
(2004) 02 AHC CK 0218
In the Allahabad High Court
Case No : Writ Petition No. 1170 (SB) of 1995

S.S.L. Verma

APPELLANT

Vs

U.P. Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Citation : (2004) 5 AWC 4484

Hon'ble Judges : Pradeep Kant, J;K.S. Rakhra, J

Bench : Division Bench

Advocate : H.P. Srivastava, for the Appellant; N.K. Seth, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kant and K.S. Rakhra, JJ.—Heard the learned Counsel for the Petitioner Sri. H.P. Srivastava and Sri. N.K. Seth for the Respondent Bank.

2. Excluding all other facts, the short point involved in the present petition is as to whether an employee of the U.P. Co-operative Bank Ltd., whose services are governed by the provisions of U.P. Co-operative Societies Employees Service Regulations, 1975 could be subjected to any initiation and continuation of disciplinary proceedings or award of punishment after retirement even though no such power exists in the aforesaid Service Regulations and also whether without holding any enquiry and without associating the Petitioner in the enquiry, any amount towards gratuity or ex gratia payment could have been withheld in view of the Circulars and Office Memorandum issued by the Bank.

3. The Petitioner joined the services of U.P. Co-operative Bank Ltd. In the year 1956 on the post of Assistant, who was later on promoted upto the post of Deputy General Manager from which post he retired on 31st March, 1993. since after retirement, the Petitioner was not being paid the balance amount of gratuity, security and ex gratia for the years 1991-92, 1992-93 on the alleged audit objections, as disclosed in the counter-affidavit, the Petitioner amended the writ petition and challenged the aforesaid directions also.

4. Since initially at the time of filing of the writ petition, the aforesaid facts were not in the knowledge of the Petitioner, the necessary plea was taken on the basis of the averments made in the counter-affidavit, wherein the Bank made efforts to justify its action of withholding the payment, though, according to the Bank, only ex gratia payment has not been made on the ground that in view of the Circular issued by the Bank under the signatures of the Managing Director, referred to above, such recovery could have very well been made from the Petitioner.

5. The power to hold enquiry including initiation of disciplinary proceedings, its continuation and consequently award of punishment, after retirement of an employee, would depend upon the Service Rules which govern the services of such an employee. In the absence of any statutory provision or rule, such an enquiry can neither be initiated nor continued nor any punishment can be inflicted after an employee retires. In the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , where the Apex Court, considering the effect of retirement on the pending departmental enquiry, held as under:

... no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

In view of the absence of such a provision in the aforesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the Appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the Appellant nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the Appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the Appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the Appellant was entitled to full retiral benefits on retirement.

6. In the case of Dr. R.B. Agnihotri Vs. State of Uttar Pradesh and others, , a Division Bench of this Court has held that in the absence of any statutory provision departmental proceedings could not be continued after retirement even to the extent for the purpose of imposing any reduction to the retiral benefits payable to the employee.

7. In the instant case, admittedly, no enquiry was even initiated against the Petitioner either before or after retirement nor any enquiry could have been continued after the Petitioner retired. It was only on the basis of the Circular and Office Memorandum issued by the Bank itself that the amount of ex gratia was not paid. The Bank had no authority to issue a Circular or the Office Memorandum, as contained in Annexure-C-5 and C-6 to the short counter-affidavit, which does not conform to provisions of statutory Regulations of 1975.

Even otherwise, there is no provision in the U.P. Co-operative Societies Employees Service Regulations, 1975 where the Bank or the Managing Director or Board of Directors or the Bank can be said to be empowered or vested with power to issue any such Circular or Office Memorandum. We, therefore, find that the aforesaid Circular/Office Memorandum could not be made applicable for the purpose of taking any action against an employee of the Co-operative Bank who has retired after reaching the age of superannuation. The Circular and Office Memorandum has thus been issued without any authority and are non est and void to that extent and we declare accordingly.

8. Learned Counsel for the Bank has submitted that because of audit objection such a step had to be taken. We find it appropriate to observe that merely on audit objection, the recovery could not have been made unless the Petitioner was afforded an opportunity even otherwise, subject to there being any such rule for holding such an enquiry after retirement.

9. There appears to be little dispute regarding the amount which has not been paid to the Petitioner, as, according to the Petitioner, besides the amount of ex gratia a part of amount of gratuity and security has also not been paid, whereas, according to the Bank, only the amount of ex gratia has not been paid.

10. We, therefore, issue a writ in the nature of mandamus and direct that the amount to which the Petitioner is entitled towards post retiral dues including payment of ex gratia and other amounts which have not been paid to the Petitioner, shall be paid to him within a period of two months from the date of receipt of a copy of this order.

11. Looking to the facts of the case and the fact that the Petitioner has retired in the year 1993 and the money which has been withheld from being paid was withheld without any authority, we direct that the Petitioner shall be entitled and shall be paid interest on the unpaid amount from the date it became due at the rate of 6% simple interest, till it is actually paid.

12. The writ petition is allowed. No order as to costs.