(2018) 06 UK CK 0067

In the Uttarakhand High Court

Case No : Writ Petition No. 1638 (S/S) of 2018

Mohan Chandra Pathak — APPELLANT

Vs

State of Uttarakhand and another — RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2018) 06 UK CK 0067

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : K.K. Harbola, Bhagwat Mehra, N.S. Pundir, B.S. Bist, D.S. Patni

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J.

The petitioner was initially appointed as Personal Assistant in the erstwhile U.P. Jal Nigam by direct recruitment after due selection. After attaining the age of

superannuation, he retired from his services on 31.10.2016.

2. The contention of the petitioner before this Court is that the post retiral dues as payable to the petitioner by way of gratuity, leave encashment and commutation

are due to be paid to the petitioner, which despite having been sanctioned, have not been paid.

3. The claim for the grant of leave encashment, commutation and gratuity was sanctioned by the respondent on 28th November, 2016, 2nd November, 2016 and 26th

November 2016 respectively.

4. The learned counsel for the petitioner has placed reliance on a judgment rendered by the Coordinate Bench of this Court on 22.11.2018 in Writ Petition

No. 75 of

2016 (S/S) as well as the judgment rendered by the Division Bench of this Court on 26.03.2018 in Writ Petition No. 113 of 2018 (S/B). What is significant to note is

that even the Coordinate Bench of this Court in Writ Petition No. 75 of 2016 (supra) too directed respondent to pay retiral dues in the light of judgment rendered by

Division Bench of this Court in Writ Petition No. 494 of 2015 (S/B), wherein, under an identical circumstance, where a claim has been raised for non-payment of

retiral dues, the Court has passed directions to pay the same.

5. Learned counsel for the respondent Corporation, does not actually dispute the liability; but, he does not of course agree to the exact amount due. His main

contention is paucity of funds. He would further submit that in fact the Corporation has moved the Government and repeated demands were made.

6. This argument may not be tenable in the light of the fact that the respondent / Nigam themselves have sanctioned the amount payable to the petitioner. Paucity of

funds under law can never be a ground to deny the sanctioned retiral dues payable to an employee which is the basis of subsistence for him and his dependents.

Non-payment of retiral dues may lead to grievous financial crisis, which cannot be permitted to persist.

7. The argument as extended by the learned counsel for the respondent that the Nigam is unable to pay the post retiral dues to the petitioner on account of there

being dearth of finance. The aforesaid issue came up for consideration before Allahabad High Court in the case of Samal Chand Tiwari Vs. State of U.P. reported

in [2006 (62) ALR 698]. The Allahabad High Court in para 6, 7 and 8 held as under :-

â??6. Thus, retiral benefits are not bounty but a right earned by the employee and thus it is deferred wages payable to a Government servant in lieu of considerable

length of service rendered by an employee to the employer.

7. The quantum of retiral benefits although is governed by statutory rules but it is clear that Government servant has a legal right to receive his retiral benefits as soon

as he retires. After retirement a Government servant is not paid any salary. Only some amount is paid in the form of retiral benefits to provide him monetary

assistance to sustain himself and his dependents with honour and dignity.

8. Non-payment of pension, therefore, amounts to denying right to earn livelihood of an employee who after retirement may need it most, since he does not get

thereafter a regular salary from the employer but at the advance age, the employee and his family is taken care by the nominal amount paid to him as retiral benefits.

The respondents have also not care to place on record the details showing as to how they claim that they do not have sufficient funds to pay retiral benefits to the

employees. It is not the case of the respondents that day-to-day functioning has hampered or the officers of the respondents are also not getting their regular salary.

No details of any expenditure etc. have been furnished by the respondents. In a vague and evasive manner, the plea of financial crisis has been taken to deny the

admitted liability. Apathy on the part of the respondents is writ large from the facts that there is no mention in the entire counter affidavit that the retiral benefits shall

be paid to the petitioner within a reasonable time. This itself shows total inaction and arbitrariness on the part of the respondents.â??

8. Taking into consideration the impact of the judgment rendered in the case of D.S. Nakara Vs. Union of India reported in 1983 (47) FLR 42 (SC), it has been held

that the retiral benefit is a right which is earned by an employee and it has also been termed as to be deferred wages payable to the Government servant. Meaning

thereby, such a due which is payable after considering the length of service rendered by an employee and it would always be governed by the Statutory Rules as it

determines an entitlement of legal right of an employee to receive his retiral benefit as soon as he retires. The purpose of the said arrangement under the Statute is to

protect the family and the retired employee at the stage, he after his superannuation looses every source of income so as to provide him monetary assistance to

sustain him and to live with dignity and honour.

9. Owing to the aforesaid backdrop, it has been held that the retiral dues is a right which is earned by an employee who is statutorily entitled to receive when he

supernuates because thereafter he does not get a regular salary from an employee at the advance stage of his life.

10. The Honâ??ble Apex Court in the case of Municipal Council, Ratlam Vs. Vardhichan and others reported in 1980(6) FLR 601 SC, has held out where an

authority has to discharge a statutory obligation, it cannot take a stand or a plea of non-availability of regular funds for discharging a statutory duty and in particular in

those circumstances where the retiral dues takes the shape of a right earned by an employee by the length of service.

11. From the aforesaid perspective, the Honâ??ble Apex Court in a case of Secretary, Ministry of Chemicals and Fertilizers, Government of India Vs. Cipla Ltd.

And others, reported in 2003 (7) SCC 1 and State of Gujarat and another Vs. Shri Ambica Mills Ltd., Ahmedabad and another reported in 1974(4) SCC 656 has held

that a defence of financial crunch should not be a valid defence for the State where it is bound to discharge duties which is statutorily and constitutional in nature.

The entitlement of retiral benefit of petitioner is a Fundamental Right accrued to him under Article 21 of the Constitution of India which means a right to earn

livelihood and he is entitled for the retiral benefits to receive his deferred wages in accordance with the Rules. Non payment of the same would amount to be

violative of Article 14. The Court has held as under :-

â??11. The respondents have not shown anywhere as to what efforts they have made to arrange the requisite finance for payment of retiral benefits to the petitioner

who has retired as long back as on 31st October, 2001, i.e. more than four years ago. Counter-affidavit is completely silent on this aspect and shows the total laxity

and apathy on the part of the respondents.

17. In this view of the matter, I have no hesitation in holding that non-payment of retiral benefits and others to the petitioner is arbitrary and unreasonable. There is no

valid justification for the respondents to delay payment thereof.â??

12. As such, a writ of mandamus is issued to the respondent / Nigam directing him to pay the post retiral dues as explained in para 10 of the writ petition which is

quoted hereunder:

â?? A. Leave Encashment (300 days) Â Â Â Â Â Â Â Â Â Â Â - Rs.6,50,025/- (approx.) (sanctioned but not paid) (within three months)

B. Commutation Â -Rs.5,68,139/- (approx.) (sanctioned but not

paid) (in one month)

C. Gratuity Â - Rs. 10,00,000/- (approx.)

(sanctioned but not paid) (in two months)

Â Â

Â ____

Â Â

Total â?" Rs. 22,18,164/- (approx.)

13. The respondent /Nigam is directed to pay the post retiral dues to the petitioner as mentioned in paragraph No. 12 of the judgment within a period as mentioned

against each head of dues payable to the petitioner from the date of presentation of the copy of the judgment.

14. Subject to the above observations, the writ petition stands disposed of.

15. However, there would be no order as to costs.

