(1997) 09 AHC CK 0052

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24445 of 1996

Ramapati Tripurari APPELLANT

Vs

District Judge and Another RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Uttar Pradesh Retirement Benefit Rules, 1961 — Rule 12

Citation : (1997) AWC 796 : (1997) 3 UPLBEC 1903

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : K. Ajit, for the Appellant; SC, for the Respondent

Judgement

D.K. Seth, J.—The petitioner alleges that he had retired in 1989 but his gratuity was withheld on the ground that he did not hand over the charge as cashier of the Civil Court Clerks'' Co-operative Society.

2. Mr. K. Ajit, learned counsel for the petitioner suits that gratuity of a Government Servant can be withheld only when an employee is charged with the offence of murdering and the same can not be withheld on any other charge. He relies on paragraph 12 of the Uttar Pradesh Retirement Benefit Rules. 1951 in support of the said contention. He also relies on instruction No. 166 relating to Drawing and Disbersing Officer Regarding Procedure for Finalisation of pension Gases wherein it has been pointed out in a note that the arrears of water and electricity charges recoverable by local bodies and Cooperative Society dues are not to be treated as dues to Government. No recovery of such dues can be made from the death cum-retirement gratuity He also relies on. the decisions in the case of D.V. Kapoor Vs. Union of India and others, in which it has been held in paragraph 7 that: -

"Rule 9 of the rules empowers the President only to with old or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the Slate in whole or in part subject to minimum. The employee''s right to pension is a statutory right. The measure of deprivation therefore, must be co-operative to or commensurate with the gratuity of the grave misconduct or or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order disclosed that the president withheld or permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be with-held as a measure of punishment. No provisions of law has been brought to our notice under which the president is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

He also relies on two other decisions being in the cases of State of Kerala and Others Vs. M. Padmanabhan Nair, and Dr. Harbas Singh Sidhu v. The State of Punjab and Ors. 1992 (2) SLR 661.

3. Learned Standing Counsel on the other hand contends that unless the dues of the Co-operative Society have been cleared, the petitioner can not be paid his gratuity. Once the petitioner has not come with clean hand he is not entitled to get any equitable relief from this Court

4. After hearing learned counsel for the parties it appears that the ground on which the gratuity was sought to be withheld does not come in the ambit of Rule 12 of U. P. Retirement Benefit Rules, 1951. Then again the same is not supported by the instruction No. 166 referred to above as quoted hereinabove. Thus It appears that even on the basis of the rules and instructions, the gratuity can not be withheld on the alleged ground as contained in Order dated 1-4-1989 contained in Annexure-1 to the writ petition. Then again paragraph 7 of the decision in the case of D.V. Kapoor (supra) supports the contentions of the learned counsel for the petitioner

5. In that view of the matter, this writ petition is disposed of by directing the concerned respondent to consider and decide the petitioner''s representations contained in Annexures 2 and-to the writ petition respectively in accordance with law as early as possible preferably within a period of four months from the date a certified copy of this order is produced before the concerned respondent and the payments shall be made to the petitioner as early as possible preferably within a period of two months from the date of such decision on the representation of the petitioner. Such consideration is to be effected in the light to the observation made above and the payment is to be made unless it can be withheld in any other ground within the ambit of any provisions of law.

6. There will be no order as to cost.

7. Certified copy of this order be supplied to the learned counsel for the petitioner on payment of usual charges at the earliest.

