

(1999) 08 SC CK 0133
In the Supreme Court Of India
Case No : Civil Appeal No. 4519 Of 1999

R. Veerabhadram

APPELLANT

Vs

Govt. of A.P.

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 52, 52(1)

Citation : (2000) 2 LLJ 766 : (1999) 9 SCC 43 : (2000) SCC(L&S) 166

Hon'ble Judges : Sujata V. Manohar, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The appellant, at the material time was holding the post of Deputy Secretary to the Government of Andhra Pradesh. On March 20, 1986, the Anti-Corruption Bureau of the State of Andhra Pradesh registered a case against the appellant under the Prevention of Corruption Act. On May 12, 1986, the appellant was suspended from service. During the pendency of his suspension on June 30, 1988, the appellant was allowed to retire on attaining the age of superannuation while still under suspension without prejudice to the pending proceedings against the appellant.

3. The appellant filed a Petition in the Andhra Pradesh Administrative Tribunal challenging his retirement during suspension . The Tribunal, by its order dated December 2, 1988, held inter alia, that in accordance with Rule 52 of the Andhra Pradesh Revised Pension Rules, 1980, the appellant shall be paid provisional pension but no death-cum-retirement gratuity shall be paid to him till the judicial proceedings are concluded and the final order is passed thereon. This order has become final and binding. Accordingly, on September 30, 1989, the Government of Andhra Pradesh issued an order for payment of provisional superannuation pension. The order further stated that orders regarding payment of gratuity

would be issued separately.

4. According to the respondents, under Rule 52(c) of the A.P. Revised Pension Rules, 1980, it is provided that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. The relevant portion of Rule 52 which deals with payment of provisional pension and withholding of gratuity is as follows:

52. Provisional Pension where departmental or judicial proceedings may be pending: (1)(a) In respect of a Government servant referred to in Sub-rule (9), the Audit Officer/Head of Office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b)...

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

5. The appellant, however, in July 1992, again requested the State Government to sanction full pension, gratuity and other benefits as also contended that he should be granted benefits on the basis of his being promoted to the post of Joint Secretary to the Government of Andhra Pradesh. He, thereafter, filed an application in the A.P. Administrative Tribunal praying for an order directing the respondent to grant all arrears of pension, death-cum-retirement gratuity, computation of pension from July 1, 1988 till date as also consequential benefits on promotion to the post of Joint Secretary to the Government from July 13, 1987 to June 30, 1988. The Tribunal dismissed this application. The appellant filed a review petition before the Tribunal which was also dismissed by the Tribunal in view of the pendency of the criminal case against him.

6. The orders of the Tribunal in the main matter and the review petition are challenged in these appeals. Long after these S.L.Ps were filed in this Court, the appellant was acquitted in the criminal proceedings by an order dated March 20, 1998. Thereafter, the appellant has been paid the full pension as well as gratuity and other consequential benefits. In the present case, the appellant now claims, for the first time, that he should be granted interest on the gratuity which was withheld during the pendency of the criminal proceedings. He claims interest for the period from June 30, 1988, that is to say, the date of his retirement till October 27, 1998 when gratuity was paid. The only other contention raised before us is that he should be granted all monetary benefits on the basis of his entitlement to promotion to the post of Joint Secretary in 1987. This contention was rejected by the Tribunal.

7. The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against the appellant when he retired. Rule 52(c) of the

A. P. Revised Pension Rules, 1980 expressly permits the State to withhold gratuity during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed that death-cum-retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant. We therefore, do not see any reason to order payment of any interest on the amount of gratuity so withheld.

8. Learned Counsel for the appellant has placed strong reliance on a decision of this Court in the case of *State of Kerala and Others Vs. M. Padmanabhan Nair*, . In that case, there was a delay in payment of gratuity to the pensioner. The Court said that since the delay was unexplained and unjustified and the State was guilty of neglect in the discharge of its duties, interest should be granted on delayed payment of gratuity. In the present case, there is no such unjustified delay in payment of gratuity. Gratuity was withheld on legitimate grounds as set out above.

9. The appellant has also relied upon a decision of the Gujarat High Court in the case of *Shah Babulal Balkrishna v. State of Gujarat* reported in 1997 5 Serv LR 761 where the Court said that withholding the amount of gratuity payable to the petitioner, when two departmental enquiries concluded in favour of the petitioner, was unreasonable and arbitrary and the petitioner was entitled to gratuity with interest at 12%. We do not find in the judgment a reference to any rule which permitted withholding of gratuity. There is also reference in the judgment to a Government Resolution which permits award of interest @ 9%. However, the Court granted interest @ 12%. This case cannot, therefore, be relied upon in the present case when there is an express Rule which permits the Government to withhold gratuity and when there is also a binding order of the Tribunal which has directed that death-cum-retirement gratuity should not be paid until the judicial proceedings are concluded. In fact, in view of the statutory Rules and the order of the Tribunal, it cannot be said that there is any delay in the payment of gratuity. The appellant is, therefore, not entitled to any interest on gratuity.

10. It is next contended that the appellant should be granted a deemed promotion to the post of Joint Secretary prior to his retirement. The promotion to the post of Joint Secretary is a promotion by selection and not by seniority. The appellant, therefore, cannot claim any promotion from the date on which his junior was promoted, since the basis for promotion is selection and not seniority. The appellant, however, has relied upon a decision of this Court in *Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others*, . In that case also, the appellant had been charged with an offence under the Prevention of Corruption Act and he was kept under suspension. However, when his turn came for promotion, he was considered for promotion but he was promoted at a later date

in view of the criminal proceedings which ultimately ended in his acquittal. The Court held that once there was an acquittal, he was entitled to reinstatement as if there was no blot on his service. The material on the basis of which his promotion was denied, did not now subsist and he should be promoted on the basis of the Departmental Promotion Committee's findings. In the present case the appellant was not considered for selection because of the pending criminal proceedings. Since the promotional post is a selection post, there is no basis on which he can now claim that he must be deemed to have been selected and hence he should be granted the promotion. There is no basis on which we can hold that he would have been selected when he was eligible for promotion. The decision, in the above case, has no application here. The only other judgment on which the appellant relied, in this connection is the judgment of the Rajasthan High Court in Mohan Singh Bhati v. State of Rajasthan reported in 1998 1 Serv LR 684 , where the Court said that after acquittal, the respondent was entitled to reinstatement and all consequential monetary benefits. We fail to see how this decision will help the appellant in the present case. On the contrary, in the State of Mysore Vs. C.R. Sheshadri and Others, , this Court has held that if the Rule of promotion is one of sheer seniority, it may well be that promotion is a matter of course. On the other hand, if merit is the rule, promotion is problematical and it would be hazardous to assume that by efflux of time, the petitioner would have got the promotion. The Court cannot speculate in retrospect whether the petitioner would have been selected on merit and on the strength of such "dubious hypothesis" direct retro-active promotion and back pay. 11. The appellant, therefore, is not entitled to any relief and the present appeals are dismissed.