

Court No. - 33

Case :- WRIT - A No. - 12201 of 2019

Petitioner :- Kallu Ram

Respondent :- State of U.P. through its Chief Secretary, Lucknow and others

Counsel for Petitioner :- Ravi Pratap Singh

Counsel for Respondent :- C.S.C., Udai Bhanu Singh

Hon'ble J.J. Munir,J.

1. Parties have exchanged affidavit.
2. Admit.
3. Heard forthwith.
4. Heard Mr. Ravi Pratap Singh, learned Counsel for the petitioner, Mr. Udai Bhanu Singh, learned Counsel for respondent Nos. 2 and 3, and Mr. Yashwant Singh, learned Standing Counsel appearing on behalf of respondent No. 1.
5. This writ petition has been filed, seeking issue of a *mandamus*, ordering the respondents to pay the petitioner's gratuity in the sum of ₹2,45,428 and leave encashment in the sum of ₹5,31,758. In the return filed on behalf of respondent Nos. 2 and 3, it is disclosed in paragraph No. 12 that the total sum of gratuity payable was a sum of ₹7,01,243.50, out of which, a sum of ₹5,25,000 has been paid, leaving a balance of ₹1,75,311. So far as dues on account of leave encashment are concerned, it is pleaded in paragraph No. 13 that the said sum of money, though due to the petitioner, cannot be paid, because the respondent-Bank have suffered financial losses and are not in a position to pay the sum. As regards gratuity, the justification for withholding the balance of ₹1,75,000 is that the petitioner sanctioned a loan to one Brahma Dev Tiwari, without following the prescribed rules and regulations necessary to safeguard the Bank's

interest. The loan turned a bad debt and has caused loss to the Bank. It is urged that it is on account of the said loss caused to the Bank that the petitioner's gratuity in part has been withheld.

6. It is argued by learned Counsel for the petitioner that the loan was granted to Brahma Dev Tiwari in due course of business, observing all formalities. If the loan became a bad debt, it is part of the Bank's business, regarding which, there is a mechanism to recover. Learned Counsel for the petitioner has pointed out that the respondent-Bank have issued a recovery certificate against Brahma Dev Tiwari for the recovery of a sum of ₹2,89,075. Brahma Dev Tiwari has filed Writ - C No. 49333 of 2013 before this Court, where the Division Bench granted him protection, subject to payment of the outstanding loan dues in six quarterly installments. According to the petitioner, the said loan has, therefore, been realized. In paragraph No. 10 of the writ petition, it is averred that Brahma Dev Tiwari has informed the petitioner that he has deposited the entire loan dues. In the counter affidavit filed on behalf of the Bank, there is a para-wise reply, but a bald and a vague denial to the assertions in paragraph No. 10 of the writ petition.

7. Be that as it may, the totality of circumstances show that there is *ex facie* no culpability of the petitioner in sanctioning a loan, which the loanee has not paid in good time, for his own reasons. Due process has been adopted against the defaulting loanee and a recovery certificate issued, whereagainst this Court, on a writ petition, has interfered to grant the loanee indulgence of payment in installments.

8. On an overall view, there is nothing to entitle the Bank to stop any part of the petitioner's gratuity on account of the above transaction. Moreover, during the period that the petitioner was in service, no proceedings were taken against the petitioner for sanctioning loan to a customer, without observing the required regulations of practice of the Bank to safeguard their interest. Gratuity

becomes payable on the date of retirement and it cannot be withheld for months and years together.

9. The petitioner retired on 31.07.2015, and there is absolutely no justification for withholding his gratuity in whole or part by the respondents. So far as leave encashment is concerned, the justification put forward by the respondent-Bank that their financial condition does not permit them to meet their liability in this regard is stated to be rejected. It is well known that for the payment of dues of an employee on account of services rendered, particularly, post-retiral dues, paucity of funds with the employer is absolutely no defence.

10. In this connection, reference may be made to the decision of the Supreme Court in **Haryana State Minor Irrigation Tubewells Corporation and others v. G.S. Uppal and others, (2008) 7 SCC 375**, where it has been held:

“33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan v. Union of India* [1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541] and *Indian Overseas Bank v. Staff Canteen Workers' Union* [(2000) 4 SCC 245 : 2000 SCC (L&S) 471]. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events discussed above clearly shows that the employees of the Corporation have been treated on a par with those in Government at the time of revision of scales of pay on every occasion.”

11. Also, of illuminating guidance is the decision of the Supreme Court in **Punjab State Cooperative Agricultural Development Bank Limited v. Registrar, Cooperative Societies and another, (2022) 4 SCC 363**, where it is observed:

"56. So far as the submission made by the learned counsel for the appellant about the financial distress of the appellant Bank to justify the impugned amendment to say that it may not be possible to continue the grant of pension any more is concerned, suffice to say, that the rule-making authority was presumed to know repercussions of the particular piece of subordinate legislation and once the Bank took a conscious decision after taking permission from the Government of Punjab and Registrar, Cooperative, introduced the pension scheme with effect from 1-4-1989, it can be presumed that the competent authority was aware of the resources from where the funds are to be created for making payments to its retirees and merely because at a later point of time, it was unable to hold financial resources at its command to its retirees, would not be justified to withdraw the scheme retrospectively detrimental to the interests of the employees who not only became member of the scheme but received their pension regularly at least up to the year 2010 until the dispute arose between the parties and entered into litigation.

57. In our view, non-availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour."

12. In the circumstances, this writ petition **succeeds** and shall stand **allowed with costs**, which we quantify at **₹10,000**. A *mandamus* is issued to Secretary/Mukhya Karya Palak Adhikari, Zila Sahkari Bank Limited, Jaunpur, the Chairman, Zila Sahkari Bank, Jaunpur, and the Commissioner and Registrar, Cooperative Society, U.P., Lucknow to ensure, amongst themselves, payment of the petitioner's balance gratuity and leave encashment dues, within six weeks of date.

13. Let the Registrar (Compliance) communicate this order to the Secretary/Mukhya Karya Palak Adhikari, Zila Sahkari Bank Limited, Jaunpur, the Chairman, Zila Sahkari Bank, Jaunpur, and the Commissioner and Registrar, Cooperative Society, U.P., Lucknow **within 72 hours next**.

Order Date :- 31.10.2023

I. Batabyal