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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL

January 02, 2025

Writ Petition (S/S) No. 34 of 2024

Dipty Singh (Male)

.....Petitioner

Versus

State of Uttarakhand and others

....Respondents

Counsel for the Petitioner:

Mr. Bhupesh Kandpal, learned counsel.

Counsel for the State :

Mr. Pooran Singh Bisht, learned Addl. C.S.C.

Upon hearing the learned Counsel, the Court made the following Order:

1. In the instant petition, petitioner is praying for the post retiral benefits, which has been withheld since 2021 on the ground that the petitioner was convicted in a criminal case against which he preferred a criminal appeal, which is still pending.

2. On 19.11.2024, the Senior Superintendent of Police, Nainital has joined the proceedings through video conferencing in order to assist this Court and submits that in view of para 3 of the Government Order dated 24.10.1981, the post-retiral benefits of the petitioner, including the amount towards Gratuity, has been withheld. Paragraph No.3 of the Government Order dated 24.10.1981, is being reproduced here-in-below:-

“3-इस सम्भावना को बचाने के उद्देश्य से कि अनन्तिम पेंशन का निर्णय हो जाने से जांच आदि में अनावश्यक विलम्ब न हो, यह भी निर्णय लिया गया है कि इस प्रकार के समस्त जांच वाले लम्बित मामलों में तथा ऐसे सरकारी कर्मचारियों के मामलों में जो सेवानिवृत्त होने वाले हैं, प्राथमिकता से जांच कराई जायें और विभागीय कार्यवाही आदि भी प्राथमिकता से हो। संबंधित अधिकारियों/प्राधिकारियों का यह भी दायित्व होगा कि किसी भी परिस्थिति में सेवानिवृत्त होने से 5 वर्ष के पश्चात् संबंधित अधिकारी/कर्मचारी के विरुद्ध विभागीय/अनुशासनिक कार्यवाही अथवा जांच आदि लम्बित न रहे।”

3. Learned counsel for the petitioner submits that the petitioner retired from service on 30.12.2021, but till date, the post-retiral benefits, except the provisional



pension and the amount towards GPF, have not been released merely on the ground that the petitioner was convicted in a criminal case, against which, he preferred a criminal appeal, which is still pending.

4. Learned counsel for the petitioner further submits that in respect of the charge of negligence in duty, disciplinary proceedings were initiated, in which, the petitioner has been exonerated from all the charges. However, since one of the accused, who was in custody of the petitioner, ran away, therefore, criminal proceeding was also initiated against the petitioner, in which, he was convicted. He further submits that since in the disciplinary proceedings, the petitioner has been exonerated from all the charges, therefore, merely on the ground that the petitioner has been convicted, against which criminal appeal is preferred, the post-retiral benefits cannot be withheld. Learned counsel for the petitioner further submits that even otherwise under the Payment of Gratuity Act, 1972, as well as under the Uttarakhand Retirement Benefits Act, 2018, there is no such provision, therefore, withholding the benefits are illegal.

5. Learned counsel for the petitioner further submits that in the earlier writ petition preferred by the petitioner, i.e. Writ Petition (S/S) No.1169 of 2011, wherein the petitioner prayed for a direction that the respondent be directed to release the arrears of salary was decided on 24.11.2011 by observing that since in the disciplinary proceedings, the petitioner has been exonerated from all the charges, therefore, the petitioner cannot be deprived from the salary. While disposing of the writ petition, the respondents were directed to release the salary of the petitioner for the period commencing from 18.01.2008 to



27.05.2010 after deducting the subsistence allowance, and in compliance thereof, the entire arrears of salary has been released in favour of the petitioner.

6. By referring the order passed in earlier writ petition, learned counsel for the petitioner submits that once the entire salary has been released pursuant to the directions of this Hon'ble Court, therefore, the respondents cannot withhold the post-retiral benefits merely on the ground that criminal appeal against conviction of the petitioner is still pending.

7. On the previous date, the petitioner had relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of ***State of Jharkhand & others vs. Jitendra Kumar Srivastava & another, (2013) 13 SCC 210; Deokinandan Prasad vs. State of Bihar, (1971) 2 SCC 330, and; Hira Lal vs. State of Bihar, (2020) 4 CCC 346.*** On the other hand, on behalf of the State, the Full Bench judgment of the Allahabad High court in the case of ***Shivgopal vs. State of U.P., 2019 SCC OnLine All 2239***, was relied upon.

8. I have gone through all the judgment, and I find that the judgment relied upon by the State in the case of ***Shivgopal*** (supra) is not applicable in the facts of the present case.

9. Apart from this, learned State Counsel has also brought to the notice of this Court the Uttarakhand Retirement Benefits Act, 2018, which was notified on 13.04.2018, and by referring this Court, he submits that in view of Section 12, the pensionary benefits of the



petitioner, and the amount of Gratuity can be withheld.

10. In response to this, learned counsel for the petitioner submits that Section 12 of the Act, 2018 will not come in the way of the petitioner since in the departmental proceedings, the petitioner has already been exonerated from all the charges, and the pending criminal appeal has nothing to do with the pensionary benefits, and the respondents illegally withheld the same.

11. In addition to this, learned counsel for the petitioner further submits that, even otherwise, neither in the Payment of Gratuity Act, 1972, nor in the Uttarakhand Retirement Benefits Act, 2018, there is any provision for withholding the post- retiral benefits, and the amount towards Gratuity and in fact Section 12 of the Uttarakhand Act No.17 of 2018 (as amended by the U.P. Act No.34 of 2018) has been wrongly interpreted by the respondents.

12. Apart from this, he submits that since Section 2 of the Act, 2018 is having an overriding effect to any other law, therefore, the Government Order, which the respondents are referring, i.e. G.O. dated 28.10.1981, is not applicable at all. He further submits that there is no charge relating to financial embezzlement against the petitioner, therefore, even otherwise, in any manner, merely on the ground that the appeal against conviction is pending, the respondents cannot withhold the post- retiral benefits, including the amount towards Gratuity."

13. I have gone through with the provisions of Payment of Gratuity Act, 1972 as well as with the provisions of



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Uttarakhand Retirement Benefit Act, 2018 wherein there is no such provision for withholding the post retiral benefits and gratuity. Petitioner cannot be deprived to get post-retiral benefits as well as the amount towards gratuity, since there is no charge for embezzlement and merely on the ground that the petitioner was convicted in a criminal case against which the appeal is pending, the respondents cannot withhold the post-retiral benefits including the amount towards gratuity. Even otherwise in the departmental proceeding the petitioner has been exonerated from all the charges. Thus, the action of respondents for withholding the post retiral benefits and amount towards gratuity is illegal and arbitrary.

14. Accordingly, the writ petition is allowed. The respondents are directed to release the entire post-retiral benefits including the amount towards gratuity, within a period of two weeks from the date of production of certified copy of this order alongwith 6% interest.

RAKESH THAPLIYAL, J.

Arti