
(2020) 01 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 511 Of 2018

P.K. Ahluvalia

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 300A

Citation : (2020) 01 UK CK 0035

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Bhagwat Mehra, B.P.S. Mer, Rakesh Thapliyal, Mukesh Kaparwan

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Bhagwat Mehra, learned counsel for the petitioner, Mr. B.P.S. Mer, learned Brief Holder appearing for the State and Mr. Rakesh

Thapliyal, learned Senior Counsel appearing on behalf of respondent nos.2 and 3 and, with their consent, the Writ Petition is disposed of at the stage of admission.

2. The petitioner has invoked the jurisdiction of this Court seeking a direction to the respondents to forthwith release his retiral dues; and a mandamus directing the respondents to release the amount of leave encashment of 300 days instead of 210 days.

3. The petitioner is an employee of the U.P. Hill Electronic Corporation Ltd. The said Corporation is a company registered under the Companies Act, 1956, and has a legal identity distinct and separate from that of the State Government. Though the petitioner has sought a direction, both against the

State of Uttarakhand and the U.P. Hill Electronic Corporation, no mandamus can be issued to the first respondent-State Government to pay the salary

and other emoluments of an employee of a public limited company, since the public limited company is a legal entity distinct and separate from that of

the State Government. The fact, however, remains that the second respondent is liable to pay the retiral dues of its employees.

4. The liability to pay the retiral dues is admitted. The only defence put forth by Mr. Rakesh Thapliyal, learned Senior Counsel appearing on behalf of

respondent nos.2 and 3, is that, since an FIR was registered against the petitioner on 09.02.2018, no amount could be paid to him till completion of the criminal proceedings.

5. Mr. Bhagwat Mehra, learned counsel for the petitioner, while contending that no charge-sheet has been filed even till date, would submit that there

is no statutory provision conferring power on the respondent-Corporation to withhold the retiral dues of its employees, much less on the mere filing of

an FIR. Learned counsel would place reliance on the judgment of the Supreme Court, in State of Jharkhand & others vs. Jitendra Kumar

Srivastava & another (order in Civil Appeal No.6770 of 2013 dated 14.08.2013), wherein the Supreme Court held that the earned benefit, which

accrues to an employee, is in the nature of property; it cannot be taken away without the due process of law as per the provisions of Article 300-A of

the Constitution of India; and in the absence of any provision in the statutory Rules, for withholding pension or gratuity, failure to make payment

thereof is illegal.

6. The law declared by the Supreme Court, in Jitendra Kumar Srivastava, is that retiral dues of an employee constitutes property. Article 300-A of

the Constitution disables the respondent-Corporation from depriving the petitioner of his property save by authority of law. It is only if there is any

legislation-plenary or subordinate, which conferred power on the respondent-Corporation to withhold payment, could the petitioner have been denied

his right for payment of his retiral dues.

7. No statutory provision which enables the respondent-Corporation to retain the retiral dues of an employee, on the mere registration of a complaint

(FIR), has been brought to our notice.

8. When we asked Mr. Rakesh Thapliyal, learned Senior Counsel appearing on

behalf of respondent nos.2 and 3, whether there were any such Rules applicable to the Corporation, learned Senior Counsel would fairly state that there were none. The respondent-Corporation was not justified, therefore, in withholding the retiral dues of the petitioner herein.

9. When we asked him when the retiral dues of the petitioner would be been paid, Mr. Rakesh Thapliyal, learned Senior Counsel, would submit that it is on account of acute financial constraints faced by the second respondent that the payment could not be made till date.

10. In such circumstances, we consider it appropriate to direct the second respondent to compute the petitioner's retiral dues, and pay him the computed amount at the earliest and, in any event, within three months from the date of production of a certified copy of this order.

11. With regards the petitioner's claim for being paid leave encashment for three hundred days, as against the 210 days determined by the respondent, suffice it to permit the petitioner to make a representation to the respondent-authorities in this regard; and to direct the respondents to consider the same in accordance with law within three months from the date of production of a certified copy of this order.

12. The Writ Petition is disposed of accordingly. No costs.