(2000) 02 AP CK 0047

In the Andhra Pradesh High Court

Case No : WA No. 2034 of 1999

Y. Tatachary APPELLANT

Vs

Acharya N.G. Ranga Agricultural University, Hyd. RESPONDENT

Date of Decision : 07-02-2000

Acts Referred:

University Teachers Pension Rules, 1992 — Rule 44, 9(4)

Citation : (2000) 2 ALD 567 : (2000) 2 ALT 210 : (2000) 1 APLJ 439

Hon'ble Judges : M.S. Liberhan, C.J;I. Venkatanarayana, J

Bench : Division Bench

Advocate : Mr. G. Vidya Sagar, for the Appellant; Mr. B. Siva Reddy, SC for Agricultural University, for the Respondent

Judgement

M.S. Liberhan, C.J.—This writ appeal is directed against an interim order passed by the learned single Judge, pending writ petition.

2. With the consent of the learned Counsel for the parties, the writ petition itself is taken up for final disposal. The facts of the case that are not disputed and necessary to dispose of the writ appeal as well as the writ petition are as follows:

The appellant-writ petitioner though retired from service of the respondent-University as Horticulturist (Teacher) on 31-7-1998, he has neither been paid either pension or the gratuity, and they have been withheld without any reason. No departmental enquiry or judicial proceedings against the petitioner for any delinquency, misdemeanor or mis-conduct or either for recovery of any dues or for recovery of any money for any loss caused by him, have ever been initiated against him till date. The only ground on which the University withheld the pension and gratuity of the petitioner is that at the time of availing study leave to complete Ph.D., he entered into some sort of a bond with the University stating that in the event of his resigning from service without returning to duties after expiry of study leave or at any time within a period or 5 years after his return to duty or failing to complete the course and submit the thesis within three years from the date of joining, he shall refund to the University on demand a sum of

Rs.60,000/-. In view of the above bond executed by the petitioner having been violated by him, the University contends that it is entitled to recover Rs.60,000/- from the petitioner as he failed to complete the Ph.D. It is to be noted, that even for that, no proceedings have ever been initiated against the petitioner till date, except correspondence inter se the parties.

3. Insofar as payment of pension is concerned, the employees of the University i.e., Teachers, are governed by Pension Rules for University Teachers, 1992 (hereinafter referred to as ''the 1992 Rules''). Rule 9(4) of the 1992 Rules in verbatim runs thus:

"In the case of a teacher of the University who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 44 shall be sanctioned."

4. In the case on hand, no provisional pension has been sanctioned to the petitioner, but it is stated at the bar by the learned Counsel for the respondent-University that provisional pension has been sanctioned.

5. Rule 44 of the 1992, Rules runs thus:

"Provisional Pension where departmental or judicial proceedings may bepending:-

(1)(a) In respect of a teacher of the University referred to in sub-rule (4) of Rule 9, the Audit Officer/Head of Office shall pay the provisional pension not exceeding the minimum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Teacher of the University, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be paid by the Audit Officer/Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the teacher of the University until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

(2) Payment of provisional pension made under sub-rule (f) shall be adjusted against final retirement benefits sanctioned to such teacher of the University upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

6. A conjoint reading of Rule 9(4) and Rule 44 of tlie 1992, Rules makes it clear that they envisage and mandate payment of provisional pension in cases where departmental or judicial proceedings may be pending, and it also confers a substantive right upon the University to withhold payment of pension or gratuity

in certain circumstances. In the instant case, no proceedings, either departmental or judicial, are pending against the petitioner or have ever been initiated against him till date.

7. An employee is entitled to pension and gratuity earned by him on his superannuation. The very object of payment of pension to an employee, who served the University faithfully, is to mitigate his financial constraints and enable him and his family enjoy a happy life after retirement. It is not disputed that the Legislature paid special attention to the pensionary benefits of an employee viz., that an employee is entitled to pension in accordance with the statutory rules governing and it can be denied only in cases where the employee was awarded with punishment of stoppage of pension, and also in cases where the pension is sought to be aliached in execution of a decree for recovery of any amount by a Competent Court and for the recovery of the loss caused by the employee during his employment. It is well-settled principle of law, and it cannot be gainsaid that not more than one-third of the pension can ever be deducted even for recovery of any loss caused by an employee during the course of his/her employment.

8. Rule 44 mandates that gratuity shall not be paid to the teacher of the university unless the departmental proceedings or judicial proceedings are concluded and final orders thereon are passed. In the instant case, admittedly, there is no departmental proceedings or judicial proceedings, pending against the petitioner in which final orders are being awaited.

9. A person cannot be a prosecutor, defender and a Judge in his own cause. The respondent-University cannot be permitted to be a Judge of its own cause which runs contrary to the maxim Nemo Uniquam Judit In Se. Admittedly the University has not initiated any proceedings against the petitioner in accordance with law for his alleged violation of the bond said to have been executed by him before proceeding on study leave.

10. Nothing has been shown to us that the Universily has the power to take and decide a cause in its own hands that a particular employee is in dues of certain amounts that are recoverable from him. Even if the University comes to such a decision, it can recover the amount only by resorting to judicial process of law.

11. We fail to comprehend under what statutory, legal, moral technical rights the Universily has denied the retiral benefits like pension and gratuity to the petitioner. The University cannot withhold the retrial benefits of its employee unless it is specifically vested with such powers. The authority cannot assume the powers, which are not statutorily conferred upon it.

12. On our persistent plea as the Bar about the power of the authority even by way of executive instructions to withhold the pension or gratuity in cases where there are no departmental or judicial proceedings, the learned Counsel for the University has failed to show any such executive instructions which give such powers.

13. The petitioner had retired in the year 1998, and has been knocking at the doors of the University since then to get his retiral benefits sanctioned for his family survival in the society in these days of high cost of living, but he always met with cold face.

14. Our above views further gain support from the decisions of the Supreme Court in the cases of State Bank of India Vs. A.N. Gupta and Others, , Bhagirathi Jena v. Board of Directors, OSFC and others 1999 (4) sc 9.

15. For the reasons recorded above, we allow the writ appeal as well as the writ petition with costs quantified at Rs.5,000/-(Rupees Five Thousand only) and mandate the respondent-University as envisaged by the 1992 Rules, to release the retiral benefits i.e., pension, gratuity, provident fund etc., to the petitioner within a period of one month with 12 per cent compound interest from the date the amount fell due for payment till the date of payment.

