(2020) 07 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 157 Of 2020

Ramjatan APPELLANT

Vs

State Of Uttarakhand And Others RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Citation : (2020) 07 UK CK 0027

Hon'ble Judges : Ramesh Ranganathan, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : M.S. Rawat, Anil Kr. Bisht, Sandeep Kothari

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri M.S. Rawat, learned counsel for the petitioner, and Sri Sandeep Kothari, learned Standing Counsel for the GMVN and, with their

consent, the writ petition is disposed of at the stage of admission.

2. The petitioner retired from service, on attaining the age of superannuation, on 30.09.2017 nearly three years ago. He has invoked the jurisdiction of

this Court seeking a mandamus directing the respondents to forthwith release the outstanding leave encashment and the revised benefits of gratuity,

leave encashment and arrears of salary as per the 7th Pay Commission in favour of the petitioner along with interest on delayed payment.

3. When the matter came-up before us earlier, we granted time to Sri Sandeep Kothari, learned Standing Counsel for the GMVN, to obtain

instructions.

4. Today Sri Sandeep Kothari, learned counsel, on instructions, states that the retiral benefits, due and payable to employees of GMVN, can be largely

segregated into three components i.e. provident fund, gratuity and leave encashment; the petitioner has been paid his provident fund and gratuity dues;

it is, no doubt, true that the leave encashment benefits have not been paid to the petitioner; the acute financial crisis, which the Corporation is facing,

has resulted in such non-payment; there are 205 employees, as on December, 2019, who are due to be paid their leave encashment benefits; the

Corporation is doing its utmost to make payment, of leave encashment, strictly in the order in which its employees have retired from service on

attaining the age of superannuation; the petitioner stands at Serial No.84 in the said list; and it would be inappropriate for the Corporation to pay the

petitioner his leave-encashment benefits, merely because he approached this Court, without making payment of these benefits to those who stand

above him in the list of employees who retired from service before him, and to all of whom leave encashment benefits are payable.

5. While we are conscious that the second and the third respondents cannot be forced to make payment of leave encashment benefits to the petitioner,

overlooking those who retired before him, merely because he has invoked the jurisdiction of this Court, the fact remains that the petitioner retired from

service on 30.09.2017, nearly three years ago.

6. If the petitioner stands at Serial No. 84, then the 83 employees above him in the list, must have also retired from service before him, and yet they

have not been paid their retiral dues of leave encashment. Having extracted work from them, the Corporation is not justified in contending that its poor

financial position justifies the petitioner or the other employees, all of whom have retired from service three years ago, should wait endlessly with the

hope that they would receive these benefits someday.

7. While we were initially inclined to issue a mandamus directing payment of the retiral benefits, to all the retired employees of the Corporation, within

a specified time-frame, we are conscious that during this COVID-19 pandemic, when economic activities have either come to a grinding-halt or have

substantially reduced, any such direction may not be justified in these extra-ordinary circumstances. Suffice it, instead of keeping the writ petition

pending on the file of this Court, to direct respondent nos. 2 and 3 to endeavor to make payment of the petitionerâ??s leave encashment benefits

within six months from today. Needless to state that our order shall not be understood as requiring respondent nos. 2 and 3 to overlook those, who

retired from service before the petitioner, in making such payments.

8. In case the petitioner submits a representation for payment of gratuity and other benefits, under the 7th Pay Commission Pay Scales, and for

payment of interest on delayed payment of these retiral benefits, the said representation shall be considered by respondent nos. 2 and 3 in accordance

with law, and a decision shall be taken thereupon, and be communicated to the petitioner expeditiously.

9. The Writ Petition is, accordingly, disposed of. No costs.