

(2008) 02 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 191 of 2007 (S/B)

State of U.P. and Others

APPELLANT

Vs

Shiv Singh Bisht and Another

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Manual of Services Civil Services Rules — Rule 351A

Citation : (2008) 8 UC 886

Hon'ble Judges : Vinod Kumar Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; B.M. Pingal, on behalf of Vivek Shukla, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—The Respondent No. 1-Shiv Singh Bisht has filed a Claim Petition before the Public Service Tribunal for seeking following reliefs:

(i) That the Hon'ble Tribunal may be pleased to direct the opp. parties to direct the opp. parties to make payment of arrears of salary pension gratuity amount of commutation the amount of 10% retained G.P.F. arrears of interim relief and D.A. selection grade and also to refund the amount of security deposited with the opp. parties alongwith interest at the rate of 18% per annum.

(ii) That the Petitioner may be granted any other relief which the Hon'ble Tribunal may deem proper in the circumstances of the case.

(iii) That the cost of this petition be also awarded to the Petitioner.

2. Brief facts, relevant for deciding the writ petition, are that the Respondent No. 1-Shiv Singh Bisht, retired from the post of Forest Ranger in the year 1988. After his retirement, he was not paid any pension, gratuity and other admissible dues. Feeling aggrieved by the above, the Respondent No. 1-Shiv Singh Bisht has filed a claim petition before the Tribunal.

3. The Petitioners-State filed their written statement and counter affidavit in which they have not denied the liability to pay the arrears of increased pay and entitlement of increased pension to the Respondent No. 1-Shiv Singh Bisht. It was further alleged that the claim for selection grade, payment of G.P.F. and other arrears are being processed for the payment. The Petitioners had only disputed the payment of security and gratuity on the ground that there was recovery of Rs. 33,195/- against the Respondent No. 1-Shiv Singh Bisht on account of the losses incurred to the Government due to his negligence. The amount of the gratuity and the amount of the security was Rs. 28,875/- and Rs. 4,320/- respectively as shown in annexure 6 to the affidavit of the Petitioners filed in writ petition. Thus, the total amount which was to be paid to the claimant was Rs. 33,195/- out of which Rs. 26,064/- was to be deducted as loss to the Government due to the negligence of the Respondent No. 1-Shiv Singh Bisht.

4. The learned Claim Tribunal after hearing the parties allowed the Claim Petition.

5. Feeling aggrieved by the said judgment and order, the present writ petition has been filed by the Petitioners-State to quash the order dated 30-09-1994 of Public Services Tribunal in Claim Petition No. 69/11/1990 under Article 226 of the Constitution of India.

6. Heard Mr. J.P. Joshi, Chief Standing Counsel for the Petitioners and Mr. B.M. Pingal, Advocate on behalf of Mr. Vivek Shukia, Advocate for the Respondent No. 1.

7. Mr. J.P. Joshi, the learned Chief Standing for the Petitioners contended that the Respondent No. 1-Shiv Singh Bisht was to be paid Rs. 4,320/- and Rs. 28,875/- for the security and gratuity respectively. Out of total amount of Rs. 33,195/-, Rs. 26,064/- is to be deducted as the loss to the Government due to the negligence of the Respondent No. 1-Shiv Singh Bisht.

8. Mr. B.M. Pingal, the learned Counsel for the Respondent No. 1 refuted the contention and contended that the said amount cannot be deducted from the gratuity and security. He further contended that no departmental inquiry was conducted to hold him guilty; the Respondent No. 1 Shiv Singh Bisht was not responsible for any loss and no deduction can be made from his gratuity and security as contended by Mr. J.P. Joshi, the learned Chief Standing Counsel. The learned Counsel for the Respondent No. 1 relied upon the Rule 351-A, Manual of Services (Civil Services Regulations) in this behalf.

9. It is evident from the record that the Respondent No. 1 Shiv Singh Bisht retired in the month of November, 1985 and the order of the recovery was passed by the authorities on 10th September, 1986 after retirement of the Respondent No. 1. The record did not reveal that any departmental inquiry was conducted against Respondent No. 1 by the authorities. If the Respondent No. 1 has committed grave negligence in discharging his official duties and caused the loss to the State Government by his such negligence, the departmental inquiry should have been initiated against the Respondent No. 1. The learned Chief

Standing Counsel could not demonstrate us that any department inquiry was conducted or initiated during the service period of the Respondent No. 1 or after the retirement of the Respondent No. 1 as provided under Rule 351-A of Civil Services Regulations. Without holding any departmental inquiry, it cannot be held that the Respondent No. 1 has committed the negligence by which the State Government has suffered loss to the tune of Rs. 33,195/-. The Tribunal was justified in holding that the Respondent No. 1 cannot be held liable for the losses in absence of a proper inquiry; the department is not entitled to make deduction from the gratuity and security money after the retirement of Respondent No. 1; the departmental inquiry and the order of the recovery therein from the pension or any other post retiral benefits can only be made in accordance with the Rule 351-A of Civil Services Regulations; no deduction can be made from the gratuity of the retired employee; and the Petitioners were not justified in withholding the security, gratuity and other dues of the Respondent No. 1. We are completely in agreement with the findings recorded by the Tribunal.

10. In view of the foregoing discussion, the writ petition devoids of merit and is liable to be dismissed. Accordingly, the writ petition is dismissed.

11. No order as to costs.