

(1984) 10 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1640 of 1976

Farman Ali

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-10-1984

Acts Referred:

Uttar Pradesh Retirement Benefit Rules, 1961 — Rule 3(2), 4, 5

Citation : (1984) AWC 290 Supp

Hon'ble Judges : A.N. Varma, J;A.N. Dikshita, J

Bench : Division Bench

Advocate : R.H. Zaidi, for the Appellant;

Final Decision : Allowed

Judgement

A.N. Varma, J.—By means of this petition the Petitioner has prayed for a writ of certiorari quashing certain orders passed by the Government of Uttar Pradesh and Accountant General U.P. Allahabad rejecting the petitioner's claim for fixing his pension at Rs. 101/- per month and death-cum-retirement gratuity at Rs. 4575/- as well as for a writ of mandamus commanding the said respondents to fix the petitioner's pension and the death-cum-retirement gratuity at the amount mentioned Above.

2. The relevant facts are that the Petitioner was initially appointed on 11-3-1928 as a copyist -in the Munsif's Court at Bijnor. On 1-1-1970 he retired as Sadar Munsarim District Judges Court. After his retirement his pension was fixed at Rs. 86/- per month and the death cum retirement gratuity Rs. 3975/-. The Petitioner felt aggrieved by this and filed a representation dated 14-5-1970 addressed to the Government of Uttar Pradesh and the same was forwarded by .the District Judge Bijnor. In this representation the Petitioner claimed that as he was drawing a substantive pay of Rs. 265/- on the date of retirement and as the Petitioner was getting Rs. 40/- as dearness allowance on 19-3-1962, the date on which the U.P. Retirement Benefit Rules, 1961 came into force, the petitioners' emoluments for the purpose of determining his pension and death cum-

retirement gratuity would legally be deemed to be RS. 305/-. Consequently in accordance with the aforesaid Rules his pension worked out to Rs. 101/- per month taking the average of three years emoluments as defined by Rule 3(2) of the aforesaid Rules. On the same ground his gratuity worked out to Rs. 4575/- in accordance with Rule 5 of the aforesaid Rules. The Government asked for the comments of the District Judge on this representation, who submitted the same through his letter dated 17-9-1970 in which the District Judge supported the claim of the petitioner. Thereafter the State Government asked the District Judge to take the opinion of the Accountant General U.P. in the matter. The Accountant General by his letter dated 4-4-1974 replied that as the dearness allowance referred to in Rule 3(2)(7) of the U.P. Retirement Benefit Rules had already been merged in the substantive pay of the Petitioner w.e.f. 1-4-63, as a result of the petitioner's having opted for the new scale of pay, he was not entitled to the addition of dearness allowance payable on 29-3-1962 in the computation of pension and death-cum-retirement gratuity under the U.P. Retirement Benefit Rules 1961. The District Judge did not agree with the reasoning of the Accountant General and accordingly referred the entire matter to the Government stating that the fact that the Petitioner had opted for the new scale of pay introduced w.e.f. 1-4-1965 did not affect the right of the Petitioner to have the dearness allowance added to his substantive pay for purpose of pension and gratuity in terms of the U.P. Retirement Benefit Rules and further that the Government Notification amending the U.P. Retirement Benefit Rules w.e.f. 1-4-70 was not applicable to the Petitioner who had already retired from service on 1-1-70. The Government, however, did not agree with the opinion of the District Judge and by an order dated 28th April, 1975 rejected the representation of the petitioner. By another order dated 17th July, 1976, the Government rejected a subsequent representation to the same effect submitted by the Petitioner on 14-6-1976.

3. Aggrieved by the aforesaid orders, the Petitioner has approached this Court.

4. Short question which, therefore, arises for consideration is whether the dearness allowance drawn by the Petitioner on 29-3-1962 was liable to be added to his substantive pay drawn by him at the time of his retirement in computing his pension and gratuity. The question will depend on the interpretation and effect of the U.P. Retirement Benefit Rules 1961 as they stood on the date of the petitioner's retirement. Rule 3(2) insofar as it is relevant for our purpose states:

3(2): In these Rules unless there is anything repugnant in the subject or context

(1) "Audit Officer" means the Accountant General Uttar Pradesh.

(2) "Emoluments" will include-

(i) pay other than that drawn in a tenure post:

(ii)...

(iii)...

(iv)...

(v)...

(vi)... .

(vii) dearness allowance as admissible on the date of notification of these rules or as may be specially allowed to count for pension in future:

Provided that if the emoluments of an officer have been reduced during the last three years of his service, otherwise than as a penalty, "average emoluments" as defined in Article 487 of Civil Services Regulations may, if these are more favourable of the retiring officer, be treated as the "emoluments".

5. It is thus apparent that emoluments for the purpose of determining pension and gratuity admissible to the Petitioner would include not only the pay drawn by the Petitioner at the time of his retirement but also dearness allowance as admissible on the date of Notification (which was 29-3-62) in view of the clear and unambiguous terms of Clause (vii) of Sub-rule (2) of Rule 3. Under Rule 4, the amount of pension or gratuity has to be fixed at the appropriate amounts setout in the Annexure to the Rules which lay down the scales of gratuity or pension. Gratuity is calculated on the basis of the monthly emoluments drawn by the employee at the time of his retirement and the pension is determined on average emolument.

6. It is indisputable that the term "emoluments" in these rules will have the meaning assigned to it under Rule 3(2) as it stood on the date of the retirement unless there is anything repugnant in the subject or context. We are clearly of the opinion that there is nothing repugnant in the subject or context which might justify giving to the term "emoluments" a connotation different from that specifically defined in the Rules.

7. It, therefore, follows on the plain language of the rules, which are explicit and unambiguous, that in computing the petitioner's pension, the respondents were bound to add the dearness allowance admissible on the date of the notification of the aforesaid rule that is 29-3-62 and the opinion expressed by the respondents Nos. 1 and 2 to the contrary is manifestly unsustainable in law being directly contrary to the statutory provisions referred to hereinabove.

8. Let us now turn to the Government Notification dated 26-2-1967 whereby new pay scales were introduced with effect from 1-4-65. Clause (vii) of this notification provides that all whole time Government servants who were in service on 29th July, 1965 shall have the option either to retain their old scales of pay or to elect the new scales of pay within ninety days. Under the new scales of pay the dearness allowance admissible at the rates enforced on 31st March, 1961 stood merged in the substantive pay of the Government Servant opting for the new scales.

9. We have examined this Government Notification but find nothing therein which

might Indicate that the effect of electing the new scales of pay would be to deprive the Government Servant of the benefit of computation of his pension and gratuity in accordance with the definition of "emoluments" as given in Rule 3(2) of the U.P. Retirement Benefit Rules, 1961, as the same stood on the date of the petitioner's retirement i.e. 1-7-70. It appears that the consequential amendments were not Inserted in the U.P. Retirement Benefit Rules until 1-4-70 when the U.P. Retirement Benefit (Amendment} Rules 1970 came into force, whereby Rule 3(2) was amended and substituted as follows:

3(2):"Emoluments" means the "pay" as defined in Rule 9(21) of the U.P. Fundamental Rules, which the officer was receiving immediately before his retirement:

Provided that in the case of an officer who on the date of his retirement is drawing pay in the scale of pay as in force on March 29, 1962 the term "emoluments" shall also include the dearness allowances as admissible there on that date.

Note If an officer immediately before his retirement or death, has been absent from duty on leave with allowance, his emoluments for the purpose of calculating service gratuity and/or death cum retirement gratuity should be taken at what they would have been had he not been absent from duty.

Provided that the amount of gratuity is not increased on account of increase in pay not actually drawn and that benefit of higher officiating or temporary pay is given only if it is certified that he would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.

10. The original Rule 3(2) was deleted and substituted by the above-mentioned rule w.e.f. 1-4-1970.

11. It is obvious that the amended Rule 3(2) shall have No. application to the petitioner's case who had already retired from service. His pension and gratuity shall, therefore, have to be determined with reference to the U.P. Retirement Benefit Rules, 1961 as they stood prior to their amendment in 1970. The amended Rule 3(2) under which emoluments do not include dearness allowance except in the case covered by the First Proviso to Rule 3(2) would not be applicable to the petitioner's case who had already retired earlier on 1-1-70.

12. Our conclusion, there fore, is that the respondents Nos. 1 and 2 have illegally declined to exclude the amount of dearness allowance payable to the Petitioner on 29-3-62 in computing his pension and gratuity. They will accordingly redetermine the petitioner's pension and gratuity by adding the dearness allowance to the petitioner's substantive pay.

13. In the result the petition succeeds and is allowed. The impugned orders passed by the Government of Uttar Pradesh on 17-7-76 and 28-4-75 And that passed by the Accountant General U.P., Allahabad dated 4-4-74 are quashed. The Government of Uttar Pradesh as well as toe Accountant moral U.P., Allahabad are

both directed to redetermine the petitioner's pension and gratuity immediately in accordance with law, having regard to the observations made hereinabove and to my order to the Petitioner the arrears of pension as redetermined as well as the difference in the amount of gratuity payable to the petitioner's, they are further directed to continue to pay to the petitioner's pension in the future as redetermined in accordance with this judgment. The Petitioner is entitled to his costs (torn the Respondent Nos. 1 and 2. Petition allowed.