

(2006) 02 AHC CK 0183

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23797 of 2005

Ujagar

APPELLANT

Vs

The Chairman/Executive Officer, Nagar Palika Parishad and
Others

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2006) 2 AWC 1968 : (2006) 3 UPLBEC 2547

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Indal Singh, for the Appellant; Rakesh Bahadur and Avinash Misra,
for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The petitioner was appointed on the post of Safai Karmchari in Nagar Palika Parishad, Shikohabad District Firozabad on 1.8.1972 on permanent basis. He was issued a notice on 30.6.1992 by the then Executive Officer of [he Nagar Palika Parishad informing him that he shall retire from service after three months on 30.9.1992. The petitioner accordingly retired from service on 30.9.1992. No dues were pending against the petitioner at the time of his retirement. After his superannuation the petitioner moved representations dated 6.7.2004 and 17.11.2004 for release of his pension and other retiral dues including gratuity, fund and group insurance, but no payment was made to him. Aggrieved the petitioner has come up in this writ petition praying for a writ in the nature of mandamus commanding the respondents 1, 2 and 3 to pay the pension and other retiral benefits as group insurance, provident fund, gratuity and leave encashment etc. to the petitioner.

3. The learned Counsel for the petitioner submits that Regulation 13(2) of the

U.P. Nagar Palika (Non-Centralized Service Retirement) Benefits Regulations, 1984 (hereinafter referred to as the Regulations) contains a mandatory provision in respect of sanction and payment of pension and other retiral benefits before six months from the date of retirement of an employee of Nagar Palika Parishad. Sub-clause (2) of Regulation 13 of the Regulations is as under:

(2). Akendriyata sewa ko pratyek paddhari ke sewanivriti ke dinank se ek varsh poorva sambaddha vibhagadhyaksh prapatra "6" me uske avedan patra ko aur uski pension aur upaclan se sambandhit anya abhilekhon ko poorva karenge aur unhe nagar palika ke lekhakar ko bhejenge. Lekhakar pension aur upadan ki dhanrashi janch karne ke paschat use adhikari ke madhyam se nagar palika board ke adhyaksh ko prastut karenge. Jo pension aur upadan ke patradi ke samiksha karenge is patradi ki sanviksha usi reeti se kee jayegi jis reeti se municipal account board ke adhm palika nidhi ke dawi ki pariksha kee jati hai. Adhyaksha is patradi ko padadhyaksh ki sewa nivriti ke dinank se 6 mah poorva parikshak sthaniya nidhi lekha uttar pradesh ke paas pension aur upadan ki dhanrashi ke satyapan aur pusti ke liye bhejega. Parikshak sthaniya nidhi lekha, uttar pradesh dwara pension aur upadan ke dhan ka satyapan aur pushti kiye jane ke paschat in patradi ko manchal ayukta ke pas pension aur upadan ke sweekanti aur bhugtan ke liye presit kiya jayega.

4. It is stated that in spite of the aforesaid mandatory provisions respondent No. 1 has till date neither complied with the aforesaid regulation nor submitted the record and documents pertaining to retirement of the petitioner before respondent No. 2 for sanctioning the pension and other retiral benefits though he was morally and legally bound to submit the same six months prior to the retirement of the petitioner so that the petitioner could have been given pension at the time of his retirement. It is also stated that the petitioner had many times presented himself before respondent No. 1 and requested that if any document is required to be completed he was ready to complete all the formalities.

5. It is urged that payment of post-retiral benefits are not dependent upon the discretion of the respondents as retiral benefits are not given by way of grace or bounty or largess. It is a statutory and fundamental right of the petitioner to get his retiral dues under Article 21 of the Constitution, as they are the benefits earned out of his long and devoted services put in by the petitioner with the respondents. The petitioner has a right to live with dignity and non-payment of these dues is hit by Article 21 of the Constitution.

6. The petitioner also relied upon para 20 of the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), wherein the Constitution Bench relied upon the decision rendered in Deokinandan Prasad Vs. The State of Bihar and Others, of the aforesaid judgment rendered by the Hon'ble Supreme Court in D.S. Nakara v. Union of India is as under:

The antiquated notion of pension being a bounty, a gratuitous payment

depending upon the sweet-will or grace of the employer not claimable as a right and therefore no right to pension can be enforced though Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan. Prasad v. State of Bihar, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh.

7. The learned Counsel for the respondents on the other hand relying upon the averments made in para 5 of the counter affidavit has submitted that the retiral dues of the petitioner count not have been paid to him as he had not completed all the formalities and had not submitted a duly filled in form for payment of pension etc. It is stated that the pension papers of the petitioner are incomplete only on account of default by the petitioner. It is stated that the petitioner was required to submit duly completed papers for payment of his provident fund. However, non-compliance of these formalities and contributions required to be made by him, as such he is not entitled for the payment of pensionary benefits till he does so.

8. It is urged that pension rules were framed only in the year 1984 and thereafter it was decided that pension would be paid to the employees of the Nagar Palika Parishad who were working prior to the enforcement of the rules. The employees under the rules were required to deposit certain amount from their salary which was to be deposited in their pensionary fund and since the petitioner has not deposited his pensionary contribution from his salary therefore he is responsible for the delay in payment of his retiral dues.

9. The learned Counsel for the respondents has also drawn the attention of the Court to paras 10 and 11 of the counter affidavit in which it has been averred that the petitioner's insurance and leave encashment amounts have been paid to him long back. As soon as the petitioner completes the necessary formalities with regard to his pension, his gratuity and pension shall be paid to him which could not be paid to him only because of non-cooperation of the petitioner.

10. From the arguments of the parties and a perusal of the writ petition, counter affidavit and rejoinder affidavit, it appears that the parties are levelling allegations against each other for non-compliance of formalities/contribution for payment of retiral dues. The fact whether the fault lies with the petitioner or the respondents cannot be ascertained in writ jurisdiction without there being any supportive evidence - documentary or oral, hence it would be just and equitable to direct the petitioner to appear before respondent No. 1 on 8.3.2006 to complete all the remaining formalities required for payment of his retiral dues.

11. After the petitioner appears before him on 8.3.2006 for payment of pensionary benefits etc., respondent No. 1 shall ensure that all the papers of the petitioner are duly filled in and contributions made where required. The papers of the petitioner for payment of retiral benefits shall immediately be processed and forwarded for payment of retiral benefits to be paid to the petitioner within a period of four months from 8.3.2006 with interest in accordance with law.

12. The petition is accordingly disposed of. No order as to costs.