the provident, fund is clearly illegal. Further, in view of the illegal withholding of the retiral benefits, the petitioner would be entitled to penal interest of 18% on the amount due to him.

8. In the result, the petition succeeds and is allowed. The respondents generally, and the respondent No. 4 in particular, are directed to pay or cause to pay to the petitioner the entire pension and provident fund due to him together with penal interest at the rate of 18% within a period of two months to be computed from today. There is no order as to costs.

