(1998) 09 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15084 of 1996

Ehsan Ahmed Khan APPELLANT

Vs

Osmania University and another RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Andhra Pradesh Pension Code — Article 351
Andhra Pradesh Revised Pension Rules, 1980 — Rule 46, 52

Citation : (1998) 5 ALD 702 : (1998) 6 ALT 37

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. M.V. Raghava Reddy, for the Appellant; Mr. K. Ramakant Reddy, SC for Osmania University and Mr. M. Harisesha Reddy, SC for ACB, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioner, the learned Standing Counsel for the University and the learned Standing Counsel for the Anti-Corruption Bureau.

2. The petitioner voluntarily retired in the year 1995 from the services of the University. Thereafter some difficulty arose in paying the pension and pensionary benefits to him. Therefore, he filed this writ petition.

3. Counter was filed by the University in which it was stated that there were some allegations against the petitioner and the matter has been referred to the Anti-Corruption Bureau to investigate. Therefore, the petitioner was not paid his gratuity however, he is being regularly paid his pension. After the counter was filed by the University, the respondent-University also moved an application praying that the Anti-Corruption Bureau be also arrayed as party. That application was allowed and the learned Standing Counsel for the Anti-Corruption Bureau also appeared today and he was heard. He submitted a copy of the sanction given by the Registrar of Osmania University dated 16-4-1998 which is taken on record. He states that there are several allegations against the petitioner and the matter was enquired into and the Anti-Corruption Bureau has

found prima facie case against the petitioner and therefore the Registrar got sanction from the University authorities to prosecute the petitioner and sanction has been granted on 16-4-1998. Since gross misappropriation has been made by the petitioner and some others, it will be difficult to recover the money from the petitioner, so the withholding of gratuity is sought to be justified. The sanction has been given by the competent authority to prosecute the petitioner in April, 1998. It is for the Anti-Corruption Bureau to proceed in the matter and this Court is not in a position to comment upon the allegations levelled against the petitioner but it is a fact that the petitioner has worked in the University. He has retired from service and he is entitled to his pension and other pensionary benefits as on today. The gratuity or the pension or the other pensionary benefits of a retired employee can only be withheld if permitted by law. The learned Counsel appearing for the University submits that the University can withhold the gratuity of the petitioner in accordance with Rule 46 (ii) of the Revised Pension Rules, 1980. This rule reads:

"(ii) where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, provisional pension is authorised under Article 351-B of Andhra Pradesh Pension Code-Volume I, Rule 52 of the Andhra Pradesh Revision Pension Rules, 1980. No gratuity is paid in such cases until the conclusion of the proceedings and issue of final orders thereon. The gratuity, if allowed to be drawn by the competed authority on conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority in such proceedings."

4. No doubt under tin''s provision an employer can withhold payment of gratuity provided on the date of retirement, such an employee is either facing a disciplinary or a judicial proceeding. The learned Standing Counsel for the University submits that when the petitioner retired on that date he was facing a disciplinary proceeding which ultimately culminated in exoneration of the petitioner. Therefore, in my view, when the petitioner was exonerated, he was entitled in terms of the concerned Rule to get his gratuity immediately. As on today, no judicial proceeding or disciplinary proceeding against the petitioner is pending. Today even if a charge-sheet is filed, that will not deprive the petitioner of his right to get the gratuity as in accordance with Rule 46 (ii) the date on which a judicial proceeding should be pending is the date on which the concerned official retires and not a date subsequent or prior to that. Since admittedly on the date of retirement of the petitioner, only a disciplinary proceedings was pending against the petitioner which ultimately resulted in exoneration, there is no justification for withholding of the gratuity of the petitioner. For these reasons, I allow this Writ Petition directing the respondents to pay the gratuity amount to the petitioner. This Court had earlier ordered to deposit gratuity amount in the Court and I am told that it has been deposited. The petitioner shall be at liberty to withdraw the amount after 15 days from today.