

(2015) 01 AHC CK 0109

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 67709 of 2014

Kanhaiya Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Constitution of India, 1950 — Article 148, 309

Citation : (2015) 2 ADJ 458 : (2015) 4 ALJ 246 : (2015) 2 AWC 1102

Hon'ble Judges : Mahesh Chandra Tripathi, J.

Bench : Single Bench

Advocate : Mrigank Shekhar Singh, for the Appellant; Pankaj Rai, Add. C.S.C.,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Mahesh Chandra Tripathi, J.—Heard learned counsel for the petitioner and Shri Pankaj Rai, learned Additional Chief Standing Counsel for the respondents. Since a simple legal issue is involved in the matter, the writ petition is being disposed of at this stage without calling for a counter-affidavit

2. By means of present writ petition, the petitioner has prayed for quashing the orders dated 5.8.2013 and 3/4.7.2013. He has further prayed for a direction to the respondents to release the amount against the gratuity along with interest @ 18%.

3. It appears from the record that the petitioner was initially appointed as Ambulance Cleaner in S.R.N. Hospital, Allahabad on 1.6.1971. He was promoted on the post of Driver on 1.2.1984. He retired on attaining the age of superannuation from the post of Driver on 28.2.2013. By the letters dated 3/4.7.2013 and 5.8.2013 the respondents withheld the payment of gratuity of Rs. 4,40,451/- on the ground that the petitioner did not submit the registration certificate and log book of Vehicle No. UAE-9734 (Matador), which was in his possession. The arrears of pension and commutation amounting to Rs.

3,58,376/- was paid to him on 16.8.2013. He has also received the payment of Rs. 54,382/- towards group insurance on 16.8.2013.

4. Learned counsel for the petitioner submits that the said vehicle was in possession of the petitioner in the year 1995 and thereafter he had informed to the superior officials from time to time for taking over the charge of the said vehicle but for the reasons best known to them, no suitable action has been taken meanwhile and after 20 years the petitioner has been asked to submit the registration certificate and log book of the said vehicle. He further submits that since the year 1995 the department had never issued any demand or asked any clarification in this regard and in most arbitrary manner after retirement of the petitioner, forfeited the admitted amount towards gratuity which cannot be sustained in the eye of law.

5. The contention of the petitioner is that no departmental proceeding is pending against the petitioner at present and, therefore, submission is that the petitioner is entitled for full pension. It is further submitted that there is no charge of the financial irregularities against the petitioner. Reliance is placed on the Division Bench decision of this Court in the case of Mahesh Bal Bhardwar v. U.P. Co-operative Federation Ltd. and another, 2007 (10) ADJ 561 and the decision of learned Single Judge in the case of Radhey Shyam Shukla Vs. State of U.P. and Another, and Division Bench decision of this Court in the case of Lal Sharan Vs. State of U.P. and Others, .

6. In the case of Deoki Nandan Shan v. State of U.P., AIR 1971 SC 1409, the Apex Court ruled that the pension is a right and payment of it does not depend upon the discretion of the Government but is governed by the Rules and the Government servant coming within those Rules is entitled to claim pension and grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount, having regard to service and other allied matters, that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was further affirmed by the Apex Court in the case of State of Punjab and Another Vs. Iqbal Singh, .

7. In the case of D.S. Nakara and Others Vs. Union of India (UOI), , the Apex Court has observed as under:

"From the discussion three things emerge: (1) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and

(iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch....."

8. The ratio laid down in these cases had been subsequently followed by the Apex Court in series of its decisions including the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, .

9. The Division Bench of this Court in the case of Mahesh Bal Bhardwaj v. U.P. Co-operative Federation Ltd. and another (Supra) has held that gratuity and other post retiral dues, which the petitioner is otherwise entitled under the Rules, could not have been withheld.

10. Learned Single Judge of this Court in the case of Radhey Shyam Shukla v. State of U.P. and another (Supra) has also taken extreme case where even mere pendency of the criminal proceedings would not authorize withholding of gratuity.

11. It is admitted situation that no departmental enquiry was initiated against the petitioner.

12. The Division Bench of this Court in the case of Lal Sharon v. State of U.P. and others (Supra) has held that even mere intention to obtain sanction for initiating disciplinary enquiry could not be basis for withholding the post retiral dues unless sanctioned, granted and the disciplinary proceedings started.

13. Apex Court in the case of State of Punjab and another v. Iqbal Singh (Supra) has further held that since the cut of the pension and the gratuity adversely affects the retired employee as such order cannot be passed without giving reasonable opportunity of making his defence.

14. In the aforementioned facts and circumstances, the impugned orders dated 5.8.2013 and 3/4.7.2013 cannot be sustained and are hereby quashed. The matter is remanded back to respondent No. 4 to look into the grievance of the petitioner and to take appropriate decision as indicated above within two months from the date of production of a certified copy of the order before him. With the aforesaid observation, the writ petition is allowed.