

(2004) 05 AHC CK 0172
In the Allahabad High Court
Case No : C.M.W.P. No. 47363 of 2002

Raghunath Prasad Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Citation : (2004) 3 AWC 2760

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Akhilesh Sharma, for the Appellant; U.C. Mishra, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard counsel for petitioner and Sri U. C. Misra for respondent No. 4. Learned standing counsel appears for respondent Nos. 1, 2 and 3.

2. The petitioner was appointed on 1.11.1963 as Accountant In Nagar Panchayat, Fatehabad, District Agra. He retired on 31.12.2001. By this writ petition, he has prayed for a writ of mandamus commanding respondents to pay post retiral benefits including gratuity, G.P.F., arrears of revised salary, leave encashment, bonus, dearness allowance, group insurance policy and pension with interest at the rate of 18% per annum. It is contended that the petitioner made several representations, first of which was given on 25.2.2002 to the Executive Officer, Nagar Panchayat, Fatehabad, district Fatehabad but the amount was not paid. Counsel for petitioner states that no dues certificate was issued to the petitioner, and that no disciplinary case is pending against him. The Assistant Director, Local Bodies Accounts Examination Department, U. P., Agra sanctioned the payment of pension, and gratuity on 28.6.2002 by which the competent authority, i.e, the Nagar Panchayat Fatehabad, was directed to pay to the petitioner Rs. 84,720 as gratuity, and Rs. 1,000 as pension per month. The petitioner, however, was not paid the amount and that apart from the gratuity and arrears of pension, the

respondents are also liable to pay Rs. 1,20,790 as salary for 24 months, from 1st October, 1997 to June, 1998, 1st December, 2000 to 31st December, 2001 ; Rs. 11,145 towards G.P.F.; Rs. 34,606 towards leave encashment, Rs. 10,805 dearness allowance from July, 1990 to November, 2001 ; Rs. 14,000 as revised salary, Rs. 21,000 as bonus, and Rs. 5,000 as group insurance amount.

3. In the counter-affidavit of Sri Balbir Singh Yadav, Executive Officer, Nagar Palika Parishad, Shamshabad, district Agra, who is also looking after the work of Executive Officer, Nagar Panchayat Fatehabad, district Agra it is stated in para 3H, that an enquiry in respect of embezzlement of Rs. 1,60,000 is still pending against the petitioner, which was started on the basis of a complaint dated 28.2.2002 made by the then President of Nagar Panchayat, Fatehabad, to the Chief Secretary. The State Government desired the District Magistrate, Agra, to conduct an enquiry within 15 days. In para 3J, it is stated that the enquiry is still pending due to non-cooperative attitude of the petitioner. In case any recovery is ordered in respect of allegations made in the complaint dated 28.2.2001, the recovery of the same shall not be possible if all the retiral benefits are paid to the petitioner. This is also one of the reason for non-payment of retiral dues.

4. In the rejoinder-affidavit, the petitioner denied that any such enquiry is pending. The petitioner was suspended on the allegations made In the complaint. He was exonerated from the allegations by resolution No. 2 of Nagar Panchayat, Fatehabad, in its meeting dated 23.5.2001, after receiving a report of the Enquiry Committee. The report of Sub-Divisional Magistrate, Fatehabad, dated 20.11.2002 annexed as Annexure-2 to the writ petition shows that the complaint was made against Sri Balbir Singh Yadav, Officiating Executive Officer. Smt. Meena Devi the then Chairman, Nagar Panchayat, Fatehabad, had made a complaint that inspite of her directions for obtaining approval for making the payments under the "Swarna Jayanti Rojgar Yojna", the Executive Officer and the Accountant surreptitiously made the payment for constructions. The enquiry officer found that the payments were made after the report of satisfactory work was given by the Junior Engineer and that the Chairman of Nagar Panchayat did not have any authority to object or restrain the payments. The enquiry officer in his report dated 20.11.2002 found that there were no allegation against the petitioner and not Irregularity was found against the work of the petitioner. Both the officers were exonerated.

5. The Court took exception to the statement of facts in paragraphs 3H and 4 of the counter-affidavit of Sri Balbir Singh Yadav, Executive Officer. He was required to give details and the status of the enquiry. A supplementary counter-affidavit of Sri Chiranji Lal Mahaur, President, Nagar Panchayat, Fatehabad, has been filed through Sri U. C. Misra, advocate stating that he was elected as President, Nagar Panchayat, Fatehabad, in the last week of December, 2000. Smt. Meena Devi the then President had made a complaint in the matter of Irregularities in payment of about Rs. 1,60,000 In "Swarna Jayanti Rojgar Yojna". About 68 employees are working In Nagar Panchayat at present and that when the deponent took over,

about 8 retired employees were not paid retirement benefits due to poor financial condition of Nagar Panchayat. The deponent made a request and started paying the retirement benefits in instalment and that all the retired employees had accepted offer and are receiving the payments in instalments. The petitioner, however, refused and insisted that the entire payments to be made to him. The petitioner was appointed as Moharrir on ad hoc basis on 1.11.1963 and was promoted as Accounts Clerk on 1.4.1970. He was suspended in the year 1996 and was reinstated on tendering written apology. He was again suspended on 15.11.2000 for financial irregularity In which an enquiry sub-committee was appointed. The petitioner had tendered apology on 20.2.2001 and that the State Government by its order dated 23.1.2003 has again, started an enquiry to be held by the Additional District Magistrate along with the Sub-Divisional Magistrate and Executive Engineer of the Public Works Department and that the enquiry Is still pending.

6. In the Supplementary rejoinder-affidavit, the petitioner has denied that any such enquiry is pending against him. The petitioner was exonerated and that fresh enquiry letter dated 25.1.2002, has been directed only against Sri Balbir Singh Yadav, Officiating Executive Officer and that the Chairman and Sri Balbir Singh Yadav are withholding the retiral dues on false pretext.

7. The petitioner retired as Accountant, Nagar Panchayat, Fatehabad, on 31.12.2001, on attaining the age of superannuation. He was suspended on a complaint made against him by the then Chairman of Nagar Panchayat. An enquiry was conducted by the Sub-Divisional Magistrate, Fatehabad. He was reinstated by the Nagar Panchayat by its Resolution No. 2 dated 23.5.2001. The fact findings enquiry was concluded with the report of Sub-Divisional Magistrate, Fatehabad, dated 20.12.2002 In which he did not find any allegations established either against the petitioner or Sri Balbir Singh Yadav, Officiating Executive Officer. The enquiry officer found In paragraph 4 of his report that there are no allegations of financial irregularity against the petitioner. He was given a charge-sheet by the then Chairman on some other charges. The enquiry officer reported that no irregularity was committed by Sri Upadhyaya in "Swarna Jayanti Rojgar Yojna", whereas the Chairman has tried to read allegations made against him In her complaint. The Assistant Director, Local Bodies sanctioned the payment of gratuity of Rs. 84,720 after deducting a sum of Rs. 11,706 and pension of Rs. 1,000 with effect from 1.1.2002. The deductions were directed to be made on account of wrong increment awarded to the petitioner on 1.7.1979. The amount, however, has not been released nor any decision has been taken with regard to arrears of salary and other allowances detailed as above.

8. The letter sent by the State Government on 25.1.2003 to the District Magistrate, Agra (Annexure-S.C.A. 3) has re-opened the enquiry only against Sri Balbir Singh Yadav, Officiating Executive Officer, Nagar Panchayat, Fatehabad, In respect of financial irregularities and Illegal payments in "Swarna Jayanti Rojgar Yojna". This enquiry appears to be still pending in which Sri Shamim Ahmad

Khan, A.D.M. (Administration) Agra, has sent a letter dated 13.2.2003 to the Sub-Divisional Magistrate and Executive Officer, Public Works Department, Agra, to Join as committee members to the enquiry proceedings. This matter relates only to Sri Balbir Singh Yadav and not the petitioner. The petitioner as a retired employee cannot be subjected to disciplinary enquiry and recovery unless he has been given sufficient opportunity and permission has been taken from the Head of the Department and in case of Government servant, the Governor of the State. The gratuity, bonus and other retirement dues cannot be withheld unless there is an order of the competent authority, namely, Director, Local Bodies, U.P, Lucknow, in the present case. The Chairman and Executive Officer, Nagar Palika Parishad, Fatehabad, have no authority to withhold the payment of sanctioned amount to the petitioner.

9. In the present case, the Nagar Palika Parishad, Fatehabad, reinstated the petitioner on 23.5.2001. The petitioner attained superannuation and retired on 31.12.2001. The fact finding enquiry with regard to allegations in the matter of complaint by Smt. Meena Devi concluded with the report of Sub-Divisional Magistrate, dated 20.11.2002. The Assistant Director, Local Fund sanctioned the payment of gratuity and pension on 28.6.2002 and thereafter nothing is pending against the petitioner. In the circumstances, there was absolutely no justification to withhold the payments of retirement dues. The retirement dues are not paid to the retired employees of a local body by way of any grace and bounty. The Chairman and the Executive Officer do not have any right to withhold the sanctioned payment or to delay the same. They have no authority to deny petitioner with his statutory right arising out of life long service.

10. In the present case, I find that the retirement dues have not been paid to the petitioner after its sanction on 28.6.2002 on account of incorrect and defiant attitude of Sri Balbir Singh Yadav, Officiating Executive Officer, Fatehabad. He made a false and misleading averments in his counter-affidavit dated 7.1.2003 with regard to the pendency of an enquiry against the petitioner regarding embezzlement of Rs. 1,60,000. It was found that there were no allegations against him in the complaint. The enquiry was actually made against Balbir Singh Yadav. He has not explained the averments made in paras 3H, 3-I and 4 of his counter-affidavit, and that Sri Chiranjee Lal Mahaur, the present President of Nagar Panchayat, Fatehabad, filed a supplementary counter-affidavit. In this affidavit once again wrong allegations have been made that the State Government has directed fresh enquiry through a committee chaired by Additional District Magistrate, whereas the letter of the State Government shows that the enquiry has been reopened only against Sri Balbir Singh Yadav.

11. These facts clearly demonstrate that Sri Balbir Singh Yadav affirmed a false affidavit to mislead the Court and to deprive the petitioner from his legitimate dues. He is guilty of perjury and is liable to be punished. In the present case, his guilt is compounded by the fact that the enquiry is actually pending against him, and that he is trying to deflect the allegations against the petitioner. The

petitioner is a retired employee and has been exonerated from the allegations in the enquiry report of Sub-Divisional Magistrate, Fatehabad, dated 20.11.2002.

12. The writ petition is consequently allowed. A writ of mandamus is issued to the respondent Nos. 3 and 4 to pay entire retirement dues including gratuity, arrears of pay and pension, arrears of revised pay, G.P.F., leave encashment, bonus, dearness allowances, group insurance with 10% Interest per annum to the petitioner within a period of four weeks from the date of production of a certified copy of this order before them. The entire interest at the rate of 10% per annum on the withheld payments shall be deducted from salary of Sri Balbir Singh Yadav, Executive Officer, Nagar Palika Parishad, Shamshabad, district Agra, looking after the work of Executive Officer, Nagar Panchayat, Fatehabad. A copy of the order shall be sent to the Director, Local Bodies U.P. to be placed in his service record and to take appropriate steps against him for swearing false affidavit before this Court and misleading the Court. The petitioner is also held entitled to Rs. 5,000 as costs to be paid by Sri Chiranji Lal Mahaur and Sri Balbir Singh Yadav.