(1996) 08 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No. 2141 of 1993

Rabindar Nath Goswami APPELLANT

Vs

Gauhati University and Others RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Constitution of India, 1950 — Article 141
Gauhati University Retirement Benefit Rule 1974 — Rule 48A

Citation : (1997) 2 GLR 193

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : S.P. Roy and S.N. Debnath, for the Appellant; R.L. Yadav, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—...Pension and gratuity are no longer any bounty to be distributed by the Govt. to its employees on their retirement but have become, under the decision of this Court (Supreme Court of India) valuable right and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment....

2. The aforesaid observation is not an appeal to the conscience but a law declared under Article 141 of the Constitution of India. 12 years ago the aforesaid observation was made by the Supreme Court of India in the State of Kerala and Ors. v. M. Padmanabhan Nair reported in 1985 (1) SCC P. 429. The Petitioner served as a lecturer of Gauhati University and retired as reader in Applied Botany and Biotechnology on 19.1.90. By a letter the Registrar, Gauhati University intimated the Petitioner in the following way:

... While intimating the date of superannuation falls on 19.1,90 on attainment of 60 years of age. I am to state that this University will remain thankful to you for your long and sincere services.

The matter relating to your retirement benefits etc will be dealt with in due course.

With kind regards,

....

3. By letter dated 2.1.1990 the Petitioner wrote to the Registrar, Gauhati University reciprocating the sentiment from his end in the following line:

... Thank you for your laudatory expression while intimating my date of superannuation from this University service. The virus of your sentiments as expressed in that letter has also affected me. No doubt the employer employee relationship between this University and me is coming to and end soon but the mutual respect and trust I am sure, will go beyond this relationship.

Finally I request you to settle my retirement benefits and other money matters by a reasonably early date.

With personal regards....

Despite expression of sentiment by the parties in the aforesaid two letters the relation broke down and the said relation did not last long. Because of delay in payment of the retiral benefit and Petitioner started issuing legal notices from his end, demanding the gratuity along with 15% interest thereon. On 1.10.92 the Registrar of Gauhati University issued the following office Orders:

... OFFICE OF THE REGISTRAR : GAUHATI UNIVERSITY: GUWAHATI, PERSONNEL DEPARTMENT (ESTABLISHMENT ''T'' BRANCH)

OFFICE ORDER DATED THE 1st OCTOBER, 1992

Administrative order for release of gratuity money payable to Sri R.N. Goswami, Retd. Reader in Applied Botany and Biotechnology, G.U. is hereby released.

Sd/- M.C. Bhuyan, Registrar, Gauhati University,

Memo No. ESTT/T/133/92 1067-70 Dated 1.10.92

Copy forwarded for information and necessary action to:

1. The Treasurer, G.U. with a request to submit a proposal to the Registrar for approval of the E.C.

2. The Secretary, Under Classes, G.U.

3. Sri RN Goswami, Reid. Reader in Applied Botany and Biotechnology, G.U. Sundarbari, Guwahati-14.

4. Personal file.

Sd/- Registrar Gauhati University

Though it is shown as release order virtually it was only a proposal which will appear from the entrustment of the Registrar to the Treasurer of the Gauhati University with a request to submit a proposal to the Registrar for the approval of the Executive Committee. The matter was taken up before the Executive Council as stated by the learned Counsel for the Respondents and Executive Council sanctioned the gratuity on 11.1.93 by letter dated 19.5.93. The Treasurer of the Gauhati University informed the Petitioner that the Cheque for the gratuity is ready for payment. On receipt of the said letter on 21.5.93 the Petitioner contacted the office of the Respondent No. 4, the Treasurer and finally cheque was handed over to him on 5.6.93 vide cheque No. 791428 dated 10.5.93 for an amount of Rs. 68,825/- As per the minute of the Executive Council meeting the gratuity of the Petitioner was computed and settled at Rs. 72,000/- being gratuity for his 29 years 5 months 9 clays service as per Gauhati University Retirement Benefit Rule 1974. In a most unjust manner Rs. 3,175/- was deducted therefrom. Petitioner also stated that even after his retirement he was reemployed in the Department of Applied Botany and Biotechnology, Gauhati University on the basis of the letter dated 9.1.90 and accepted the said offer and worked under Re-employment up to the end of the current academic session i.e. 1990. By Anr. letter dated 11.8.90 the Petitioner was again appointed as Guest Lecturer in Applied Botany and Biotechnology on a remuneration of Rs. 100/- per lecture subject to maximum of Rs. 2000/- per month with effect from his date of joining for a period of two months. By Anr. letter dated 22.11.90 from Registrar, Gauhati University Petitioner was appointed as Guest lecturer in the same terms and condition for academic session, 1991. By letter dated 2.9.91, Petitioner expressed his desire to vacate residential Quarter No. 37 allotted to him which he was so long occupying and requested, Registrar, Gauhati University for making appropriate arrangement for taking the charge of the aforesaid Quarter on behalf of the University. By the said letter he further requested the Registrar to release his gratuity and other payments and also requested Registrar about the payment of any dues he has to pay to the University. In the paper book a letter from the said Registrar addressed to the Petitioner is found whereby the Petitioner requested to take necessary action to vacate the Quarter accordingly. And the Estate Officer by his letter dated 28.9.91 informed the Registrar, Gauhati University that the Petitioner has vacated the Teacher Quarter No. 37 on 22.9.91.

4. On being aggrieved by the delay payment of gratuity and also deduction of the gratuity the Petitioner moved this Court for appropriate relief.

5. The Respondents in their affidavit stated that since Petitioner was occupying allotted quarter after his long retirement gratuity could not be settled before finalising the amount of rent and Electric charges. Respondents also stated that notice by the Petitioner required information about the outstanding liabilities since not furnished, it also took some time. Respondents also stated in their affidavit that though the order for release of gratuity was passed on 1.10.92 the said amount could not be actually paid by the Treasurer because the Petitioner had over stayed in the University Quarter and the Executive Council had to decide the amount of penal rent recovery from him and also for the ground that

the Executive Council being rent pay master it had to approve and sanction the payment of gratuity. It is also averred that besides the aforesaid reasons the University was also facing acute financial crunch for the last several years and his gratuity was paid by means of over draft from the State Bank of India at a very high rate of interest. From the affidavit it transpires that the basic reasons for not paying the gratuity was due to the occupation of the University Quarter till 22.9.91. It is also averred that normally employees are entitled to stay in quarter up to 3 months from the date of his supcrannuation. But in the instant case the Petitioner occupied the quarter for 21 months after retirement at nominal rent. The Respondents also averred that the deduction of Rs. 3,175/- was done as normal procedure followed any such cases. It was also averred by the Respondent specifically that so long as the Petitioner stayed in the Quarter the gratuity could not be paid as he did not deposit the monthly rent in cash. If the gratuity would have been paid while he was occupying the quarter the university would be left with no alternative to realise the outstanding for him". From the affidavit it appears that University withheld the gratuity as a security for rent in question.

5. I have heard Mr. S.P. Roy, learned Counsel appearing for the Petitioner, who submits that since the Petitioner is entitled for retiral benefit as a matter of right and the delay in payment of gratuity is due to the default Respondents the Respondents He bound to compensate the Petitioner. Mr. Roy also submits that in the circumstance, University can not be justified for not paying gratuity within a reasonable time. The deduction of Rs. 3,175/- from the gratuity is illegal and unauthorised and the said deduction was made in total violation of principles of natural justice and on that account purported deduction is illegal and without jurisdiction.

6. Mr. R.L. Yadav, learned Counsel for the Respondents sought to justify the action of delayed payment of gratuity on the ground of not vacating the Quarter in time. Mr. Yadav, also submits that under Rules for the lime being in force there is no time limit in payment of gratuity and accordingly no error has been committed by the University in not taking prompt payment of gratuity. Mr. Yadav, learned Counsel also submits that other reason for non payment of delayed gratuity is non-payment of rent by the Petitioner. Mr. Yadav, learned Counsel further submits that since the law relating to the payment of gratuity in the Gauhati University does not provide any interest in the absence of any contract the question of payment of interest does not arise. In this regard Mr. Yadav referred the following cases reported in AIR 1963 SC 1985, AIR 1966 275 : AIR 1994 SC 1984.

7. Payment of gratuity is not a charity but a responsibility cast on the employer by statute. According to University''s own law an employee is entitled for gratuity if he has completed 5 years of qualifying service at the University according to the Scale of gratuity indicated in Schedule-C. These gratuity shall be payable on his superannuation from service of the University. In the event of his demise this

gratuity shall be payable to the nominee or nominees in the manner prescribed. Payment of gratuity can not be linked up with unauthorised occupation of the University Quarter. The Respondent, University are equally not justified for the culpable delay in paying the gratuity on the alleged ground of non payment of rent. I am also not impressed by the argument put forwarded by the learned Counsel that since the statute of the Universities has not fixed any time limit and there can not be any question of delay for payment of the gratuity. The Respondent University under its own law has declared in no uncertain terms that the gratuity is required to be paid on leaving the service of the University. In the instant case the Petitioner superannuated on 19.1.1990 and the payment was only made on 5.6.1993. The statutory provisions did not mean that gratuity can be paid at any point of time after leaving the service of the university. A decision of the Supreme Court in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, is apposite.

8. Mr. R. Kapur retired as Director General of Income Tax on 28.2.1986 and he was informed that the payment of gratuity could not be paid till the receipt of "No Demand Certificate" from the Directorate of Estates for the unauthorised occupation. A proceeding under Public premises Eviction of unauthorised Occupants) Act 1971. The said Officer damages against Sri Kapur. The authority did not issue "No Demand Certificate and the gratuity was withheld therefore under this circumstances, Mr. Kapur approached the Central Administrative Tribunal New Delhi and tribunal on consideration of the appeal held that the death cum-retirement gratuity could not be withheld merely because the employee had not vacated the allotted premises during the course of his employment. The Appellant continued to retain the allotted residence even after retirement, interest at the rate of 10% could be paid to Mr . Kapur. The Appellant moved the Supreme Court claiming his antitlement of 18% interest at least in view of the judgment of the Supreme Court in the State of Kerala and Others Vs. M. Padmanabhan Nair, The Apex Court in the above matter observed as under:

... Pension and gratuity are no longer any bounty to be distributed by the Government to it employees on their retirement but have become under the decisions of this Court, valuable rights and property in their hands any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment....

... The Tribunal having come to the conclusion that DCRG can not be withheld merely because the claim for damage for unauthorised occupation is pending, should in our considered opinion have granted interest: at the rate of 18% since right to gratuity is not dependent upon the Appellant a vacating the official accommodation. Having regard to these circumstances we feel that it is a fit case in which the award of 18% is warranted it is so ordered. The DCRG due to the Appellant will carry interest at the rate of 18% per annum from 1.6.86 till date of payment. Of course this shall be without prejudiced to the right of the Respondent to recover damages under Fundamental Rule 48-A....

A decision referred by Mr. R.L. Yadav, learned Counsel for the Respondent for holding the gratuity reported in Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and others, does not come into (sic). In the aforesaid case (the Appellant Jarnail Singh) by an order dated (sic) the president of India exercing the power conferred under Rule 9 Central Services Pension Rule 1972 directed fulll monthly pension and entire amount (sic) cum retirement gratuity otherwise admissible to the Appellant to be witheld permanent basis. This, direction was given on account of serious irregularity and to have been committed by the Appellant in an enquiry held for the purpose (sic) consultation with the UPSC. Rule 9 conferred a right on the President or (sic) pension or part thereof, whether permanently or for a specified period, (sic) of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. Interpreting the Central Civil Service Pension Rules, 1972 the Supreme Court held that the Pension includes gratuity. The said decision therefore does not support the stand of the University. The order of deduction of Rs. 3,175/- from the gratuity of the Petitioner is also not sustainable. The impugned order of deduction is also violative of the principle of natural justice. The action of the University withholding the lawful dues for the Petitioner cannot be justified order any circumstances, The next question comes as to whether the University can addled with interest and if the answer is affirmative what should be the rate of interest. (Sic) and inaction no doubt warrants for an order awarding interest upon the authority. However, Considering the fiscal situation of the University as on today, despite the remiss, I refrain from awarding interest and part with the case with a note of deep distress. The Respondent/University is directed to release the amount of Rs. 3,175/- within one months from today failing to release the same within the period specified the Respondents shall pay 15% interest till realisation of the same.

The Petition is allowed to the extent indicated above. The Respondents shall pay Rs. 200/- as costs.

