
(2009) 12 AHC CK 0344
In the Allahabad High Court

Vijendra Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Citation : (2010) 2 AWC 1780

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Petitioner was a Librarian in Lala Rajpat Rai Memorial Medical College, Meerut which is affiliated to Meerut University and is run and managed by State Government. Petitioner retired on 31.8.2001. The dispute in this writ petition relates to retiral benefits of the petitioner which are not being paid. According to the respondents petitioner did not formally handover the charge and did not submit no dues certificate hence retiral benefits including pension have not been paid to him. Petitioner's case is that he completed the requisite formalities at the time of his retirement. Through this writ petition orders dated 9.9.2002, 19.10.2002 and 14.11.2002 have been challenged. The first order has been passed by the Principal of the College. Through the said order petitioner's representation was decided in pursuance of direction of this Court issued in an earlier writ petition which had been filed by the petitioner. In the said order it is mentioned that no dues certificate is required to be submitted which has not been submitted by the petitioner, petitioner has not formally handed over charge of the Library. It is also mentioned that books of about Rs. 9 lacs are missing from the Library for which the petitioner is responsible. It has also been mentioned that there is no objection in paying pension and gratuity however, charge must properly be handed over by the petitioner and he must submit no dues certificate. The other order dated 19.10.2002 has also been passed by the Principal of the College. That was a letter written by the Principal to the petitioner in reply to petitioner's letter dated 16.10.2002. In that letter it is

mentioned that petitioner even though reached the Library however, he declared that neither he had come to handover charge nor he would sign any letter. It was further directed that on 23.10.2002 by 2.30 p.m. petitioner should reach the library and handover charge to Shri Chandra Mohan Bahuguna. The third letter was also written by the Principal in the similar fashion and it was mentioned therein that he must formally handover the charge.

3. In the counter-affidavit it has been stated that Enquiry committee was set up to examine the matter of loss of books. The subsequent incumbent had given list of more than 2,000 missing books which has been annexed alongwith counter-affidavit. Enquiry committee also submitted its report on 26.10.2001, copy of which is part of Annexure-9 to the counter-affidavit and the said copy was sent to the petitioner on 10.3.2003. In para 25 of the counter-affidavit it has been stated that notice dated 10.3.2003 was sent alongwith Enquiry committee's report. The said para has been replied in para 8 of rejoinder-affidavit. The reply is that petitioner was not in service hence no charge-sheet could be served upon him. It has also been stated in the counter-affidavit that official residence allotted to the petitioner had not been vacated by him. In para 29 of rejoinder-affidavit it has been stated that even though petitioner has removed his assets from the house but he is keeping it under his lock and he would handover the same if it is allotted to any other person. It is a fantastic, utterly baseless plea.

4. In para 28 of the rejoinder-affidavit it has been stated that petitioner was provided copy of inquiry committee's report alongwith list of missing books but he did not give any reply. Even after retirement the goods/items misappropriated by an employee may be sought to be recovered from him and in case the said items are not returned, the cost thereof may be recovered from retiral dues. However for that proper inquiry is required. As the petitioner admittedly did not give any reply hence it amounts to his admission regarding his involvement in misappropriation of books by him. In the enquiry report it is mentioned that inspite of sufficient service petitioner did not appear before the enquiry committee. In the notice given by advocate of the petitioner the fact of receiving notice by the enquiry committee was admitted. It is also mentioned in the enquiry report that the list of missing books (of more than 2,000 in number) submitted by the next incumbent Shri Chandra Mohan Bahuguna was also supplied to the petitioner however, he did not give any reply to that.

5. On the one hand enquiry against the petitioner was not initiated after his retirement with the permission of the requisite authority as required by Regulation 351A of Civil Service Regulations. On the other hand, petitioner did not formally give charge of the library to his junior/next incumbent. If an employee has caused pecuniary loss to the employer, amount may be recovered from him and even from his retiral dues. However, for the said purpose there must be a proper inquiry in a legal manner. By virtue of Regulation 351A of Civil Services Regulations, enquiry after retirement of a Government employee can be initiated with the approval of the Governor. In the instant case, it was not done.

6. Relevant part of the Regulation is quoted below:

351A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or Judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on reemployment after retirement:

Provided that:

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment--

(i) shall not be instituted save with the sanction of the Governor ;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings ; and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

7. Petitioner is also guilty of not handing over possession of the official quarter to the employer.

8. Accordingly, keeping the above facts in view and in the interest of Justice, it appears that most suitable order would be to direct payment of retiral dues after deducting an amount of Rs. 25,000 and the penal rent of official quarter from the date of petitioner's retirement till actual handing over of the possession of the same to the employer. After such deductions the remaining retiral dues shall positively be paid within three months and in case, petitioner is entitled to recurring pension, then the same shall also be continued to be paid after three months from the date of filing of certified copy of this order before the appropriate authority failing which since after three months till actual payment 1% per month interest shall be payable thereupon.

Writ petition is, accordingly, disposed of as above.