
(2010) 12 AHC CK 0207
In the Allahabad High Court
Case No : Writ Petition No. 8330 (S/S) of 2010

Ganga Prasad

APPELLANT

Vs

U.P. Power Corporation Ltd. and Another

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2010) 12 AHC CK 0207

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devendra Kumar Arora, J.—Heard learned Counsel for the parties.

2. By means of present writ petition, the Petitioner is seeking a writ of mandamus thereby directing the opposite parties to release the gratuity of the Petitioner forthwith.

3. The submission of learned Counsel for the Petitioner is that the Petitioner had joined on the post of skilled coolie on 14.08.1972 at E.M. Division, Lucknow and by order dated 01.04.1974 the Petitioner was made permanent on the said post. The Petitioner was promoted as Lineman vide order dated 14.07.1988.

4. The further submission of learned Counsel for the Petitioner is that a criminal case was registered against the Petitioner, his son and wife under the provisions of Dowry Prohibition Act and the Petitioner was placed under suspension by means of order dated 28.05.1994. Subsequently, the Petitioner was reinstated by the opposite parties vide order dated 07.01.2008. The Petitioner attained the age of superannuation on 30.07.2009, and by means of order dated 30.07.2009, the Petitioner was informed that since a case u/s 498A I.P.C. and Section 3/4 of Dowry Prohibition Act is pending against him, he will be given interim pension and G.P.F. and remaining amount will not be given.

5. It is also submitted by learned Counsel for the Petitioner that the Petitioner has not been paid his leave encashment of earned leave and gratuity. There is no provision which provides for withholding of the gratuity. Learned Counsel for the Petitioner in support of her contention placed reliance on the judgment of the Apex Court reported in Ahmedabad Pvt. Primary Teachers" Association Vs. Administrative Officer and Others, The relevant paras-6 and 7 of the same are reproduced as under:

6. The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judges of the High Court "gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received". It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social-security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social-security measure to wage-earning population in industries, factories and establishments.

7. Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body. The expression "gratuity" itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post-retiral hardships and inconveniences.

6. Learned Counsel for the Petitioner also placed reliance on the judgment of Apex Court reported in AIR 2000 SC 3513a in which it has been held that an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

7. Learned Counsel for the Petitioner has also relied upon the judgment of Apex Court reported in D.V. Kapoor Vs. Union of India and others, in which it has been held that the employee's right to pension and gratuity is a statutory right and that can only be withheld in accordance with law Learned Standing Counsel appearing on behalf of the opposite parties could not place any provision under which the gratuity of the Petitioner can be withheld on account of pendency of the criminal case against him.

8. I have considered the arguments of learned Counsel for the parties and gone

through the record.

9. It is admitted position that the Petitioner has attained the age of superannuation on 31.07.2009 and by means of order dated 30.07.2009 the Petitioner was informed that he will be entitled only for interim pension and G.P.F., which will be subject to final outcome of the criminal matter pending against him. So far as the gratuity of the Petitioner is concerned, no provision has been placed before this Court, which authorises the opposite parties to withhold the same.

10. This Court in *Bengali Babu Misra v. State of U.P. and Ors.* Writ Petition No. 1189 (S/B) of 2002 while considering the similar case pleased to observe that since there is no provision under any of the Service Rules or the Government Orders or any other laws, which provides that even if the person is subjected to any punishment in the criminal prosecution that would be of no consequence so far as the service tenure or the service benefits are concerned and withholding of post retiral dues on the ground of pendency of the criminal proceedings cannot said to be reasonable or legal. The relevant portion of the judgment reads as under:

Since there is no provision under any of the Service Rules or the Government Orders or any other law and at least no such provision has been cited before us by the learned Standing Counsel, even if the Petitioner is subjected to any punishment in the criminal proceedings that would be of no consequence so far his service tenure or service benefits are concerned. In view of the above, we are of the view that the action of opposite parties in not releasing the entire post retiral benefits or dues to the Petitioner on the ground of pendency of criminal proceedings, cannot be said to be reasonable or legal.

11. This Court in the case of *U.S. Bharati v. Chief Controller* 1996 (14) LCD 217 while placing reliance on the judgment of *Deokinandan Prasad Vs. The State of Bihar and Others*, observed that right to receive pension is a fundamental right under the Constitution of India and pension of an employee cannot be withheld simply because of appeal against conviction and sentence is pending against him in regard to a case, which took place during the service period.

12. On the analysis of the aforesaid legal position, this Court comes to the conclusion that the opposite parties cannot withheld the gratuity of the Petitioner.

13. Accordingly, the writ petition is allowed. A writ of mandamus is issued directing the opposite parties to release the amount of gratuity of the Petitioner within a period of six weeks from the date of receipt of a certified copy of this order.

14. No order as to costs.