
(2012) 05 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 332 of 2010

Jalaluddin

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 6 ADJ 547

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sabir Ali, for the Appellant; J.N. Verma and R.K. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Anil Kumar, J.—Heard Sri Sabir Ali, learned counsel for petitioner, Sri R.K. Chaudhary, learned counsel for respondents and perused the record. Facts of the present case are that petitioner who was working in the Nagar Palika Parishad, Akbarpur, Ambedkar Nagar, retired from the post of Lamp Lighter on 31.5.2005, as his post retiral dues (pension and gratuity) has not been paid, so he approached this Court for redressal of his grievances in respect to payment of post retiral dues by filing Writ Petition No. 5073 (SS) of 2008 with the following main prayer:

(i) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties immediately to determine and pay the monthly pension, gratuity and other retirement benefits to the petitioner alongwith arrears and interest @ 18% per annum thereupon, without making any further delay.

2. The said writ petition was disposed of by an order dated 22.8.2008, relevant portion of the same on reproduction reads as under:

Considering the facts & circumstances of the case, with the consent of learned counsel for the parties, the writ petition is finally disposed of at this stage itself

with a direction to respondent No. 1 to provide age limit to the petitioner, if he is eligible in accordance with law and if age limit has been provided to other person as indicated in Annexure-8 to the petition within a period of one month from the date a certified copy of this order is produced. Thereafter, the respondents concerned may clear of the retiral dues due towards the petitioner within two months.

3. As per direction given by this by order dated 22.8.2008 in Writ Petition No. 5073 (SS) of 2008 filed by the petitioner, the matter in regard to payment of post retiral dues to the petitioner (pension and gratuity) has been processed on 16.9.2008 by the Executive Officer with a recommendation that the period of six months and 24 days which is sought for the qualifying services in order to get the post retiral dues (pension) may be condoned.

4. Accordingly, the matter came up for consideration before the appropriate authority/O.P. No. 1 after taking lenient view the State has condoned the said period and forwarded the matter to the executive officer/O.P. No. 4 for further action who thereafter on 5.3.2009 referred the matter to the Commissioner, Faizabad, y, the post retiral dues (pension and gratuity) has been paid to the petitioner on 17.3.2009 which was received by him.

5. After receiving gratuity and pension, the petitioner has filed the present writ petition before this Court with the following main relief :

(a) to issue a writ order or direction in the nature of mandamus commanding the opposite parties to pay interest at the rate of 18% on the amount of gratuity and pension to which the petitioner is entitled from the date it became payable till the date of payment of the gratuity amount.

PENSION:-So far as the pension is concerned it is settled that pension is not merely a statutory right to the fulfillment of a Constitutional promise, inasmuch as it partakes the character of public assistance in case of unemployment, old age, disablement and similar other cases of unversed want, but the right to pension is a substantive right and not a bounty or gratuitous payment.

6. Further, Hon''ble the Supreme Court after placing reliance on the judgment in the case of D.S. Nakara and Others Vs. Union of India (UOI), and in the case of V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , held that for being entitled to pension, the applicant was required to show as under:

(i) that he was admitted in the eh Fund and

(ii) that he should have completed qualifying service for payment of pension.

The "qualifying service" for the purposes of pension is provided in Section (i) of Chapter 16. The Regulation 361 of the Civil Service Regulations provides the condition of the qualification, which reads as follows:

361. The service of an officer does not qualify for pension unless it conforms to

the following three conditions:

- (A) The service must be under Government.
- (B) The employment must be substantive and permanent.
- (C) The service must be paid by Government."

7. Regulation 368 of Civil Service Regulation provides that service does not qualify unless the officer holds a substantive office on a permanent establishment.

8. Regulation 370 of Civil Service Regulation after the amendment w.e.f. 20.4.1977 reads as follows:

370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruptions by confirmation in the same or any other post shall qualify except-

- (i) periods of temporary or officiating service in non- pensionable establishment;
- (ii) periods of service in work charged establishment; and
- (iii) periods of service in a post paid form contingencies."

9. Article 424 of Chapter 18 of the Civil Service Regulations provides the following kinds of pension admissible to a Government servant (a) compensation pension (b) invalid pensions (c) superannuation pension (d) retiring pensions.

10. Fundamental Rule 56 provides for retiring of a Government servant on attaining the age of 58 years or 60 years as the case may be. It is not disputed that in the present case, the age of superannuation of the petitioner-respondent was 60 years. Clause (e) of

11. Fundamental Rule 56 reads as under:

(e) "A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required allowed to retire under this rule:

Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less.

Articles 465 and 465-A provides as under:

465 (1) A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for 25 years or on attaining the age of 50 years.

(2) A retiring pension is also granted to a Government servant who is required by Government to retire after attaining the age of 50 years.

465-A. For officers mentioned in Article 349-A, the rule for the grant of retiring pension is as follows;

(1) An officer is entitled on his resignation being accepted, to a retiring pension after completing qualifying service of not less than 25 years, or on attaining the age of 50 years.

(2) A retiring pension is also granted to an office who is required by Government to retire after attaining the age of 50 years.

12. In Law of Lexicons the expression regular" and "regular services" have been assigned meanings at page 1638-1639 as under:

Regular- Webster defines "regular" to mean conformable to a rule; methodical; periodical.

REGULAR" is derived from "regular", meaning "rule", and its first and legitimate signification, according to Webster, is "conformable to a rule" agreeable to an established rule, law, or principle, to a prescribed mode, or according to established, customary forms.

Regular-Conformable to rule; periodical; recurring or repeated at fixed times or uniform intervals; properly constituted; normal; marked by steadiness or uniformity of action, procedure or occurrence.

Regular services.-The expression "regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise are liable to render continuously for a term military service to His Majesty in every part of the world or in any specified part of the world. R. v. Governor of Wormwood Scrubbs Prison, (1948) 1 All ER 438, 441 (KBD). [Army Act. S. 190(8)] (See; State of Haryana Vs. Haryana Veternaty and A.H.T.S. Asson. and Another, , State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, and State of Punjab and Another Vs. Ashwani Kumar and Others,)"

GRATUITY:

13. As per law laid down in the case of Giwan Singh v. The Administrator, Union of Territory of Delhi, 1985 (1) SLJ 100, held that as employee after putting in qualified period of service for pension and gratuity is entitled for pension and gratuity unless the appropriate authority passes a valid order under Pension Rules stopping the pension.

14. Further, Hon"ble the Apex Court in the case of State of A.P. and Others Vs. Ind. Natali Granite Ltd., , held that the claim of interest on delayed payment of pension and gratuity would arise only if the Government is responsible for the delay.

15. In view of the above said position, now the question which is to be examined

in the present case that whether there is any delay on the part of official respondents in respect to payment of post retiral dues to the petitioner, as a result of which the petitioner is entitled for interest as claimed by him the present case.

16. Undoubtedly rather as per admitted position in the instant matter, the case of the petitioner for payment of post retiral dues(pension and gratuity) has been processed by Executive Officer on 16.9.2008 with a recommendation that the period of six months and 24 days which is sought for giving the petitioners post retiral benefits from the qualifying services may be condoned.

17. Thereafter, the matter in question was forwarded by Executive Officer, Nagar Palika Parishad, Akbarpur, Ambedkar Nagar to the Commissioner on 5.3.2009 and accordingly, the same has been paid on 17.3.2009 to him.

18. In view of the above said facts, the relief as claimed by petitioner that 18% interest may be given on the delayed payment of amount towards pension and gratuity may be given to him cannot be exceeded in the present case.

19. Thus, I am of the considered opinion, looking into peculiar facts and circumstances of the case that there is no undue and deliberate delay on the part of the official respondent for payment of the amount of post retiral dues (pension and gratuity), as such the relief as claimed by the petitioner in the instant case under Article 226 of the Constitution of India cannot be granted.

20. For the foregoing reasons, the writ petition lacks merit and is dismissed. No order as to costs.