

Court No. - 6

Case :- WRIT - A No. - 3738 of 2024

Petitioner :- Narendra Kumar Tiwari

Respondent :- State Of U.P. Thru. Its Prin. Secy. Home Deptt. Lko. And 3 Others

Counsel for Petitioner :- Arun Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. Under challenge is the order dated 03.01.2020, a copy of which is Annexure-1 to the petition, whereby the claim of the petitioner for being paid interest on gratuity has been rejected.
3. Contention of the learned counsel for the petitioner is that his father Sri Arun Kumar Tiwari, who was working on the post of Head Constable, had retired on attaining the age of superannuation on 31.07.2001, however, the gratuity was not released on the ground of pendency of two criminal cases considering the provisions of Regulations 351-A of the Civil Services Regulations.
4. Sri Arun Kumar Tiwari had filed a **Writ Petition No.9727(SS) of 2018** in re : **Arun Kumar Tiwari vs State of U.P. & Ors** challenging the orders dated 22.09.2017 and 21.09.2017, whereby his gratuity had been stopped on the ground that criminal cases are pending against him.
5. The writ court vide judgment and order dated 30.04.2018, a copy of which is Annexure-8 to the writ petition, set aside the said orders and directed the respondents to pay the gratuity amount to the petitioner within a period of one month.
6. In pursuance thereof the gratuity was paid to Sri Arun Kumar Tiwari on 19.12.2018. Subsequent thereto Sri Arun Kumar Tiwari died on 08.04.2022.
7. During the life time of Sri Arun Kumar Tiwari, the respondents

have passed the order impugned dated 03.01.2020 whereby his claim for being paid interest on withheld amount of gratuity is rejected.

8. Being aggrieved, son of Sri Arun Kumar Tiwari namely the petitioner has filed the instant writ petition.

9. Argument of the learned counsel for the petitioner is that when the respondents on their own accord continued to withhold the gratuity as was due to his father despite he having retired on attaining the age of superannuation on 31.07.2001 and the same had only been paid on 19.12.2018 in pursuance of the direction issued by the writ court vide order dated 30.04.2018 as such the petitioner would be entitled for payment of interest on the withheld amount of gratuity from the date the same became due i.e. on retirement of his father in July, 2001 till the actual payment i.e. 19.12.2018.

10. In this regard, reliance has been placed on a decision of this Court in the case of **Brajendra Kumar Singh vs State of U.P. & Ors** passed in Writ A No.2461 of 2015, decided on 17.08.2022 as well as decision of this Court in the case of **Devendra Kumar Sharma vs State of U.P.** passed on Writ A No.15093 of 2020, decided on 08.10.2021.

11. Learned counsel for the petitioner has also argued that of the two criminal cases that were pending against his father, one criminal case has resulted in an acquittal vide judgment and order dated 26.04.2005 by the competent criminal court while the other criminal case continued to remain pending against his father and has been abated vide order dated 06.07.2022, subsequent to death of his father on 08.04.2022.

12. From the arguments as raised by the learned counsel for the parties and from perusal of the record, it clearly emerges that father of the petitioner had retired on attaining the age of superannuation on 31.07.2001 yet his gratuity was not paid on account of pendency of two criminal cases against him. One of the criminal cases has resulted in his acquittal vide order dated 26.04.2005 yet another criminal case

continued to remain pending against him. His claim for payment of gratuity had been rejected vide orders dated 21.09.2017 and 22.09.2017. Being aggrieved he had filed Writ Petition No.9727(SS) of 2018, and this Court vide judgment and order dated 30.04.2018 had directed the respondents to pay gratuity to him. The gratuity has been paid on 19.12.2018. Sri Arun Kumar Tiwari died on 08.04.2024 and the second criminal case which was pending against him has been abated subsequently on 06.07.2022, a copy of which is Annexure 5 to the petition.

13. Instant writ petition has been filed by the son of the deceased employee claiming interest on the gratuity amount from the date of retirement till the date of actual payment.

14. Whether the gratuity of a retired employee can be withheld on account of pendency of departmental proceedings or criminal proceedings, is no longer *res integra* having been settled beyond doubt by the Full Bench of this Court in the case of **Shivagopal vs State of U.P. & Ors** : 2019 SCC OnLine All 2239 wherein upon a reference being made, the Full Bench of this Court has held as under:-

"119. In view of the aforesaid facts and circumstances, the two questions which had come up for our opinion are answered as under:—

(i) A government employee is not entitled to death cum retiral gratuity unless the conclusion of the departmental proceedings or the enquiry by the Administrative Tribunal or judicial proceedings which includes both civil and criminal.

(ii) The law as laid down in Jai Prakash (Supra) is the correct law whereas all other decisions said to be in conflict with it are actually not in conflict rather do not address to the legal position with which we are concerned in these writ petitions but with pension alone or if with gratuity on the basis of the equity and that too without reference to regulation 919-A and as such would not apply in the matter of payment of gratuity to the government employee."

15. Full Bench of this Court in the aforesaid judgement has held that a government employee is not entitled to death cum retiral gratuity **unless the conclusion of the departmental proceedings or the enquiry by the Administrative Tribunal or judicial proceedings which includes both civil and criminal.**

16. When the facts of the instant case are seen in the context of the law laid down by the Full Bench of this Court in the case of *Shivagopal (supra)*, it clearly emerges that the gratuity of the deceased employee had not been paid on his retirement on 31.07.2001 admittedly on the ground of pendency of two criminal cases against him. Said criminal cases remained pending and the claim for payment of gratuity had been rejected by the Department vide orders dated 21.09.2017 and 22.09.2017. Upon a challenge being raised by the deceased employee, the writ court vide judgment and order dated 30.04.2018 directed the gratuity to be paid, which has been paid on 19.12.2018. Keeping in view the law laid down by the Full Bench of this Court in the case of *Shivagopal (supra)*, obviously the gratuity could not have been paid to the deceased employee as two criminal cases were pending against him of which in one criminal case the deceased employee had been acquitted on 26.04.2005 yet even at the time of the death on 08.04.2022 the other criminal case continued to remain pending and has been abated vide order dated 06.07.2022. Thus when the facts of the instant case are seen in the context of Regulation 371-A of the Civil Services Regulations along with the judgment of the Full Bench of this Court in the case of *Shivagopal (supra)* it is apparent that no gratuity was payable to the father of the petitioner on account of pendency of the criminal cases but for the fact that the writ court vide judgment and order dated 30.04.2018 directed for the gratuity to be paid to the father of the petitioner.

17. Once the gratuity itself could not have been paid on account of pendency of criminal cases against the father of the petitioner of which one criminal case has admittedly been abated on 06.07.2022 as

such there cannot be any occasion for payment of interest on the principal amount of gratuity from the date of the retirement of the petitioner's father till the actual release of the gratuity on 19.12.2018.

18. So far as the judgment of this Court in the case of *Devendra Kumar Sharma (supra)* is concerned, suffice is to say that this Court has not considered what the Hon'ble Full Bench has held i.e. no gratuity to be payable on account of pendency of the departmental or criminal proceedings against the delinquent employee and thus the said judgment is of no benefit to the petitioner.

19. So far as the judgment of this Court in the case of *Brajendra Kumar Singh (supra)* is concerned again the writ court had not considered the dictum of law of the Full Bench in the case of *Shivagopal (supra)* rather has been swayed by the fact that a criminal case was pending against the delinquent employee for a period of almost 26 years and the trial had not been concluded. The said judgment would thus, squarely fly against what has been held by the Full Bench of this Court in the case of *Shivagopal (supra)* rather it is the Full Bench of this Court judgment in the case of *Shivagopal (supra)* which would be binding on this Court and the judgment in the case of *Brajendra Kumar Singh (Supra)* would thus have to give way to the Full Bench judgment of *Shivagopal (supra)*.

20. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is **dismissed**.

Order Date :- 21.5.2024
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