(1999) 08 AHC CK 0200

In the Allahabad High Court

Case No : Writ Petition No. 1646 (SB) of 1998

Smt. Leelamma Nair APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Citation : (1999) 3 UPLBEC 1791

Hon'ble Judges : R.D. Mathur, J;A.S. Gill, J

Bench : Division Bench

Advocate : A.K. Bajpai, for the Appellant; C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

A.S. Gill and R.D. Mathur, JJ.—The petitioner Smt. Leelamma Nair has filed this writ petition with the prayer for issuance of a writ, direction or order in the nature of mandamus commanding the opposite parties to release the amount of pension gratuity etc. and for payment of 18% interest for the period of delayed payment of pensionary benefits. She has also prayed for issuance of a writ, order or direction in the nature of certiorari to quash the impugned orders dated 7-9-1998, 16-9-1998, 16-10-1998 and 27-10-1998. contained in Annexures No. 11. 13, 14 and 15 respectively. She has further prayed for issuance of a writ, order or direction in the nature of mandamus to command the opposite parties to realise the arrears of rent and damages at the rate'' which was being charged at the time of her superannuation from job or with a slight increase as the Hon''ble Court may direct in the circumstances of the case.

2. The case of the petitioner is that she joined the department of Medical and Health on 3-4-1964 against the post of Staff Nurse. On 2-2-1975, she was promoted to the post of Ward Sister. On 25-2-1984. she was further promoted as Tutor and was posted at the A.H.M. Dufferin Hospital, Kanpur where she was confirmed on the post of Ward Sister since 1-4-1984. On 11-3-1986, she was again promoted to the post of Tutor (Gezetted) and was posted at die I.M.

Hospital, Varanasi. On 26-4-1995, she was lastly promoted as Matron and posted at the Mahila Hospital, Lucknow from where she superannuated on 30-6-1997. The career of the petitioner during 33 years of service was very good and no adverse remark was ever given to her. For the period from April, 1995 to June. 1995, the petitioner was paid House Rent Allowance at the rate of Rs. 400/- per month as per her entitlement. On 16-6-1995 she was allotted residential quarter inside the Hospital Campus.

3. On superannuation, the petitioner relinquished her charge on 30-6-1997. After handing over charge to Smt. A.P. Ceasar, Sister in the Hospital, she obtained ''No Dues'' certificate from all the sections concerned of the Hospital. On 1-9-1997, the opposite party No. 3 sent requisite documents to the Finance Controller of the Department of Medical, Health and Family Welfare for the grant of pension. The Additional Director, vied his letter dated 8-1-1998 addressed to opposite party No. 3 accorded sanction for payment of 90% of the General Provident Fund against her full term deposit. On 6-2-1998. the opposite party No. 3 recommended to-the Finance Controller of the Department of Medical, Health and Family Welfare for disbursement of amount of Traveling Allowance admissible to the petitioner after superannuation, to facilitate her to go back to her ultimate destination.

4. The pensionary benefits of the petitioner were not released and as such on 1.7.1998, she representated to opposite party No. 2. mentioning the hardships being caused to her. When no response was received from the opposite parties, she submitted second representation dated 25-7-1998 to opposite party No: 2 reiterating her difficulties. The Finance Controller of the Department of Medical Health and Family Welfare by his letter dated 29-8-1998 addressed to opposite party No. 4, Treasury Officer, District Treasury, Collectorate, Lucknow issued order for releasing pension, gratuity, amount of commuted pension to the petitioner. However, no pensionary benefits were paid to the petitioner and by letter dated 7-9-1998 of the opposite party No. 3, on the other hand she was informed that the dues could not be paid to her as she had retained the matron''s residential quarter beyond 30-6-1997. the date of her superannuation. It was also mentioned in the said letter that she is liable to pay arrears of rent and damages at the market rate for the period after 30-6-1997 which were estimated to be Rs. 77,100/- along with electricity charges of Rs. 10,560/-.

5. It is alleged that the opposite party No. 3, Smt. Sharda Chand was kind enough, at the initial stage to verbally allow the petitioner to retain the premises till her successor Matron was posted in the Hospital. As no Matron was posted, she continued to reside in the premises. That the petitioner submitted reply dated 16-9-1998 to the letter of the opposite party No. 3 dated 7-9-1998. The opposite party No. 3, vide letter dated 16-9-1998, once again threatened the petitioner of dire consequences through the penalty realisation for the over stay in the premises. The petitioner personally met the opposite party No. 3 and informed her that she would leave for her home State Kerala after her dues are

paid. The opposite party No. 3 sent letters dated 16-10-1998 and 27-10-1998 to the petitioner reiterating the demand for payment of electricity dues and other amounts. It is alleged that rent or damages can be realised on a rational basis taking into consideration the status of the employee and her proportionate income. The petitioner occupied the premises in question as she was verbally instructed by the opposite party No. 3 that she can retain the premises till her post retirement dues are cleared or another Matron is posted in her place.

6. The opposite parties have admitted that the petitioner had retired from the post of Matron, Veerangna Avanti Bai Lodhi Mahila Chikitsalaya (Dufferin Hospital), Golaganj, Lucknow. It has, however, been contended that the petitioner was asked to furnish the details regarding her pension by letter dated 19-6-1997 and on the receipt of the papers from her, the record was sent to the Finance Controller of the department of Medical, Health and Family Welfare on 1-9-1997 without any delay for release of pension. The petitioner even after her superannuation unauthorisedly retained the Matron''s house from 30-6-1997 to 21-11-1998, although she was asked to vacate the house soon after her superannuation by letter dated 25-6-1997 and thereafter by various letters. The petitioner, vide her letter dated 1-9-1997, informed that she would vacate the house by October, 1997 but still she did not vacate the same. Smt. Mohni Kulshreshtha was appointed as Metron in the Hospital and she remained posted in the Hospital from 1-8-1997 to 26-12-1997, but as the Matron''s house was not vacated by the petitioner, she got herself transferred to some other Hospital. The petitioner is, therefore, liable to pay damages for use and occupation of Matron''s house form August, 1997 to 21st November, 1998 at the rate of Rs. 5,900/- per month as per Government Order No. R-02/32-2-92-4-69-85 dated January 2, 1992 and electricity charges at the rate of Rs. 264/- per month. The total amount to be paid by the petitioner comes to Rs. 1,04,456/- which is to be deducted from her gratuity. The contention of the petitioner that the living area of the house in her occupation is only 30 sq. meter, is not correct. The living area of the house is 295 sq. meter and, therefore, the damages for use and occupation as per Government Order comes to Rs. 5,900/- per month. That the petitioner is herself responsible for delayed payment of pensionary benefits because she did not clear the dues and vacate the Government premises occupied by her.

7. In supplementary counter affidavit filed on behalf of the opposite parties, it has been contended that a sum of Rs. 1.04,456/- outstanding against the petitioner had been adjusted against her gratuity and rest of the amount of the pensionary benefits has been ordered to be paid and bill for the same has been submitted to the treasury.

8. In her rejoinder affidavit filed on 15th May. 1999, the petitioner has contended that a sum of Rs. l,04,456/7 has been illegally deducted from her pensionary benefits.

9. The only questions for determination in this writ petition are as to whether the

opposite parties are entitled to recover Rs. 1,04,456/- as damages for use and occupation and for electricity charges from the petitioner for retention of the Matron house by her after her retirement and as to whether the petitioner is entitled to interest on delayed payment of pensionary benefits. Reliance has been placed on behalf of the State, on Government Order No. R-02/32-2-92-4-69-85, dated January 2, 1992 vide which it has been provided that on superannuation of a Government Servant, rent for premises occupied by him shall be charged at ordinary rate for one month and on special permission by the Government, rent may be charged at ordinary rate for another three months and thereafter damages would be charged at the rate of Rs. 20/- per sq. meter of the living area in case of type I, II and III houses and at the rate of Rs. 25/- per sq. meter in case of other houses. That since no special permission was given to the petitioner to retain the house after one month of her superannuation, she is liable to pay the damages at the rate of Rs. 20/- per sq. meter of the living area from August, 1997.

10. The contention of the petitioner is that the living area of the house in her occupation was 30 sq. meter, whereas according to opposite parties the living area of the accommodation is 295/- sq. meter. The opposite parties have filed Line Diagram of Matron house, according to which the living area appears to have been calculated. From this diagram it appears that all the covered area of the Matron house has been calculated and that area comes to 295 sq. meter. There is difference between the living area and covered area. In Government Order No. 765/32-2-88 dated October 6, 1988, the living areas of various types of houses situated in residential colonies of the Estate Department have been specified. According to this Government Order, the living areas of type VI house situated at Gautam Palli, Raj Bhawan, Butler Palace and Dilkusha is less than 296 sq. meter. The living area of type II and III residences of the Estate Department is less than 100 sq. meter, ranging from 33 sq. meter to 77.3 sq. meter. Therefore, it appears that instead of calculating the living area of the Matron house, the opposite parties have calculated the covered area and on the basis of the covered area, they calculated the damages which are being charged from the petitioner.

11. In view of the Government Order dated January 2, 1992 relied upon by the opposite, parties and also Government Order dated October 6, 1998, the petitioner is liable to pay damages for use and occupation of the Matron house at the rate of 20 times of the living area of the house for the period during which it remained in her unauthorised occupation. As indicated above, the opposite parties have calculated the covered area of the house instead of living area and on the basis of the covered area they have calculated the damages for use and occupation at the rate of Rs. 5.900/- per month. By letter dated 7-9-1998, the petitioner was informed that she is liable to pay damages at the rate of Rs. 5,900/- per month and thus, a sum of Rs. 76,700/- has been claimed as damages for 13 months during which she retained the Matron house after permissible period. Electricity charges have also been claimed at the rate of Rs.

264/- per month from May, 1995 to August, 1998, the entire period during which house in question remained in her occupation.

12. By letter dated 16-9-199.8, the petitioner was informed that the living area of the house in her occupation is not 30 sq. meter as alleged by her, rather it is 295 sq. meter and she is liable to pay damages on the basis of that living area. If she fails to pay damages, a suit under U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 shall be filed. By letter dated 16-10-1998, the petitioner was again informed that she is liable to pay Rs. 88,500/- as damages for use and occupation of Matron house and Rs. 11,088/- as electricity charges upto October, 1998. Again by letter dated 27th October, 1998, the petitioner was informed that she had occupied the Matron house on 26-4-1995 and since then she had not paid electricity charges till the house was vacated by her. It is also mentioned in the said letter that the electricity department had asked the Officers, Nurses and other Class III and IV employees to pay electricity charges at the rate as mentioned in the said letter. Thus, accordingly, petitioner is liable to pay Rs. 11,088/- as electricity charge.

13. The opposite parties have claimed Rs. 88,500/- as damages for use and occupation on the basis of calculation of the living area of Matron house. As indicated above, this area of 295 sq. meter appears to be covered area and not the living area. Opposite parties are entitled to claim damages for use and occupation of Matron house on the basis of living area to be calculated in accordance with Government Orders dated January 2. 1992 and October 6, 1988. The orders dated 7-9-1998 and 16-10-1998 by which the petitioner has been asked to pay damages at the rate of Rs. 5,900/- per month, are liable to be quashed. The petitioner is. however, liable to pay electricity charges.

14. The contention of the petitioner is that she submitted all the relevant papers to the opposite parties but her pension was not released despite her repeated requests. When pensionary benefits were not released by the opposite parties, she was compelled to file this writ petition on November 7. 1998. Her pension was paid on 20-4-1999. Her home town is in the State of Kerala and due to nonpayment of her pensionary benefits, she had to over stay at Lucknow. If she had left for Kerala it would not have been possible for her to come time and again to Lucknow to get her pension released. Learned Counsel for the petitioner has argued that if the pensionary benefits of the petitioner had been cleared in time, she would have left for Kerala and would have vacated the Matron house. Learned Counsel for the petitioner has also contended that on one hand the opposite parties delayed the payment of pensionary'' benefits to the petitioner and on the other hand they are charging penal rent in the shape of damages for use and occupation from the petitioner. The petitioner, is. therefore, entitled for interest on the delayed payment of pensionary benefits.

15. In para 7 of her rejoinder affidavit dated January 13, 1999, the petitioner has deposed that she had completed all formalities for payment of pension before 30-6-1997. In para 8 of the supplementary counter affidavit, the opposite parties

have admitted that the petitioner had submitted pension forms alongwith photographs and on receipt of such papers, the same were sent to the Sanctioning Officer on 1-9-1997. The opposite parties have not disclosed as to when the papers were made available by the petitioner. Admittedly, the papers sanctioning the pensionary- benefits to the petitioner were issued, vide order dated 29-8-1998. Despite the pension being sanctioned to her, the petitioner was not paid pension and, therefore, she had to file this writ petition on November 7, 1998. It is only when the order of this Court was passed directing the opposite parties to pay post retiral benefits to the petitioner by or before 8-12-1998, the opposite parties sent the bill and made payment of pensionary benefits. The contention of the petitioner is that the payment of her pensionary benefits was withheld simply for the reason she had failed to vacate the Official residence provided to her.

16. In the case of State of Kerala and Others Vs. M. Padmanabhan Nair, it has been held by the Apex Court as under :

"Pension and gratuity are no longer any bounty to the distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights 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."

17. In the case of R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, it has been held that death-cum-retirement gratuity could not be withheld merely because the employee had not vacated the allotted premises during the course of his employment and claim for damages for unauthorised occupation is pending if that is so the interest could be awarded on the delayed payment of gratuity. In the case of R. Kapur (supra), the Central Administrative Tribunal awarded interest at the rate of 10% which was enhanced by the Apex Court to 18%.

18. In the instant case, the pensionary benefits of the petitioners were withheld simply because she had failed to vacate the Matron house. In para 9 of the supplementary counter affidavit dated 12-2-99, it has been stated that on 29-8-1998, the petitioner was directed to vacate the Government accommodation and to pay the balance amount so that her Payment Order could be sent to the Treasury for payment but the petitioner failed to pay Government dues alongwith interest. The opposite party No. 3 had sent letter to the Chief Treasury Officer, Lucknow dated 24-11-1998 informing him that no payment should be made to the petitioner unless a sum of Rs. 1,04,456/- is deducted from the amount payable to her. In para 13 of the counter affidavit dated December 7, 1998, it has been clearly indicated that ''No Dues'' certificate to the Treasury, to release pension and gratuity of the petitioner, could be issued only after she had vacated the Government premises and the amount due against her is adjusted from the gratuity.

19. It, therefore, follows that the entire pensionary benefits of the petitioner was withheld simply because she had failed to vacate the Government accommodation. In view of the case of R. Kapur (supra), the petitioner is entitled to interest on the amount of gratuity and pension which had been withheld by the opposite parties. In para 7 of the rejoinder affidavit filed on January 13, 1999, the petitioner has stated that the opposite parties were bound to pay arrears on post retiral benefits within a maximum stipulated period of three months as per rules. Since they had delayed the payment of post retiral benefits beyond that period, they are liable to pay interest on the delayed payment of pension and gratuity, from 1-10-1997 till the date of actual payment.

20. As per their own letter dated October 27, 1998 (Annexure No. 15 to the writ petition), the electricity charges from Nurses have to be charged at the rate of Rs. 250/- per month. How the electricity charges from the petitioner is being claimed at the rate of Rs. 264/- per month, is not understandable nor it has been clarified in the counter affidavit filed on behalf of the opposite parties.

21. From a perusal of the Government Order dated January 2, 1992, it is clear that in case of superannuation, the Government employee can retain the house occupied by him for one month on normal rent and thereafter for another three months on normal rent with the special permission of the Government. In the instant case, the petitioner has contended that she had sought permission from the Opposite Party No. 3 to occupy the house. She even sent a letter of request informing the opposite party No. 3 that she would be leaving for her home State Kerala immediately after her pensionary benefits are cleared. She even gave an undertaking that she would partly vacate the house in October, 1998.

22. It, therefore, follows that the petitioner did apply for permission to retain the house for another three months after a period of one month from the date of her retirement. It appears that no action was taken on that application. Considering the special circumstances of the case, we feel that the petitioner be permitted to retain the house for this permissible period of three months also. The opposite parties may realise damages for use and occupation from the petitioner as contemplated in Government Order dated January 2, 1992 after a period of four months from the date of her retirement.

23. In the circumstances as indicated above, the impugned orders dated 7-9-1998, 16-9-1998, 16-10-1998 and 27-10-1998, contained in Annexures No. 11, 13, 14 and 15 are hereby quashed. The opposite parties are directed to realise the electricity charges and damages for use and occupation of the Matron house in accordance with law and according to the Government Orders issued in this regard. The petitioner is entitled to interest at the rate of 18% on the delayed payment of pension and gratuity from 1-10-1997 till the date of actual payment. Liberty is granted to the petitioner to file fresh writ petition if the damages for use and occupation are not charged as per rules. The writ petition is decided accordingly.

