(1997) 11 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19035 of 1995

Guru Charan Singh Bagga — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 07-11-1997

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 1 AWC 423 : (1998) 1 UPLBEC 260

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : B.N. Rai, for the Appellant;

Final Decision : Partly Allowed

Judgement

O.P. Garg, J.—By means of the present writ petition under Article 226 of the Constitution of India, the petitioner--Guru Charan Singh Bagga has prayed that the letter, a copy of which is Annexure 9, which was received by him in the month of March, 1995, be quashed and the respondents be directed to pay service gratuity, service pension, group insurance amount, G.P.F., commuted value of pension, along with interest thereon at the rate of 12% per annum. It is also prayed that the respondents be directed to pay arrears of honorarium @ Rs. 25 per month w.e.f. January, 1989 till the date of superannuation and also refund the loan of Rs. 5.000 taken by the department from the petitioner, with interest. Counter and rejoinder-affidavits have been exchanged. Heard Sri B. N. Rai, learned counsel for the petitioner as well as learned standing counsel for the respondents.

2. The petitioner was serving as Accounts Clerk in N.C.C. Group Headquarters, Kanpur. He retired in August, 1994 and submitted relevant papers along with No Dues Certificate'' on 16.8-1994 for release of his pension and other claims. Thereafter, the petitioner has been making representations and sending reminders but his claims have not been settled. A letter. Annexure 9 was addressed by the Director. Pension Directorate. U. P., Lucknow to Group

Commander, N.C.C. Headquarters, Kanpur intimating that the pension papers are incomplete and that the matter could not be finalised as certain proceedings of fraudulent withdrawal and embezzlement of a sum of Rs. 1,63,550 are pending against the petitioner. It appears that on account of this letter, pensionary benefits of the petitioner could not be cleared. It is alleged that by order dated 1.2.93 the petitioner was not held liable or responsible for embezzlement and was partially held guilty for not scrutinising the monthly return of expenditure for the month of September, 1994. The departmental proceedings culminated in the censure entry.

3. Counter-affidavits have been filed in this case. One of the counter-affidavits has been filed by Sri S. K. Sharma, Assistant Accounts Officer (Pension)--respondent No. 2, in which it has been asserted that final pension and gratuity is not payable to a retired Government servant against whom departmental proceedings or criminal trial is pending before a court and since the petitioner is involved in criminal case of embezzlement of Rs. 1,63,550, the matter relating to final pension and gratuity could not be cleared. In another counter-affidavit, Sri S. K. Sharma has taken the stand that though the departmental enquiry stands concluded with the punishment of censure, a charge-sheet has been submitted against the petitioner for embezzlement, in the court. It has also been averred in the counter-affidavit that:

".....The office of the deponent has no objection in release of pension and gratuity amount but because of a vague and non-committal reply being provided to the office of the deponent making reference of a charge-sheet filed and a criminal proceeding regarding embezzlement of Rs. 1.63,550 the office of the deponent is in a dilemma as to how to dispose of the pension case of the petitioner. Despite these correspondence cited above, and also several conversations with the concerned authority of the N.C.C. Department, Kanpur required clarification is not forthcoming and which is handicap of the office of the deponent in disposing of the pension case. As soon as the office of the respondent No. 3 gives us a clean chit that no criminal case is pending against the petitioner with regard to embezzlement of Rs. 1,63,550 the office of the deponent would be eager to dispose of the pension case to obviate hardship to the petitioner....."

Lt. Col. J. B. Singh, the then Commanding Officer, N.C.C. Group Headquarters has also filed counter-affidavit and the stand taken therein is more or less the same as has been taken by Sri S. K. Sharma, Assistant Accounts Officer (Pension).

4. Learned counsel for the petitioner has pointed out that the departmental enquiry has been concluded against the petitioner in which he was not found responsible or in any manner involved in the embezzlement of the amount and that no criminal case is going on against the petitioner and, therefore, now there is no impediment in the release of amount of pension and gratuity in favour of the petitioner. With the rejoinder-affidavit, a copy of the letter of April, 1996,

addressed by Major P. N. Shukla, Deputy Director, N.C.C. Directorate. U. P., Lucknow to N.C.C. Group Headquarters, Kanpur regarding the settlement of pension/gratuity payable to the petitioner, has been filed as Annexure R.A. 1 in which the position has been clarified as below :

"2. You are advised to clarify the Pension Directorate U. P., Lucknow that Sri G. 5. Bagga, Ex-Accounts Clerk was involved in a fraud case of Government money. The departmental inquiry was conducted against him and he was found guilty only to the extent that he has not submitted the monthly return expenditure for the month of September, 1994 and also not verified the drawals from the Treasury and State Bank of India. Kanpur being an Accounts Clerk. The individual was awarded the punishment of ''CENSURE'' for this lapse. No embezzlement has been done by Sri G. S. Bagga and as such no recovery order has been passed against him. Thus there is nothing outstanding against Sri G. S. Bagga. Further, the C.B.I. has not filed any case against him in the court. In view of the above the case of Sri G. S. Bagga be settled at the earliest."

5. Now, the admitted position is that the petitioner has been finally exonerated of the charge of embezzlement in the departmental enquiry. After investigation of the case, no charge-sheet has been submitted against the petitioner and as it is, the petitioner is not being prosecuted in any court for the offence of embezzlement. In view of the clarification contained in the letter of April, 1996, as quoted above, the petitioner is entitled to the release of the amount of pension as well as gratuity. The petitioner has claimed interest at the rate of 12% per annum. In view of the law laid down by Supreme Court in D.S. Nakara v. Union of India AIR 1983 SC 195 State of Kerala v. N. Padmanabahan Nair (1985) 50 FLR 145 and R. Kapoor v. Director of Inspection, Income Tax, (1994) 69 FLR 1137, the petitioner is entitled to interest on the outstanding amount of gratuity and pension from the date of expiry of two months on which the disciplinary enquiry was concluded against the petitioner.

6. As regards the claim for honorarium and the refund of Rs. 5,000 alleged to have been taken by the Department as loan from the petitioner, the respondents shall look into these claims and decide the same by a speaking order within one month from the date of production of a certified copy of this judgment.

7. In the result, the writ petition is partly allowed with the direction that the respondents shall release the amount of pension and gratuity of the petitioner with interest at the rate of 12 per cent per annum to be calculated from the date of expiry of two months on which the disciplinary enquiry was concluded against the petitioner. The payment of pension and gratuity shall be finalised and made to the petitioner within two months from the date of production of a certified copy of this judgment.

