(2009) 12 AHC CK 0144

In the Allahabad High Court

Case No : Special Appeal No.342 of 2000 (S/B)

Tribhuwan Singh APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0144

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant Sri Anil Kumar and Smt. Sangeeta Chandra for the State.

2. This special appeal challenges the order passed by the learned Single Judge by means of which he has directed the recovery of certain amount by adjusting the same from the earned leave encashment account.

3. The brief facts of the case are that the appellant as per his date of birth dated 1st July, 1941 was to retire on 30th June, 1999 from service of the State Government in Irrigation Department. The appellant was, however, allowed to continue in service upto 31st December, 1999 and he was relieved only on the said very date. The appellant was allowed to continue for six months more beyond the date he reached the age of superannuation.

4. The department on taking note of the aforesaid discrepancy passed an order for recovery of Rs.31926/ towards the excess salary paid to the appellant. This amount was sought to be recovered by deducting the amount of gratuity and salary of 115 days of the petitioner. The matter was agitated before the learned Single Judge who on day one without giving opportunity to the State Government to file counter affidavit disposed of the writ petition by directing that no deduction shall be made from gratuity but the adjustment can be made from the account of earned leave.

5. Since no counter affidavit has been filed in the writ petition, as the matter was decided on day one, it has been stated in this appeal that because of reorganization of the office, certain transfers were affected and, therefore, by mistake the appellant was allowed to continue, even after he reached the age of superannuation. The salary slip and service book of the appellant was not traceable which was in transit.

6. Learned counsel for the State further submits that if excess amount has been paid, that is recoverable under paragraph 922 (2) of the Civil Service Regulation and, therefore, the recovery in question was issued.

7. In support of the plea that excess amount which has been paid to the appellant, can not be recovered, the appellant places reliance upon the case of Collector of Madras and another v. K. Rajamanickam, (1995) 2 SCC 98. In this case, the respondent disputed the date of birth and claimed extended date of superannuation. His claim was allowed by the Administrative Tribunal and under the threats of contempt the department was compelled to reinstate him. The department challenged the orders of Tribunal in the Supreme Court. The Court found that the Tribunal''s decision was based on improper evidence. The Court further held that during the period respondent continued no recovery should be made for that period.

8. In the case of State of J&K v. Pirzada Ghulam Nabi, (1998) 9 Supreme Court Cases 102, Supreme Court accepted the claim of the respondents and dismissed the writ petition of the employee which was allowed by the High Court for the payment of salary during the period of enquiry, after the date of superannuation.

9. In the said case, respondent was retired on superannuation w.e.f. 31st May, 1984, the order of retirement was issued on 4.5.1984. He immediately filed writ petition before the High Court and by the interim order High Court stayed the retirement on 31st May, 1984. In the writ petition an order was passed on 26th December, 1984 directing the State to hold the departmental enquiry for the purpose of determining the respondent''s date of birth and directed the respondent to serve till the finalization of the enquiry. On 9th May, 1986 the departmental enquiry gave its finding against the respondent holding that correct date of birth has been entered into service book.

10. The salary for the period from 26.12.1984 to 9.5.1986 was not paid and therefore, another writ petition was filed wherein the High Court directed for payment of salary for the aforesaid period. Supreme Court while rejecting the plea of the respondent held as under:

?4. When the correct date of birth has been found as 4.5.1929, and the respondent was rightly superannuated w.e.f.31.5.1984, we fail to see how a direction can be given directing payment of any salary subsequent to the date of superannuation. The respondent has drawn our attention to the decision of this Court in Collector of Madras v. K. Rajamanickam. In that case, the respondent had already been paid for the period of service rendered by him after the date of superannuation. The department sought recovery of the amount so paid. This Court did not permit recovery of the amount which had already been paid for the service rendered by the employee after the date of superannuation. It, however, directed that his retiral benefit should be computed on the basis of his correct date of superannuation. A similar order has been passed by this Court in State of J&K v. R.C. Choudhary. In the present case, however, no amount has been paid by the appellant to the respondent for the service rendered by the respondent after the date of superannuation. The department was throughout contesting the claim of the respondent. It agreed to hold a fresh inquiry regarding his date of birth, but did not agree to payment of any salary after the respondent''s superannuation as per their records. We fails to see how we can direct any payment for any service rendered during the period of this inquiry after the date of superannuation. When salary is already paid under any misapprehension, the court may be reluctant to order recovery from a retired employee who may but put to hardship if he has to repay the amount. But these considerations do not operate in the present situation. Hence the appeal is allowed and the impugned order is set aside. The writ petition is dismissed.?

11. The Apex Court, thus, observed that retiral benefits should be calculated on the basis of correct date of superannuation and no direction can be issued directing payment of salary after superannuation. Supreme Court also observed that when salary is already paid under any misapprehension, the Court would be reluctant to order recovery from a retired employee who may be put to hardship if he has to repay the amount.

12. The aforesaid two cases arise out of a situation where the date of birth as recorded in service book was challenged by the employee and, therefore, it was not sure as to what should be the date of superannuation of such an employee. The matter was brought to the Court and the decision was given one way or the other. During the pendency of these proceedings before the Court, directives were issued and the incumbents were allowed to continue in service though subsequently it was found that the date of birth as on record was correct. Since the employees were allowed to continue in service in the aforesaid given circumstances, the Court did not allow the recovery of the amount which was paid to them for the period of inquiry.

13. The instant is the case, where the appellant did not at all doubt his date of birth recorded in the service book or his date of superannuation. He did not challenge either the recorded date of birth or his date of superannuation. He did not raise any grievance about the date of birth recorded in service book and therefore, he was fully conscious that he is to serve the State Government only till he reaches the age of superannuation i.e. 58 years, the age prescribed at that time. On reaching the age of superannuation/retirement, a government servant stands retired automatically and it does not call for any prior notice being given from the Government.

14. When a government servant reaches the age of superannuation/retirement,

he ceases to be the government servant and he cannot be allowed to continue nor he can be continued beyond the age of superannuation. Law does not require that notice of retirement should necessarily be given to the government servant though it is usually given informing him that he will reach his age of superannuation on the given date and, therefore, he will be retired on that date. This is done only for the purpose that the incumbent may submit his necessary papers and complete all formalities for receiving pensionary benefits, without delay, but such information can not be taken to be a substantive order which necessarily, has to be given, to the government servant, before his date of retirement, nor it can be said that in the absence of such a notice, the government servant shall not retire nor he will cease to be the government servant, the day he crosses the age of superannuation.

15. The appellant thus despite the fact that he attained the age of superannuation on 30th June, 1999 which fact he knew but without disclosing this fact, taking advantage of reorganization of the department, continued to work even after he stood retired from service. The department also on its turn did not notice the said fact as the service book was not available.

16. In view of the fact that the petitioner was to retire on 30th June, 1999, and there being no dispute regarding his date of birth as recorded in the service book or about his date of retirement, he was not entitled to get any salary thereafter.

17. It is true that if a government servant who has retired is required to refund any amount of money, once paid to him, under some mistaken belief, the retired government servant suffers inconvenience but where a government servant deliberately and knowingly does not bring this fact to the notice of the department, he cannot be allowed, this indulgence of not refunding the excess money paid.

18. It was the bounden duty of the government servantappellant to inform the authority that he has reached the age of superannuation and, therefore, he is no more in service. Formalities on his part were also required to be completed, well in time before his date of retirement, for the release of pensionary benefits.

19. The appellant is thus not entitled to retain the amount paid in excess to his entitlement after the actual date of retirement i.e.31st December, 1999.

20. Learned counsel for the appellant next argued that the appellant may be awarded reasonable interest on delayed payment of the retiral dues,as there was no explanation for the State Government for not paying the dues, after deducting the recovery amount, as soon as the appellant was retired from service.

21. We fail to appreciate that even if there was some outstanding dues which were to be recovered from the appellant, there could hardly be any reason for the respondents, for not paying the rest of the amount within the reasonable time on relieving the appellant from service, and why it did not fix and pay the retrial dues in accordance with law in pursuance of the directions issued by the

learned Single Judge particularly when the State has not chosen to file any special appeal against that order.

22. It was obligatory upon the State Government to release all the post retiral benefits immediately on the retirement of the petitioner after adjusting the amount in question and in any case when the learned Single Judge decided the controversy, the State Government should have acted upon the dictum of the Court, instead of sitting tight over the matter and depriving the appellant from the monetary benefits to which he was legally entitled on his retirement, for such a long time.

23. Merely because some dues are to be recovered from the government servant, the State Government cannot withhold the payment of post retiral dues nor can refuse to fix the pension on the ground that the matter is either subjudice or the no dues certificate has not been submitted by the government servant after giving his consent for deducting the amount which is being sought to be recovered.

24. In case where the State Government finds that some dues/money is recoverable from the retired government servant, it has to make payment of the entire dues after withholding the amount which is said to be due and recoverable. This action does not require any order from the Court or from any superior authority and the concerned authority is under obligation to release the provident fund etc. and fix the pension according to the own assessment of the State Government after withholding the amount which is due.

25. Of course in a case where the amount claimed for recovery, is disputed by the government servant, he may take recourse to appropriate proceedings in appropriate forum and if any order is passed, interim or otherwise, then that order has to be complied with. Merely because a writ petition has been filed or the matter is under challenge in some other appropriate forum that will also not give the State Government any right to withhold the genuine/post retiral dues which shall be paid, forthwith after deducting the amount which is recoverable, according to State Government.

26. In the case in hand, the appellant disputed the recovery and filed the present writ petition. The appellant was relieved from duty vide order dated 31st December, 1999. His post retiral dues, as were permissible, ought to have been released soon thereafter. The appellant filed the writ petition sometime in year 2000 which was decided on 2nd March, 2000, thus there cannot be any explanation nor there is any, for not making the payment of the entire dues, after adjusting the amount as per the directions issued by the learned Single Judge at least after 2nd March, 2000, promptly, within a reasonable time.

27. It is the appellant who has come in appeal against the aforesaid order by means of which the adjustment was directed to be made from the account of earned leave and not the State Government. It is again the appellant and not the State Government who felt dissatisfied with the order passed by the learned

Single Judge and there being no direction to the contrary in the special appeal, the State Government, could not have delayed the payment to the appellant, for no rhyme or reason.

28. There can hardly be any justification for depriving the appellant from the service benefits including the provident fund etc. for such a long time i.e. more than eight years.

29. Under the circumstances, the appellant, being senior citizen also, is entitled to appropriate interest upon delayed payment from the date when the amount became due till the payment is made, he, therefore, be paid interest at the rate of 10.5 per cent per annum, which we are informed is prevailing Bank''s rate of interest, from the date when the amount became due till the date, it is actually paid.

30. The amount of Rs.12698/ which has so far been recovered from the appellant shall also be adjusted.

31. The appellant shall complete all formalities as may be required and disclosed by the authorities for payment of dues.

32. We further direct that all the amount along with interest shall be paid to the appellant within three months from the date of receipt of certified copy of this order. The pension shall also be fixded accordingly and paid. The provisional pension if is not being paid shall be fixed and paid with effet from the current month.

33. Subject to the aforesaid directions, the special appeal is dismissed.

(Appeal dismissed)

