(1988) 03 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 757 of 1987 (R)

Mrs. Bhanumati Prasad APPELLANT

Vs

Ranchi University and Others RESPONDENT

Date of Decision : 23-03-1988

Acts Referred:
Bihar State Universities Act, 1976 — Section 71

Citation : (1988) PLJR 901

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : P.K. Prasad, M. Sahu and S.K. Sinha, for the Appellant; R.B. Mahto and Miss. Indranl Chaudhury, for the Respondent

Judgement

B.P. Singh, J.—The petitioner herein was the founder Principal of the Ranchi Women''s College established in or about the year 1949 under the then Bihar University. The aforesaid College became constituent college under the Ranchi University. The petitioner functioned as its Principal for many years and reached the age of superannuation on 28.2.1981. Till her superannuation the petitioner was being paid all her dues as were admissible to her as Principal of the Ranchi Women''s College. She claims that she had an unblemished record of service. The grievance of the petitioner is that the amount payable to her by way of gratuity is not being paid to her despite repeated demands. The University has acted in a most arbitrary manner in withholding the gratuity amount payable to her. She has therefore prayed for issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to pay her the amount of gratuity which she is entitled to receive. The petitioner has stated in the writ petition that the Ranchi University had Introduced a Triple Benefit Scheme called as Contributory Provident Fund-cum-Pension-cum-Gratuity Scheme. The Petitioner exercised her option to be governed by the said Scheme. The petitioner is being paid her pension under the said Scheme. The petitioner further claims that she is entitled to gratuity under the relevant statutes of the Ranchi University and the gratuity is payable by the University on her retirement.

The maximum amount of gratuity has been fixed at Rs. 30,000/- and she is entitled to this amount. However, the respondents made payment of a very paltry sum of Rs. 204/- only to the petitioner and a sum of Rs. 29,796/- was unlawfully and wrongfully withheld for no good reason. A baseless and unfounded allegation is made against the petitioner regarding misappropriation of Funds. This is not only an excuse for not paying gratuity to the petitioner, since at no stage during her long years of service, there was any such allegation against the petitioner. She was never informed of any such allegation against her nor was she ever required to submit any explanation in regard to such allegation. Only after retirement, when the petitioner claimed her lawful dues, such allegations are sought to be made. The petitioner made a representation to the Chancellor of the Ranchi University (Respondent No. 2) on 20th May, 1985 but despite the lapse of more than two years nothing more was paid to the petitioner. Under these circumstances the petitioner filed the instant writ petition on 25.5.1987.

2. The writ petition was admitted for bearing on 31.10.1987. While admitting the writ petition, after hearing the parties, this Court directed that in case the petitioner is found entitled to the payment of gratuity, she shall be entitled to interest on the amount found payable to her with effect from 1st March, 1981 at the rate of 18 per cent per annum, apart from costs that may be awarded against the University.

3. The learned Advocate-General has appeared on behalf of the Ranchi University. A counter affidavit has been filed on behalf of the University and other respondents, namely respondent Nos. 1, 3 and 4 in which it is stated that the petitioner for the first time applied in the prescribed form for the grant of pension and gratuity on 13.9.1983. The application was duly filed/and checked by the various sections of the University and was found to be correct on 15.12.1983. On the basis of her application a final decision was taken on 27.11.1984 by the University for the payment of pension and gratuity. The pension payment order in relation to the petitioner has been filed as Annexure-J to the counter affidavit. This shows that the gratuity payable to the petitioner is Rs. 30,000/- which is the maximum amount under the Ranchi University Statute. The plea of the University is that while all this was being done, there was an inspection of accounts of the College, and the Assistant Examiner of Local Accounts, Bihar, detected an apparent misappropriation of an amount of Rs. 29,796/- during the tenure of office of the petitioner i.e. in July-August, 1977. The Auditors submitted a report on 18.1.1984 which was communicated to the Financial Adviser of the University. Misappropriation of money came to the knowledge of the University for the first time in February, 1984. The Financial Adviser of the University asked the Principal of the College to submit her detailed reply/comments in regard to the said matter. The Principal of the College then called upon the Cashier of the College to submit his explanation and the Cashier replied by saying that during the period in question i.e. July-August 1977, there was strike of third and fourth Grade Employees, and the then Principal (the petitioner) used to collect the fees

herself. After the strike ended, the amount was not handed over to him through the Counter Clerk. He, therefore, shifted the blame upon the Principal and the Counter Clerk. The Counter Clerk also contended that though he had issued receipts for the amounts received during that period, the money had been received by the Principal. A notice was also issued to the petitioner on 9.5.1984. The petitioner replied by saying that at this distance of time. It was not possible for her to recollect the sequence of events. The facts, however, disclosed that the money had been received by the person concerned before they were entered in the books. This was said on the basis that receipts had been issued for all the amounts collected in the Daily Collection Register-1. It is not necessary to go into the details of this controversy. It is, however, contended on behalf of the University that since these enquiries were being made, considering the fact that grant of pension could not be delayed, the University passed a final order in regard to payment of pension, but withheld the amount of gratuity payable to the petitioner till the matter was finally concluded. In the counter affidavit it has been stated that the matter was still under investigation and necessary action could be taken only after completion of the investigation. It may only be observed that this Court by its order dated 11.8.1987 had adjourned the matter for six weeks and directed the University to complete the investigation into the alleged defalcation of funds referred to in the counter affidavit, within one month. It appears from the affidavit filed on behalf of the University on 30th October. 1987 that the preliminary enquiry was completed by the University authority on 4.9.1987 and the petitioner was duly informed about the article of charges vide letter dated 12.9.1987.

4. The learned Advocate-General submitted that Section- 71 of the Bihar State Universities Act, 1976 provides that the University shall, subject to such manners and conditions as may be prescribed by the statutes, constitute any pension, gratuity, insurance or provident funds for the benefit of its officers, teachers and other employees. He then referred to the relevant statutes for the grant of retirement benefits. One of the Schemes constituted by the statutes is the General Provident Fund-cum-Pension-cum-Gratuity Scheme. This is the scheme which governs the case of the petitioner. Clause-6 of the statutes provides that the sanction and payment of the retirement benefits admissible under these rules shall be regulated by such procedural instructions as may be issued by the University on the advice of the Inter-University Board. Clause-8 of the Scheme refers to the creation of the fund for running the Scheme. Clause-19 provides that the gratuity shall be payable to an employee on his retirement from service of the University. It further provides that no gratuity shall be payable on resignation from the service of the University or dismissal or removal from it for misconduct, insolvency or inefficiency not due to age.

5. The learned Advocate-General submitted that under the statutes the gratuity shall be "payable" on retirement from service of the University. He submitted that the gratuity only becomes payable, and there is nothing in the statutes which commands the University to pay the amount immediately. It is, therefore,

open to the University to adjust the gratuity amount against any amount that may be due from the retiring employee. The first part of the submission must be rejected. Where the statutes provide that an amount shall be payable, it does create a right in the person concerned to claim payment and a corresponding obligation on the University to make the payment. It is, therefore, not correct to submit that there is no obligation under the statutes to make payment of gratuity immediately upon retirement of the employee concerned. It is now also well settled that gratuity is not a reward to be paid to an employee for good services rendered, at the discretion of the employer. The employee is entitled to claim it as of right, if he is otherwise entitled to receive it.

So far as the question of adjustment is concerned, different considerations may arise when an amount is due from an employee of the University on the date of his retirement. However, the present case stands on an entirely different footing. There is no finding by any authority or Court to the effect that any amount is due from the petitioner to the University. The petitioner retired from service on 28th Feb., 81. Admittedly, nothing was due from her on that date. Thereafter, even according to the case of the University, an audit report was submitted in the year 1984 on the basis of which there was some apprehension about the petitioner being involved in misappropriation of University funds. The matter was being investigated and it now appears that a memorandum of charges has been submitted on 12.9.1987. The plea is that pending the departmental proceeding the University can withhold payment of gratuity. There is difficulty in the way of the University. I enquired from the Advocate-General whether there was any rule, regulation or stature of the University which permitted the University to draw up disciplinary proceeding against an employee of the University who had retired from service long ago. The learned Advocate-General fairly stated that there was no such law, rule, regulation or stature. In the absence of any law, which permits the employer to initiate disciplinary proceeding against its erstwhile employee, there can be no justification for a disciplinary proceeding being initiated against a person who is not in the employment of the employer. The learned Advocate-General also did not controvert that as a proposition of law the power of initiating disciplinary proceeding against an employee presupposes the existence of disciplinary control of the employer. In the instant case the petitioner had retired from service in the year 1981. She, therefore, ceased to be an employee of the University, and consequently she was not under the disciplinary control of the University. In these circumstances there can be no justification for the initiation of a disciplinary proceeding against her almost six years after her retirement. In these circumstances I find no justification for not paying the amount of gratuity payable to the petitioner.

6. The learned Advocate-General submitted that in any event, it is open to the University to proceed against the petitioner either by way of a proceeding before the Civil Court or by way of criminal prosecution. He is undoubtedly correct in his submission. Nothing said in this judgment shall prevent the University from taking such civil or criminal action against the petitioner as it may be advised to

take. However, I also make it clear that the Court or authority before which any such proceeding may be initiated shall consider the same on merit and nothing said in this judgment shall be construed to mean that I have expressed any opinion either on the merit of such proceeding or on its maintainability.

7. The question that now remains to be considered is as to the relief to be granted to the petitioner. The petitioner retired in the year 1981 but applied for payment of pension and gratuity only on 13.9.1983. It was submitted that unless an application was made, the University could not have made the payment. Even thereafter some reasonable time may be granted to the University to finalise the matter and make the payment. In these circumstances, he submitted that in terms of the order of this Court dated 31.10.1987, interest should be granted only with effect from January, 1984 rather than from 1st March, 1981. No doubt, in the order dated 31.10.1987 was observed that in case the petitioner is found entitled to the payment of gratuity, she shall be entitled to interest on the amount payable to her with effect from 1st March, 1981 at the rate of 18 per cent per annum. What was intended by the said order was to prescribe that the amount shall be paid to the petitioner with interest at the rate of 18 per cent per annum. It now transpires that petitioner herself delayed in making the application for payment of gratuity. In these circumstances. I am of the view that the University shall pay to the petitioner the balance amount of gratuity i.e. a sum of Rs. 29,796/- only with interest at the rate of 18 per cent per annum from 1st January, 1984. The University is directed to make payment of the amount of gratuity together with interest within six weeks from the date of judgment. In the result, this application is allowed with costs in terms of the directions contained in this Judgment. The University is directed to pay a sum of Rs. 1,000/- (Rupees one thousand) by way of cost to the petitioner within six weeks from today.