NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 249 of 2014

1. Dr. M.L. Agrawal S/o Shri Uday Ram Agrawal Aged About 47 Years R/o 2/702 Geeta Nagar, Choubey Colony, Raipur, Distt Raipur, Cg, Chhattisgarh **---- Petitioner**

Versus

1. National Institute Of Technology And Ors S/o Through The Registrar, G.E.Road, Raipur, Distt Raipur, CG, Chhattisgarh

2. Director National Institute Of Technology, G.E. Road, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh

3. Board Of Governors National Institute Of Technology, G.E.Road, Raipur, Dist Raipur, Cg, District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhyuday Singh, Advocate.
For Respondents	:	Shri Prateek Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27.01.2021

1. The grievance of the petitioner in the present writ petition seems to be the non settlement of the retiral dues which the petitioner has claimed upon resigning the service from the respondents.

2. The fact of the case is that the petitioner was in employment under the Government Engineering College (GEC) where he was appointed initially as a lecturer in the year 1991 and in due course of time he got promoted to the post of Reader in the year 2002. In the year 2005, the Central Government declared the Raipur Government Engineering College as the National Institute of

Technology (in short NIT) and by virtue of declaring as NIT, the employees working with the Government Engineering College at Raipur were given with an option to either switch their employment under the State Government or give their options for continuing their services under NIT. The petitioner herein opted for remaining with the NIT. In the year 2008, the petitioner moved an application seeking extraordinary leave for a period of two years with protection of lien on account of his selection in a private institute. The said claim of the petitioner was rejected on 16.06.2008.

3. Subsequently, the petitioner vide Annexure P/5 dated 26.06.2008 tendered an application seeking for voluntarily retirement and which if not accepted, the application be treated as his resignation. The petitioner also in view of notice submitted three months of salary by way of a cheque and the same was accepted by the authorities vide order Annexure P/6 dated 07.07.2008 w.e.f. 26.06.2008 i.e. the date when the petitioner had sought to be relieved from the establishment. Thereafter, the petitioner had approached the respondents for releasing of his dues which according to him he would have got like gratuity, leave encashment and other dues etc.

4. From the documents enclosed along with proceedings, it appears that the respondents initially released the gratuity payable to the petitioner to the tune of Rs. 4,68,767/-. Subsequently, when the petitioner moved his claim for the other dues payable to him, the respondents took a stand that since the petitioner had resigned from service from the establishment therefore under Rule 26 of Central Civil Service Pension Rule 1972 it would amount to forfeiture of service. Thereby his past service gets forfeited and as such he would not be entitled for any dues which includes gratuity and other benefits. As regards the GPF amount payable to the petitioner is concerned, the respondents have taken a stand that since inadvertently the petitioner has been paid his gratuity unless the same is refunded back, the NIT would find it difficult to release the GPF amount or else the same has to be adjusted against the payment of gratuity erroneously paid.

5. It has been time and again held by the Supreme Court as also by this High Court that gratuity is not a bounty which is being paid by the employer but it is his rightful claim for having rendered his service to the employer and for which the Government has enacted specific Statues and Rules for grant of gratuity. The payment of Gratuity Act Section 4 specifically enumerates that even if an employee tenders resignation he would still be entitled for payment of gratuity subject to his having qualifying service which in the instant case the petitioner did have for the reason that he was in employment continuously from 1991 to 2008.

6. Now the issue whether the Payment of Gratuity Act would be applicable or not, already stands decided by the Supreme Court in the case of ***Municipal Corporation of Delhi v. Dharam Prakash Sharma and Anr. (***1998 7 SSC 221) wherein it has been specifically held that since it is a special law enacted by the Government that would prevail and the benefits have to be extended to an employee under the said Act. Applying the principle laid down by the Supreme Court, the petitioner herein becomes entitled for the payment of gratuity.

7. The view of this Court further stands reiterated by a recent decision of the Supreme Court in Civil Appeal 2236/2020 in the case of ***Rajasthan State Road Transport Corporation Ltd. and Ors. vs Smt. Mohani Devi***, decided on 15.04.2020.

8. In view of the same, this Court is of the opinion that there does not seem to be any error on the part of the respondents while paying gratuity to the petitioner at the first instance and the same therefore would not be permitted to be either recovered or adjusted against any of the dues payable to the petitioner. As regards the GPF amount, since it is a contribution substantially that of the employee, the same can not get forfeited interpreting Rule 26 of the pension rule that has been relied upon by the respondents in their return, the provident fund has to be released to the petitioner upon ceasing of his employment for whatever reason if may be.

9. As regards the leave encashment part is concerned. The provision of Rule 39 of the Central Civil Services Leave Rule 1972 it again reflects that even on a resignation, an employee is entitled for a portion of leave that stands in his credit, in the instant case the petitioner undoubtedly had put in around 17 years of service and there must have definitely been some leaves in his credit and a portion of which in-terms of Rule 39 of the Leave Rule 1972 has to be released to the petitioner.

10. Given the said facts, the respondents are directed to ensure that the aforementioned payable dues be released to the petitioner at the earliest preferably within a period of 90 days. Undisputedly, since the petitioner has resigned from service, he would not be entitled for any pensionary benefits and the claim of the petitioner to that extent would therefore not be accepted.

11. As regards the contentions of the learned counsel for the respondents that since the NIT came into existence or the petitioner's claim under the employment of the NIT in the year 2005 and thereafter since the petitioner does not have a qualifying service or for that matter the earlier services rendered by the petitioner being under the State Government, the claim has to be settled by the State Government, this Court is of the firm view that once on petitioner submitting his option so far as his employment under NIT is concerned and he hence forth for all practical purposes, he becomes an employee of NIT. Nowhere was it a condition that the services under the NIT of the employees who have switched from Government Engineer College to the NIT would be a fresh employment. In the absence of any such terms and conditions, the services rendered by the employee under the Government Engineering College prior to the year 2005 has to be taken as continuous service for the purpose of settlement of dues even on retirement or resignation.

12. As regards the claim which the NIT may have to make from the State Government since that is not the issue in the present case, this Court would refrain itself from making any observation except for giving liberty to the NIT for approaching the State Government for settlement of their dues in accordance with the Rules, guidelines or settlement whatever that was entered into between the parties, the writ petition therefore stands allowed to the aforesaid extent.

Sd/-

P. Sam Koshy
Judge

Jyotijha