(2004) 07 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No. 3326 of 1999

Sri Khageswar Nayak APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Orissa Civil Services (Pension) Rules, 1992 — Rule 7(1)

Citation : (2004) 98 CLT 436 : (2004) 2 OLR 210

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : R.N. Bhuyan, S.B. Panda, S.K. Mohapatra and M.K. Panda, for the Appellant; S. Parida, (For O.Ps. 2 to 5), for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application has prayed for:

(i) direction to the opposite parties to issue No Demand Certificate in his favour for the purpose finalisation of his DCRG;

(ii) direction to the opposite parties to release the withheld amount of Rs. 19,082/- from the Gratuity along with interest at the rate of 18% per annum; and

(iii) issuance of a writ quashing Annexures 2, 5, 8, 9, 11, 12, 14, 15, 16, 20 and 21 series.

2. The petitioner was working as a Driller in the Orissa Lift Irrigation Corporation and was serving at Baripada and who refired on attaining the age of superannuation with effect from 28th February, 1995. Few days before retirement, the Junior Engineer, Lift Irrigation (M) Sub-Division, Baripada vide office letter dated 21.2.1995 intimated the Assistant Engineer, LI(M) Sub-Division, Baripada that there was shortage of materials (52 items) and the petitioner was responsible for such shortage. Thereafter, the petitioner by letter dated 23.6.1995 was asked to return the materials for issuance of No Demand

Certificate By that time the petitioner had already retired from service. Two days thereafter, the Director, Lift Irrigation vide memo dated 26,6.1995 requested the Accountant General, Orissa to issue necessary authority slip for remitting the retirement benefits payable to the petitioner. On 25.8.1995 the Executive Engineer once again directed the petitioner to return the materials for preparation of the pension papers. The petitioner had handed over the charge to one Mohan Gouda, the then Junior Engineer but the allegation of shortage of materials was not taken into consideration. The petitioner again made a representation to the Superintending Engineer on 9.10.1995 for processing the pension papers and the Superintending Engineer vide his letter dated 26.10.1995 requested the Executive Engineer to submit the pension papers along with other documents. However, the Executive Engineer informed the Superintending Engineer on 1.11.1995 that so long as No Demand Certificates are not obtained from different departments, the pension papers could not be submitted. By letter dated 20.2.1996 the petitioner was intimated that his successor who had taken over charge from him has intimated that 26 numbers of materials are still outstanding against the petitioner and a request was made to the petitioner to return the materials. At this stage, the Director of the Corporation by letter dated 26.4.1996 requested the Superintending Engineer to submit the final NDC showing the details of materials outstanding against the petitioner with their monetary value. After the said requirements were obtained, the Service Book of the petitioner along with relevant pension papers were sent to the Accountant General for issuing order regarding disbursement of retirement benefits such as pension, gratuity, commutation value of pension etc. The value of the materials not returned as alleged was assessed at Rs. 19,082/- and it was intimated by the Executive Engineer on 30th September, 1996 that the petitioner having failed to return the materials and the aforesaid amount having not been recovered from the petitioner, NDC cannot be issued. Ultimately on 4.3.1998 the Director of the Corporation wrote to the Accountant General to take necessary steps for finalisation of the gratuity after withholding Rs. 19,082/- till clearance report is received. Accordingly, Rs. 19,082 was withheld from the gratuity of the petitioner and the rest amount was pad. The said amount having been withheld from the gratuity, the petitioner has approached this Court challenging the action of opposite parties in withholding the said amount. All the three prayers relate to the question as to whether the petitioner is liable to return the said amount/ materials or not and for non-return of the materials as alleged, gratuity can be withheld.

3. A counter affidavit has been filed by the opposite parties and in reference to the counter affidavit the learned counsel appearing for the opposite parties submitted that the petitioner having admitted the loss of materials and having consented for recovery of the amount from the gratuity, there is nothing left to be decided by this Court. In this connection reliance was placed on Annexure A/1. In reply, the learned counsel appearing for the petitioner submitted that the said letter was obtained on coercion and had the petitioner not given consent,

the entire gratuity amount would have been withheld. He further submitted that no recovery on account of loss of materials can be made without a proper inquiry being made and mere consent of the petitioner for withholding the said amount is not enough.

4. There is no dispute that the petitioner retired from service on attaining the age of superannuation on 28.2.1995 and a week before his retirement the Junior Engineer had intimated the Assistant Engineer regarding shortage of materials. There is also no dispute that the petitioner was requested to return the materials. There is no dispute that in Annexure A/1 the petitioner consented for withholding of Rs. 19,082/- from the gratuity. The question that arises for consideration is whether such an amount can be recovered from the, gratuity of the petitioner without any inquiry being made even on the face of the consent given by the petitioner. In this connection, reference may be made to Rule 7 of the Orissa Civil Services (Pension) Rules, 1992 :

"Right of Government to withhold or withdraw pension :

(1) The Government reserve to themselves the right of withholding a pension or gratuity, or both either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or party of any pecuniary loss caused the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence in duty during the period of his service including service rendered on re-employment after retirement."

5. Referring to the aforesaid rule, it was contended by the learned counsellor the petitioner that in absence of any departmental or judicial proceeding and in absence of a finding regarding grave misconduct or negligence in duty, no amount can be withheld from the pension or gratuity. Admittedly, in the present case no proceeding having been initiated in respect of the allegation of loss of materials, only on the basis of consent given by the petitioner in Annexure A/1 the amount could not be withheld from gratuity. The learned counsel for the opposite parties fairly admitted that in respect of the allegation of loss of materials, no proceeding has been initiated against the petitioner. The consent given by the petitioner in Annexure A/1 runs as follows :

"In inviting a reference to your letter on the subject cited above, I am to give my consent that the outstanding dues of Rs. 19,082/- (Rupees nineteen thousand eighty two) only my please be recovered from my gratuity amount."

The said consent was given pursuant to two letters, which are Annexure 20 series. Annexure 20 is a letter written by the Director of the Lift Irrigation. Orissa intimating that the petitioner be directed to deposit the amount within seven days or give consent to recover the same from the gratuity for issue of final NDC as required by the office of the Accountant General. Pursuant to receipt of the said letter, the Execute Engineer intimated the petitioner for giving consent and the letter says that the petitioner is directed to deposit the outstanding dues of

Rs. 19,082/- within seven days or give consent for recovery of the same from the gratuity for finalisation of NDC. Therefore, in absence of consent the entire gratuity could be withheld. It is the case of the petitioner that because of the above reason, he had no other option except giving his consent. Under these circumstances, I am of the view that the consent given by the petitioner for recovery of the amount from his gratuity is not free from coercion/compulsion. Apart from the above, the Rule 7 as quoted above clearly indicates that in absence of initiation of any proceeding against the delinquent officer for his misconduct or negligence in duty and in absence of such finding no amount from pension or gratuity could be withheld. Reference in this connection may be made to a decision of the Apex Court in the case of D.V. Kapoor Vs. Union of India and others, The Apex Court in the aforesaid case held that after retirement the employee has a statutory right to get his gratuity and any order directing withholding of gratuity must precede with a finding that the retired employee committed grave misconduct or negligence. I am, therefore, of the view that withholding of Rs. 19,082/- from the gratuity of the petitioner under the above circumstances was neither justified nor legal.

6. I, therefore, allow the petition and direct the opposite parties to release the withheld amount of Rs. 19,082/- (Rupees nineteen thousand eighty two) in favour of the petitioner within a period of three months from the date of communication of this order. In the facts and circumstances of the case, no interest is allowed on the withheld amount of gratuity and there shall be no order as to costs.

