
(2015) 01 AHC CK 0155

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 67793 of 2014

Shankar Singh Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Constitution of India, 1950 — Article 148, 309

Citation : (2015) 4 ADJ 236

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant

Final Decision : Allowed

Judgement

Mahesh Chandra Tripathi, J.—Heard Shri Vijay Gautam, learned counsel for the petitioner, Shri Pankaj Rai, learned Additional Chief Standing counsel for the respondents and perused the record. Considering the pure legal submission advanced by learned counsel for the petitioner, learned Additional Chief Standing Counsel stated that he does not propose to file any counter-affidavit but would make oral submissions and the writ petition may be disposed of finally at this stage under the Rules of this Court, hence I proceed accordingly.

2. By means of present writ petition, the petitioner has prayed for quashing the impugned order dated 25.7.2014 passed by respondent No. 5, by which the gratuity amount and other retiral benefits have been withheld on account of pendency of criminal case against the petitioner. He has further prayed for a direction to the respondent authorities to pay the gratuity amount and other post retiral benefits i.e. leave encashment , insurance amount, arrears, difference of regular pension since 1.2.2014 and other amount to him alongwith interest.

3. It is contended by learned counsel for the petitioner that during pendency of a criminal case, retiral benefits and pension amount cannot be withheld and this issue has been considered and decided by this Court in Writ Petition No. 25554 of

2010 (Lalta Prasad Yadav v. State of U.P. and others) decided on 15.5.2013, Writ Petition No. 26972 of 2013 (Santosh Kumar Singh v. State of U.P. and others) decided on 14.5.2013, Writ Petition No. 10099 of 2013, HC 11AP Mishir Lal v. The state of U.P. and others, decided on 26.2.2013 and Writ Petition No. 17141 of 2012, HC 122 AP Deo Narain Singh v. State of U.P. and others, decided on 20.7.2012. It is also submitted that one of the judgment of learned Single Judge was also assailed before a Division Bench in Special Appeal No. 84 (Defective) of 2013, which has also been dismissed.

4. Learned Standing Counsel has placed reliance on a Division Bench judgment of this Court in State of U.P. and others v. Jai Prakash, Special Appeal Defective No. 1278 of 2013 decided on 17.12.2013. The Division Bench relied on Regulation 351-A of the Civil Services Regulation, which empowers the State Government to recover from the pension the amount of loss found in judicial or departmental proceedings, to have been sustained by the Government by the negligence or fraud during his service. In the said case the Division Bench further found that Regulations 351, 351-A and 351-AA of the Civil Services Regulations operate in different fields. Regulation 351-AA specifically provides that where a departmental or judicial proceeding or any enquiry by the Administrative Tribunal is pending on the date of retirement, a provisional pension under Regulation 919-A may be sanctioned. Regulation 919-A(3) contains a specific prohibition on the payment of Death-Cum-Retirement Gratuity to a Government servant until the conclusion of departmental or judicial proceeding and the issue of final orders thereon.

5. However, Shri Vijay Gautam has placed reliance on a subsequent Division Bench judgment in Special Appeal Defective No. 416 of 2014 [State of U.P. and others v. Faini Singh) decided on 25.4.2014, by which the Division Bench has dismissed the appeal filed by the State Government. The relevant para-21 of the judgment is reproduced as below:

"21. We may point out that a mere pendency of any judicial proceeding cannot be a ground to exercise the powers under Article 351AA read with Regulation 919A for withholding the retiral dues. The nature of allegations and the gravity of charge has to be taken into consideration by the competent authority before making an order to withhold the retiral dues. In case the pendency of any judicial proceeding is held to be sufficient, a minor offence or even a parking ticket may be a ground to withhold the pension of a retired employee. Such a situation is not contemplated under the powers conferred on the competent authority under the Civil Services Regulations."

6. Shri Vijay Gautam, learned counsel for the petitioner has further relied upon a Division Bench judgment in Narendra Kumar Singh v. State of U.P. and others, 2013 (9) ADJ 199 (DB) decided on 5.10.2013. The relevant paras of the judgment are reproduced as below:

"9. In the case of D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC

130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 , the Apex Court has observed as under:

"From the discussion three things emerge: (1) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socioeconomic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch...."

10. The ratio laid down in these cases had been subsequently followed by the Apex Court in series of its decisions including the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, AIR 2005 SC 3039 : (2005) 106 FLR 63 : (2005) 4 JT 489 : (2005) 2 LLJ 1040 : (2005) 5 SCC 245 : (2005) SCC(L&S) 676 : (2005) 3 SCR 696 : (2005) 2 SLJ 486 : (2005) 2 UJ 1023 .

11. Division Bench of this Court in the case of Mahesh Bal Bhardwaj v. U.P. Co-operative Federation Ltd. and another (Supra) has held that gratuity and other post retiral dues, which the petitioner is otherwise entitled under the Rules, could not have been withheld either on the pretext that criminal proceedings were pending against the petitioner or for the reason that on the outcome of the criminal trial, some more punishment was intended to be awarded.

12. Learned Single Judge of this Court in the case of Radhey Shyam Shukla v. State of U.P. and another (Supra) has also taken the similar view and has held that mere pendency of the criminal proceedings would not authorize withholding of gratuity.

13. Division Bench of this Court in the case of Lal Sharon v. State of U.P. and others (Supra) has held that mere intention to obtain sanction for initiating disciplinary enquiry could not be basis for withholding the post retiral dues unless sanctioned, granted and the disciplinary proceedings started.

14. Apex Court in the case of State of Punjab and another v. Iqbal Singh (Supra) has further held that since the cut of the pension and the gratuity adversely affects the retired employee as such order cannot be passed without giving reasonable opportunity of making his defence.

15. We have also perused the Government Order dated 28.10.1980, annexure-CA-1 to the counter-affidavit, which has been made basis for withholding the part of the pension and allowing the interim pension. This Government Order provides the payment of interim pension where the departmental proceeding are pending. None of the circular, Government Order or any provision has been referred before us, which provides that where no departmental proceeding is pending, still the pension can be withheld."

7. It is also not the case of respondents that in the criminal case, there is any allegation of loss to the Government and there is recovery to be made from the petitioner, which is the only exception recognized by this Court in the above mentioned authorities where final pension etc. may not be paid and respondents may withhold the same. For the reason stated therein, and in view of the above authorities, the writ petition is allowed and the impugned order dated 25.7.2014 is set aside. The respondents are directed to pay retiral benefits and final pension to petitioner forthwith within a period of two months from the date of production of a certified copy of this order.