
(2010) 03 AHC CK 0279
In the Allahabad High Court
Case No : C.M.W.P. No. 28548 of 2002

Harihar Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Citation : (2010) 125 FLR 831

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Murli Manohar, for the Appellant;

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner, questioning the validity of order dated 5.6.2007 passed by District Development Officer, Chandauli, directing deduction of Rs. 75,600/- from the gratuity amount of the petitioner.

2. Brief background of the case, as disclosed in the writ petition, is that the petitioner was appointed as driver, he was allotted residence in lieu of his being in service. While continuing in service, allegations had come forward that the petitioner had been staying in the Governmental premises, which was allotted to him without paying any rent. Apart from the allotted accommodation, the petitioner had taken the adjoining premises as well unauthorizedly without there being any allotment order in his favour. In spite of being asked, the petitioner did not vacate the premises in question. On 23.12.1993 notice was given to the petitioner, mentioning therein that the petitioner was unauthorizedly relating the premises in question and in spite of being asked, had not vacated the same, as such Block Development Officer was asked to make computation of rent, which was to be recovered from the petitioner, so that recovery proceedings could be undertaken. Thereafter, the Block Development Officer, Chakia addressed a letter to the petitioner asking him to vacate the premises, failing which legal action

would be taken against him. Thereafter, on 18.5.1994 letter was sent, lastly warning the petitioner to remove the illegal occupation, failing which proceedings for eviction would be undertaken. After the said decision had been taken, at no point of time, the petitioner complied with the directives given to him. Thereafter, petitioner attained the age of superannuation, and as his retiral benefits were not being finalized, he was impelled to file Writ Petition No. 19568 of 2002. This Court on 13.5.2002 issued ad-interim mandamus for finalizing the said benefits. The petitioner filed a detailed representation, and thereafter, the order impugned has been passed informing the petitioner that orders were already passed on 18.5.1994, and as the petitioner had not deposited the amount calculated towards illegal occupation of the Governmental premises, as such the amount of Rs. 75,600/- were deducted from his gratuity amount. At this juncture present writ petition has been filed.

3. Counter and rejoinder affidavits have been exchanged and thereafter, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

4. Sri Murli Manohar, learned Counsel for the petitioner, contended with vehemence that in the present case order forfeiting the gratuity amount has been passed without providing any opportunity of hearing and excessive amount has been sought to be deducted, as such impugned order is liable to be quashed.

5. Countering the said submission, learned Standing Counsel, on the other hand, has contended that in the present case liability of the petitioner stood determined on 18.5.1994, as the petitioner had not vacated the premises in spite of time being accorded and had not paid the rent towards such occupation and as such the order dated 15.6.2002 was not new action and the amount which was due, only the same had been adjusted. In this background, it has been argued that the impugned order is not liable to be interfered with.

6. After respective arguments have been advanced, factual position which emerges in the present case is that the petitioner had been claiming that the residential accommodation allotted to him was free of rent and he was not obliged to make payment of any rent, whatsoever. Specific case of the respondents had been that only one accommodation was validly allotted to the petitioner and that too was not free of rent, rather in lieu of use and occupation of the same, rent had necessarily to be paid, but the same had never been paid. In addition to the said allotted premises, the petitioner had illegally occupied the adjoining premises also, and even on repeated opportunity being afforded to him to vacate the premises and also ensuring payment of rent along with penal rent, same was never done, as such final decision was undertaken on 18.5.1994, and as per the same petitioner was made responsible for ensuring payment of an amount to the tune of Rs. 75,600/-, but at no point of time said amount had been paid by the petitioner. Thereafter; notice had been issued to the petitioner that he should vacate the premises, failing which proceedings would be undertaken. Record in question reflects that premises in question was vacated by

petitioner on 16.6.1995 and 8.12.1995 orders were passed for realization of amount as per law. After the said order had been passed complete silence was maintained in the matter of realization of said amount in question, and in the meantime, the petitioner attained the age of superannuation. While finalizing his retiral benefits from the gratuity amount, the amount in question has been deducted, which was already due towards arrears of rent and damages.

7. The question is as to whether such an action can be taken without providing opportunity of hearing after maintaining silence for such a long time, and same is subscribed by law or not. Law is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon; it is paid to him in live of service rendered and employee is entitled to get the said benefit, after retirement and in the event of his death legal heirs are entitled for the said benefit. Law is also equally well settled that gratuity being statutory right, when any deprivation is to be made, such deprivation must be in accordance with law.

8. Gratuity being statutory right, one can be deprived of the gratuity amount only as per procedure prescribed in law, and for depriving a Government employee from his/her gratuity amount, opportunity has to be afforded before forfeiting or withholding the same. In the present case admittedly before effecting recovery neither any opportunity has been afforded nor any action in terms of the provisions as contained under U.P. Retirement Benefits Rules, 1961 and the U.P. Liberalised Pension Rules, 1961 has been undertaken, which in its turn borrows the provisions of Article 351-A of Civil Service Regulations, which has to be adhered to while making recovery from gratuity amount, rather to the contrary on the basis of earlier purported determination, the amount in question has been sought to be deducted. From gratuity amount, such deduction could not have been made as has been done in the present case, without providing any opportunity of hearing and without undertaking any proceeding as is provided for under U.P. Retirement Benefits Rules, 1961 and the Liberalised Pension Rules, 1961 read with Article 351-A of Civil Service Regulation. Gratuity amount of the petitioner in the present case has wrongly been withheld on the ground that the said amount was outstanding against the petitioner, on account of which loss has been caused to the petitioner without providing any opportunity of hearing, that had amount was going to be withheld, backed by statutory provisions, as such deduction is not approved of.

9. Consequently, present writ petition succeeds and the same is allowed. The impugned order dated 5.6.2007, in so far as it directs deduction of an amount of Rs 75,600/- from the petitioner's gratuity amount is quashed. However, passing of this order will not come in the way of the State to recover the said amount by taking legal proceedings as is provided under the U.P. Retirement Benefits Rules, 1961 and the U.P. Liberalised Pension Rules, 1961, or under any law, but certainly after providing of opportunity of hearing. Entire matter be finalized, in accordance with law, within next four months, from the date of receipt of

certified copy of the order.

10. No order as to costs.