(2006) 05 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (C) No. 2016 of 2006

Tileswar Dutta APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Constitution of India, 1950 — Article 39, 41, 43

Citation : (2006) 3 GLT 342

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : B. Chakraborty and B.D. Das, for the Appellant; L.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. B. Chakravorty, learned Counsel for the Petitioner and Mr. L.P. Sharrna, learned Counsel representing the Assam State Ware Housing Corporation (for, ''the Corporation'').

2. Taking into account the issue raised in this writ petition and upon hearing the learned Counsel for the parties, this Court proposes to dispose of this writ petition today itself at the admission stage.

3. On 24.3.05, this Court in W.P. (C) No. 2632/2000, being preferred by the Petitioner seeking a direction to the Corporation to release his retiral benefits as he retired from service on 31.10.96 from the Corporation in the capacity of the Divisional Manager, closed the writ petition with a direction to the Corporation to make payment of revised scale of pay w.e.f. 1.1.96 till the date of his retirement, gratuity as would be admissible to the Petitioner as well as leave encashment (balance portion) calculated on the basis of the revised scale of pay.

4. Even incompliance of the direction of this Court order, the Managing Director of the Corporation vide order dated 5.8.2005, calculated the amount payable to the Petitioner under three heads as follows:

1. Gratuity as per payment of Gratuity Act, 1972 Rs. 1,00,000.00 2. Leave encashment (balance portion) Rs. 19,724.00 3. Arrear pay & allowances due to re- vision of pay Rs. 20,992.00 Total Rs. 1,40,716.00

5. Surprisingly, it is reflected in the above order that the Petitioner is liable for payment of Rs. 1,48,491.43 towards the claim of the Food Corporation of India (for short, "the F.C.I.") due to the allegations made by the F.C.I, as regards the shortage of Rs. 3266.99 quintals of paddy occurred at Haiborgaon Centre while he was the Warehouse Manager. Amazingly, this claim does not indicate any year or date during which the shortage of paddy alleged to have occurred and even no

documents as such have been annexed/appended or reflected in the order itself. It is, therefore, observed in the said order that the Petitioner is not entitled to get any amount payable to him as calculated above; rather he is liable to pay an amount of Rs. 7775.43 only towards the F.C.I, claim after adjustment of his liability as mentioned above with the amount receivable from the Corporation on account of retirement benefits.

6. Being aggrieved by the aforesaid order, the Petitioner has moved the writ petition for second time seeking his entitled retirement benefits.

7. The contentions and averments made in this writ petition are challenged by the Corporation by filing their counter. The specific stand taken by the Corporation is that they are making communication with the F.C.I, to settle the matter by waiving their claim and until and unless the issue is settled down, it is not possible on the part of the Corporation to take any decision pertaining to retiral benefits of the Petitioner.

8. This case is a glaring example of extreme harassment and deplorable humiliation meted out to a retired person who has been compelled to run from pillar to post to get his pensionary benefits for last 10 years including two rounds of legal battle from the date of his retirement as he was seemingly deprived of from getting a single furthing after rendering about 34 years of sincere and dedicated service without any blemish from any quarter whatsoever during his entire service period since the date of joining in the year 1962 as Manager Cadre-II. It is shocking to note that when he retired in the year 1996, there was no whisper as regards any allegation or complaint of such nature so as to make any recovery from the retiral benefits of the Petitioner to satisfy the claim of F.C.I. Noticeably in the earlier writ petition being No. W.P. (C) 2632/2000, the Corporation did not mention about any such claim made by the F.C.I, at any point of time.

9. Rather Mr. L.P. Sharma, the learned Counsel appearing for the Respondent therein submitted that he had no objection to the claims of the Petitioner and such statement was duly reflected apparently on the order dated 24.3.05 itself passed in W.P.(C) No. 2632/2000. The applicability of the provisions of the Payment of Gratuity Act, 1972 to the employees of the Corporation had also not been disputed and accordingly it was submitted by Mr. Sharma that the claim of

the Petitioner on that basis would also be allowed after due scrutiny.

10. It is pertinent to mention herein that the counter filed by the Respondents herein in paragraph 3 only contains that the shortage of 3266.99 quintals of paddy occurred during the period from November 1975, to August, 1977 while the Petitioner was Warehouse Manager at Haiborgaon which was never intimated to the Petitioner till his retirement. Rather by a communication dated 7.8.03 in reference to a letter of F.C.I, dated 10.2.99, that too after 4 years, the Managing Director of the Corporation wrote to the Zonal Manager, F.C.I, requesting the authority to waive the claims made by them against the storage loss at 5 Centres in Nagaon districts indicating that as a result of non settlement of those cases of storage loss, huge amount were to be recovered from officers including the Petitioner who was a cancer patient and had been making repeated appeals to settle the case at the earliest for releasing his pensionary benefits.

11. It is stated at the Bar by the learned Counsel for the parties that this communication dated 7.8.03 was not made available before this Court in earlier W.P. (C) No. 2632 of 2000 which was filed in the year 2000. The entire action of the Respondents smacks arbitrariness and malafide. This is manifest that it is designed only to trouble and humiliate this retired officer.

12. More interestingly the affidavit filed on behalf of the Corporation does not reveal that any disciplinary proceeding was ever initiated against him before or after the retirement of the Petitioner for such storage loss occurred during 1975-1977 as reflected in the Corporation''s counter.

13. Pertinent it to mention herein that in spite of the constitutional mandate to render the socio economic justice as enshrined in the Directive Principles of State Policy under Part IV of the Constitution of India as well as a catena of judicial decisions with the Court''s specific direction therein, positive steps directed to be taken by the employer-authorities for immediate or early payment of retiral entitlement to a retired person are still a far cry.

14. Article 39(e) of the Constitution of India envisages that the State shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter evocation unsuited to their age or strength. In the same breath, Article 41 requires the State within the limits of its economic capacity and development to make effective provision for securing the right to work, to education and to public assistance in cases unemployment, old age, sickness and disablement and in other cases of undeserved want when Article 43 obligates the State to endeavour to secure amongst others things, a decent standard of life, full enjoyment of leisure and social and cultural opportunities. Even the Preamble of the Constitution swears to eliminate inequality in income, status and standard of life. The fundamental milestone of socialism is to provide a decent standard of life to all peoples and especially to provide security from cradle to grave. The basic concept of our Constitution is to

bring socio-economic justice amongst the citizens. It is an obligation on the part of the employer to fulfil these directives towards its employees especially on their retirement in order to allow them to lead peaceful retired life with a decent living standard. Can it be said it has happened really in the scenario on the anvil of factual matrix portrayed herein above?

15. It is settled law that pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the hay day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. See D.S. Nakara v. Union of India reported in AIR 1983 SCI 30 paragraph 31 and Subrata Sen and Others Vs. Union of India and Others, paragraph 14.

16. In State of Kerala and Others Vs. M. Padmanabhan Nair, the Apex Court has categorically ruled that the pension and gratuity are no longer any bounty to be distributed by the Government to its employee on their retirement but are valuable right 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 backdrop of above, constitutional and legal provisions read with judicial authorities, what has been disappointing and disgusting all throughout is that the entire attitude of the employer towards the payment of pensionary benefits is all apathetic and rather they are too casual.

18. This Court in Phatik Chandra Choudhury Vs. State of Assam and Others, . while dealing with a similar matter of pension, allowed the writ petition directing the authority to make payment of the pension to the Petitioner within a period of one month from the date of receipt of the certified copy of the order failing which the amount of interest shall be paid @ 18% per annum.

19. In view of what has been discussed and observed, this Court is of the considered view that the Corporation has failed to support its own case of withholding the Petitioner?s retiral benefits by advancing any cogent or plausible reasons. Even after this Court''s verdict in W.P. (C) No. 2632/2000, the Corporation has adopted dilly-dally tactics not to release his entitlement on retirement. Reason for non-payment of retirement benefits unless the storage loss is settled with the F.C.I, by waiving the same by F.C.I., has no leg to stand and the same is hereby disapproved. It is, therefore, a fit case where a direction needs to be issued to release the pen-sionary/retiral benefits to the Petitioner in terms of judicial authorities cited above.

20. Consequently it is ordered that the amount of Rs. 1.40.714.00 with the interest @ 12% per annum on this principal amount to be calculated from 24.3.05, i.e. the date of order passed in W.P.(C) No. 2632/2000 shall be paid to the Petitioner within a period of 3 (three) months from today.

21. Given facts and circumstances of the case at hand, this Court considers it appropriate to impose exemplary costs of Rs. 10.000/- upon the Corporation to be paid to the Petitioner alongwith the payment as indicated above. It is provided accordingly.

22. In the result, this writ petition stands allowed.

