
(2012) 02 AHC CK 0328
In the Allahabad High Court
Case No : Writ Petition No. 6182 of 2009

Harnam Singh Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(6)
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 471, 504

Citation : (2012) 133 FLR 816 : (2012) LLR 782

Hon'ble Judges : Surendra Vikram Singh Rathore, J

Bench : Single Bench

Advocate : Ramesh Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

Surendra Vikram Singh Rathore, J.—By means of this petition, the petitioner has prayed for issuing a writ of certiorari by quashing the order dated 11.9.2008 and 27.7.2005 passed by Superintendent of Police (M) Intelligence Head Quarter, Lucknow. Vide order dated 27.7.2005, the second higher pay scale was not sanctioned to the petitioner on the ground of pendency of a criminal case being case crime No. 415 of 1996 under sections 420, 467, 471, 120B, 504 and 506, IPC relating to police station Maha Nagar. During the pendency of the aforesaid case in the Court, the petitioner retired on 31.12.2007. The grievance of the petitioner is that on 11.9.2008 only an interim pension was sanctioned in his favour. Because of the pendency of the afore-mentioned criminal case all other retirement dues, including gratuity were withheld. During the course of arguments, the grievance of the petitioner was only to the extent that the gratuity and the other retirement benefits could not have been withheld because of the pendency of a criminal case which had no relation with the department. It is submitted on behalf of the petitioner that the aforementioned criminal case is a matter between the two parties, no loss of any nature was occasioned to the department because of the said alleged offence. I learned

Counsel for petitioner has placed reliance on several case laws and has argued that the stoppage of gratuity and other retirement dues cannot be withheld simply because a criminal case is pending. Such an order as submitted by learned Counsel for the petitioner is absolutely illegal and arbitrary.

2. Learned Counsel for opposite parties has submitted that vide G.O. No. 3-1679/Das-80-909-79 dated 28.10.1980 it was provided that during the pendency of criminal proceedings only interim pension shall be released and the other retirement benefits including gratuity shall not be paid and therefore, the opposite parties have acted in accordance with the aforesaid G.O. and their act cannot be said to be illegal.

3. The submission of the learned Counsel for petitioner is that the aforementioned G.O. has been misread by the authorities concerned. The aforesaid G.O. relates only to the departmental judicial proceeding, or vigilance proceeding or service tribunal proceeding and it does not cover the criminal proceedings, which are not connected with the department.

4. It is further argued on behalf of the petitioner that mere pendency of criminal proceeding, cannot be a ground to withheld the retirement dues because if in the trial, the case is proved against the petitioner then he shall be punished in accordance with law. He cannot be punished by withholding his retirement dues.

5. Learned Counsel for opposite party laid emphasis upon the G.O. dated 28-10-1980 in which in para 2 provisions have been made regarding payment of Interim pension. A bare perusal of the aforesaid para of the aforementioned G.O. reveals that it relates to such government servant against whom some Departmental judicial or administrative inquiry is pending on the date of retirement. But it nowhere provides that if criminal proceedings are pending even then the said G.O. would be applicable. Suffice, it would be to mention that such a provision could not have been made" for the simple reason that unless Departmental proceedings have been initiated or some judicial or administrative Proceedings have been initiated for the purpose of determining the guilt of the government servant during the course of his service, mere pendency of a Criminal proceedings cannot be a ground for taking any action against the Petitioner with respect to payment of his post retrial dues.

6. Learned Counsel for petitioner has placed reliance on a Division Bench pronouncement of this Court in the case of Bangali Babit Misra v. State of U.P. and others, 2003 (50) ALR 538. In the said case the petitioner was caught in a trap case and subsequently he was suspended and in that case the Court directed that the entire post retrial dues of the petitioner including pension, gratuity, leave encashment, group insurance be paid to the petitioner.

7. Section 4(6) of the Payment of Gratuity Act, 1972 reads as under,

6. Notwithstanding anything contained in subsection (1),-

(a) the gratuity of an employee, whose services have been terminated for any

act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct of any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude provide that such offence is committed by him in the course of his employment.

8. A bare perusal of the aforesaid section makes it abundantly clear that the circumstances as enumerated in the aforesaid section does not extended at all in the case of the petitioner, therefore, the order of stopping the gratuity of the petitioner was not in accordance with law. This, Court in the case of Amod Prasad Rai Vs. State of U.P. and Another, has held that withholding of gratuity is not permissible in any circumstance other than those enumerated in section 4(6) of the Payment of Gratuity Act and held that right to gratuity is a statutory right. It is nowhere the case of the opposite party that because of the aforementioned criminal proceeding any loss was occasioned to the department or such an offence was committed during the course of his employment. It is also nowhere the case of the opposite party that any amount has to be recovered from the petitioner as outstanding dues against him towards the department. This Court in the case of Radhey Shyam Shukla Vs. State of U.P. and Another, has held as under:

Normally, as urged by the learned Standing Counsel, "judicial proceedings" would also include a criminal trial. However, the meaning ascribed to a word has to be given keeping in mind the intention of the legislature and the object which it sought to achieve while using it. A leading of the aforesaid provision shows that "judicial proceeding" has been used for the purpose of any administrative action or which may have given rise to a "judicial proceeding" relating to the conduct of the Government servant. One of the main object of withholding gratuity is to compensate the Government the loss caused by the Government servant in his functioning as such. In the present" case the criminal case relates to two individuals and the trial cannot in any manner fix responsibility of any loss to the Government. In fact, there is no case set up in the counter affidavit that the decision in the pending criminal trial between two individuals would in any way enable the Government to realize any alleged loss. In fact no loss has even been attributed to the petitioner. A Division Bench of this Court in the case of Amod Prasad Rai Vs. State of U.P. and Another, has considered the effect of the Government order which has been incorporated in the Rules and has held that mere pendency of criminal proceedings would not authorise withholding of post retrial benefits including gratuity. The aforesaid decision has been followed subsequently in the case of Mahesh Bat Bhardivaj v. U.P. Cooperative Federation

Ltd. and another, 2007 (10) ADJ 561

In view of the aforementioned legal position discussed above, in the facts of the present case, the impugned order withholding the post retirement dues of the petitioner and sanctioning only an interim pension cannot be sustained and deserves to be quashed and therefore, the order dated 11.9.2008 passed by opposite party No. 5 is hereby quashed. The opposite parties are hereby directed to release all the post retirement dues of the petitioner including gratuity within a period of three months from the date a certified copy of this order is produced before them. In case the petitioner has fulfilled all the formalities for the release of his pension then the decision for the release of the post retirement dues shall be taken at the earliest and formalities for sanctioning the pension have not been completed then the petitioner shall be afforded an opportunity to fulfill all the formalities for the release of his pension and this exercise, if needed. It shall be completed positively within a period of one month from the date a certified copy of this order is produced before them. Petitioner shall also be entitled for the interest at the rate of 10% per annum on the said amount.

The petition is accordingly disposed of finally.