

STATE OF UTTAR PRADESH AND OTHERS

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v.

DHIRENDRA PAL SINGH

(Civil Appeal No.10866 of 2016)

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NOVEMBER 15, 2016

[J. CHELAMESWAR AND PRAFULLA C. PANT, JJ.]

Service Law:

Pension and gratuity – Withholding of – Propriety, in absence of departmental enquiry or any proceedings u/Art. 351A, UP Regulations – Respondent, an Assistant Store Superintendent with the Irrigation Department of appellant-State – Discrepancies in the stock of the Departmental Store– Part of respondent’s pension and gratuity withheld on the ground of alleged misconduct committed by him resulting in loss to the public exchequer – Recovery order quashed by High Court – On appeal, held: Admittedly, no departmental enquiry was initiated against the respondent for the misconduct, if any, nor any proceedings were drawn as provided in Art.351A – The document which was the basis of enquiry and was relied upon by the State authorities itself reflected that the document showing discrepancy in the stock was dated about more than five months after the retirement of the respondent – Therefore, High Court justified in quashing the recovery order – UP Civil Service Regulations – Art. 351A.

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Payment of Gratuity Act, 1972 – s.7(3-A) – Interest on delayed payment of gratuity not to be given if the delay is due to the fault of employee and the employer has obtained permission in writing, from the controlling authority, for the delayed payment on this ground – Held: On facts, appellants-employer had not sought any permission from controlling authority – Further, there was no delay on part of employee as he made representations where after he filed a suit with respect to withheld amount of gratuity and pension – Direction given for payment of interest @ 6% p.a. on unpaid amount of pension and interest @ 8% p.a. on unpaid amount of gratuity.

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10866 of 2016.

From the Judgment and Order dated 31.05.2016 of the High Court of Judicature at Allahabad in SAD No. 408 of 2016.

B Vishwajit Singh, Ardhendumauli Kumar Prasad, Aishwarya Pathak, Advs., for the Appellants.

V. K. Garg, Sr. Adv., Niraj Kr. Sharma, Mrs. Noopur Dubey, Mrs. Priyanka Dixit, Ajay Kumar Singh, Advs., for the Respondent.

The following Order of the Court was delivered

C **ORDER**

1. Leave granted.

D 2. This appeal is directed against order dated 31.05.2016, passed by the High Court of Judicature at Allahabad, in Special Appeal Defective No. 408 of 2016, whereby the intra-court appeal was dismissed affirming the order dated 10.12.2015 passed by the learned single Judge in Writ-A No. 49921 of 2015.

E 3. Brief facts of the case are that respondent Dharendra Pal Singh was Assistant Store Superintendent with the Irrigation Department of the State of Uttar Pradesh: He stood retired on 30.06.2009 on attaining the age of superannuation. At the time of his retirement GPF, leave encashment and 70% of gratuity and pension were cleared, but rest of the 30% of gratuity and computation of pension were held up. The stand of the appellants is that there were some discrepancies in the stock in the store of the department and some enquiries were going on as to loss caused to the public exchequer. After making representations when the remaining amount of gratuity and pension was not cleared, the respondent filed Civil Suit No. 338 of 2012. However, the same was dismissed as withdrawn as the appellants/State authorities, vide order dated 23.07.2015 finally, on the basis of alleged discrepancies withheld the remaining part of gratuity and pension of the respondent and, vide order dated 06.08.2015, directed recovery of Rs.7,26,589/-, from the retiral dues payable to the respondent, which was challenged in the writ petition.

H 4. There was no departmental enquiry initiated against the respondent and after about more than six years order as to finally

withholding of remaining pension on the ground of alleged misconduct and the recovery was directed to be made from the respondent after serving a notice on him. Learned single Judge of the High Court found that the orders challenged in the writ petition cannot be sustained in law as neither recourse of Article 351-A of UP Civil Service Regulations was resorted to, nor any departmental enquiry was held. Learned single Judge further directed that the remaining amount of gratuity and pension of the respondent shall be released with interest at the rate of 10% p.a. on the sum withheld by the State authorities. The Division Bench, in special appeal filed by the State, found no illegality in the order passed by the learned single Judge.

5. We have heard learned counsel for the appellants and the respondent.

6. Article 351-A of UP Civil Service Regulations reads as under: -

“351-A. 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 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 re-employment 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 with the sanction of the Governor,

(ii) shall be in respect of 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

A on which an order of dismissal from service may be made.

(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and

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(c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Explanation – For the purposes of this article –

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(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and

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(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and

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(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.”

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7. Admittedly, no departmental enquiry was initiated in the present case against the respondent for the misconduct, if any, nor any proceedings drawn as provided in Article 351-A of UP Civil Service Regulations. Learned single Judge of the High Court has observed that the document which is the basis of enquiry and relied upon by the State authorities, copy of which was Annexure C.A.1 to counter affidavit filed in the writ petition, itself reflected that the document showing discrepancy in the stock was dated 26.12.2009, i.e. after about more than five months of retirement of the respondent. In the circumstances, keeping in view Article 351-A of UP Civil Service Regulations, we agree with the High Court that the orders dated 23.07.2015 and 06.08.2015 were liable to be quashed and, to that extent, we decline to interfere with the impugned order.

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8. Learned counsel for the appellants argued that the High Court

has erred in awarding interest at the rate of 10% per annum on the sum due to the respondent. In this connection, it is submitted that the suit was filed by the respondent only in 2012 and that too was withdrawn. A

9. We have considered the submissions of learned counsel for the appellants and reply given by learned counsel for the respondent.

10. In *State of Kerala and others v. M. Padmanabhan Nair*¹, this Court has held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In said case the Court approved 6% per annum interest on the amount of pension decreed by the trial court and affirmed by the High Court. As to the rate of interest on amount of gratuity Section 7(3-A) of Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification specify. It further provides that no such interest shall be payable if the delay in payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground. In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling authority. As to the delay on the part of employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In *Y.K. Singla v. Punjab National Bank and others*², this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest at the rate of 8% per annum shall be paid on the amount of gratuity. B
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11. In the light of law laid down by this Court, as above, and further considering the facts and circumstances of the case, we modify the impugned order passed by the High Court in respect of interest directed to be paid on the amount of withheld gratuity and pension. We direct that the appellants shall pay interest at the rate of 6% per annum G

¹ (1985) 1 SCC 429

² (2013) 3 SCC 472

A on the unpaid amount of pension from the date it had fallen due and interest at the rate of 8% per annum on the unpaid amount of gratuity from the date of retirement of the employee.

12. With the modification, as above, in the impugned order passed by the High Court, this appeal stands disposed of. No order as to costs.

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Divya Pandey

Appeal disposed of.