
(2010) 11 AHC CK 0305
In the Allahabad High Court
Case No : Special Appeal (D) No. 32 of 2006

Nagar Nigam and Others

APPELLANT

Vs

Rumpy and Another

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2011) 4 AWC 3426 : (2011) 128 FLR 737

Hon'ble Judges : Rajesh Chandra, J; R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal and Rajesh Chandra, JJ.—We have heard Sri Ajit Kumar Singh, learned Counsel for the Appellants, Sri K.K. Srivastava, learned Counsel for Respondent No. 1 and learned Chief Standing Counsel for Respondent No. 2.

2. This special appeal has been filed challenging the judgment of the learned Single Judge dated 25.10.2005 in writ petition No. 67915 of 2005 by which the Court has directed the Respondents to pay the entire retiral dues payable to the Respondent-Petitioner No. 1 with 10% compound interest and the cost of the writ petition to the tune of Rs. 5,000/- payable to the Petitioner. Learned Single Judge relied upon the judgment rendered in Rasheed Ali v. State of U.P. and Ors. Civil Misc. Writ Petition No. 21297 of 2004 decided on 20.9.2005.

3. Learned Counsel for the Appellants submitted that in the writ petition the Petitioner had only prayed for deciding her representation. The Court, however, not only granted the relief of payment of entire retiral dues but also compound interest at 10% and imposed costs.

4. It is not denied that the Petitioner had served in the Nagar Nigam, Allahabad and was entitled to the dues for which she had made the representation. Under Article 226 of the Constitution of India, the Court had ample powers to grant relief for which representation has been made but has not been decided, so as to balance the equities. The powers under Article 226 of issuing high prerogative

writs are wide enough to grant consequential reliefs. In view of this the argument that the Petitioner had prayed only for deciding her representation, but has been allowed all the retiral dues etc., has no force.

In *Shripati Tripathi v. State of U.P. and Ors.* Special Appeal No. 333 of 2006 decided on 12.10.2010, this Court, relying upon judgments in *State of Kerala and Ors. v. Padmanabhan Nair* 1985 (50) FLR 145 O.P. Gupta v. Union of India and Ors. 1987 UPLBEC 583 (SC) R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and Anr. 1994 (69) FLR 1137 S.R. Bhanrale Vs. Union of India and others, *Dr. Uma Agrawal v. State of U.P. and Anr.* 1999 (82) FLR 72 S.K. Dua Vs. State of Haryana and Another, has held as follows:

The principles, which can be culled out from the aforesaid judgments are that where State employer is not able to justify delay in payment of arrears of salary; settlement of retiral dues or terminal benefits, and it is found by the Court that the delay is wholly attributable to the State employer, the interest on such arrears of pay, pension and other retiral dues payable under the statutory rules, or even if they are not covered by statutory rules, must be paid to such employee. The reasonable period has been fixed by the Supreme Court of two months. If all the required documents duly completed have been submitted and that the State has delayed the amount of arrears of retiral dues or terminal benefits, the State employer is liable to pay interest on such delay, ordinarily at the rate of 12% simple interest per annum, unless the interest is quantified by the statutory rules. This interest paid is as penalty not only for mitigating the hardships suffered in depriving the employee of his right to receive the amount due to him within reasonable period of time and also to protect his right to life, guaranteed under Article 21 of the Constitution of India.

We may add here that after serving the qualifying period of service, the employee does not ordinarily have any other means of livelihood, when he needs them most, other than his dues. It is extremely unjust and harsh to allow a retired employee on wait to receive the dues, and to depend upon his friends, relatives and children. The right to receive retiral dues/terminal dues is closely linked to his right of self-respect, and human dignity, which is included in right to life guaranteed by Article 21 of the Constitution of India.

5. A Division Bench of this Court in special appeal defective No. 771 of 2005 *Nagar Nigam Allahabad and Ors. v. Smt. Maya and Ors.* decided on 20.10.2010, after making following observations partly allowed the appeal and allowed the Petitioner-Respondent of that case simple interest @ 10% on the dues and also knocked off the cost assessed by the learned Single Judge:

We, however, find substance in the contention of learned Counsel for Nagar Nigam, that the compound interest is a banking practice, which is awarded ordinarily either under the contract or under any statute as a penalty for non-performance of contract. In the present case, the Counsel for Petitioner-Respondent has not been able to show any statutory provision or Government

Orders, which may provide for compounding the interest on the delayed payment of retiral/terminal benefits. We, therefore, find that the learned Single Judge was not justified in compounding the interest. We also do not find any justification for awarding cost against the Nagar Nigam, Allahabad as there is nothing to show that the amount was wrongfully withheld by the Nagar Nigam. The Counsel for Appellant-Respondent submits that the Nagar Nigam is running into financial losses, and that the orders of the Court were complied with by paying the amount from the grants received from State Government.

6. We are in respectful agreement with the aforesaid observations of the earlier Division Bench. In the present case also the learned Counsel for the Petitioner-Respondent could not show any statutory provision or Government Order providing for compound interest on the delayed payment of retiral benefits. Similarly, there is nothing on record to show that the amount payable to the Petitioner was wrongfully withheld by the Nagar Nigam. In these circumstances, there is no justification for awarding cost against the Nagar Nigam.

7. In view of the above, we partly allow the Special Appeal and modify the order dated 2S.10.2005 in Writ Petition No. 67915 of 2005 to the extent that the Petitioner-Respondent will be entitled to simple interest at 10% on the dues for the period for which the dues remained unpaid. The cost assessed at Rs. 5,000/- by learned Single Judge is knocked off. The parties will bear the costs of the proceedings. The simple interest at 10% for the period of delay will be calculated and shall be paid in two months.