

(2005) 08 AHC CK 0194

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7138 of 2005

Prem Krishna Srivastava

APPELLANT

Vs

State of U.P., Director (Administration) Office of the Director
General, Medical and Health and Chief Medical
Superintendent, T.B. Sapru Hospital

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Citation : (2006) 1 AWC 55 : (2005) 107 FLR 746

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.K. Singh Rajpoot, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

2. The petitioner retired from service on 31.12.1998. After his retirement, a show cause notice dated 27.9.1999 was issued and on this basis, a charge sheet dated 8.11.1999 was issued alleging a financial loss of Rs. 36,517/- on the department. Thereafter, a departmental inquiry in pursuance of the charge sheet was initiated against the petitioner. This enquiry is still pending even after a lapse of six years.

3. The petitioner has filed the present writ petition praying that the amount of Rs. 36,517/- had been illegally withheld from the. gratuity of the petitioner and that this amount could not be withheld after the petitioner had retired since no previous sanction was obtained from the Governor under Regulation 351A of the Civil Service Regulations.

4. On the other hand, the learned standing counsel submitted that on the basis of certain audit objections, a charge sheet has been issued and that an enquiry is pending and, pending completion of the enquiry, a tentative amount of Rs.

36,517/- has been withheld from the gratuity of the petitioner and, this amount has been withheld for the simple reason that, in the event, the petitioner was found guilty of the loss, the same would be recovered from the gratuity.

5. The question which arises for consideration is, whether this amount could be legally withheld from the gratuity that was payable to the petitioner upon his retirement ? It is an admitted case, that no charge sheet or show cause notice was served upon the petitioner prior to his retirement. Regulation 351A of the Civil Services Regulations contemplates that when a person has retired and disciplinary proceedings are to be initiated after his retirement, in that eventuality, such disciplinary proceedings could only be initiated after obtaining previous sanction from the Governor. Admittedly, from a perusal of the order dated 7.2.2000 issued by the respondents, it is clear that no previous sanction was obtained from the Governor.

6. The learned Standing Counsel further submits that Regulation 351A contemplates the recovery of the amount from the pension, whereas, in the present case, the recovery has been sought from the gratuity, as such, Regulation 351A would not be applicable. In my opinion, the submission of the learned Standing Counsel is not correct. Regulation 351A of the Civil Service Regulations reads as follows :

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether , permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused, pecuniary loss to government by misconduct or negligence, during his service, including service rendered on re-employment after retirement;

Provided that-

[a] such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment"

[i] shall not be instituted save with the sanction of the Governor."

Further, Regulation 41 of the Civil Service Regulations states as under:

"41. Pension- Except when the term "Pension is used in contradistinction to gratuity "Pension" includes Gratuity."

7. From the aforesaid reading of Regulation 41, it is clear that the usage of the word "Pension" in Regulation 351A would include gratuity.

8. In view of the aforesaid, I find that the disciplinary proceedings " initiated against the petitioner after his retirement was ex-facie, illegal as it did not have the sanction of the Governor. Consequently, the petitioner is entitled to be relief as moulded during the course of the hearing of the writ petition. Since no previous permission was obtained from the Governor, the disciplinary

proceedings initiated against the petitioner is quashed. The amount withheld from, the gratuity is liable to be paid, to the petitioner. Consequently, a mandamus is issued directing the respondents to release the balance amount of the gratuity within three months from the date of production of the certified copy of this order. If the amount is released within the aforesaid period, no interest would be payable. However, if the amount is not paid within the aforesaid period, interest would be payable at the rate of 12% per annum from the date of withholding the amount till the date of payment. In the circumstances of the case, parties will bear their own costs. Writ petition stands allowed.