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AKG

Ct. 238

WPA 19493 of 2019
Amiya Kumar Chatterjee
Vs.
Union of India & Ors.

Mr. Debapriya Gupta
...for the Petitioner

Mr. Anil Kr. Gupta
...for UGC

Mr. Shubradip Roy
...for the Respondent Nos. 2 to 8

By filing this writ petition, the petitioner prays for refund of Rs. 1 lakh along with interest, which was withheld by the University from his retiral dues on account of "Unassessed U dues". The petitioner has also claimed for additional financial benefits in terms of 'FR49' and the consequential of revision of retiral dues for discharging the "additional responsibility of a higher post".

The petitioner was appointed as an overseer under Visva Bharati. Subsequently, he was promoted as an Assistant Engineer.

Mr. Gupta, learned advocate appearing for the petitioner refers to an office order dated December 22, 2011 to suggest that certain duties were assigned to the petitioner with a direction to report to the Registrar of the University. He also draws attention to this Court to a notification dated April 30, 2012 where the petitioner was mentioned as "Non-Member Engineer-in-charge" of an "Implementation Committee" for the Tagore Memorial Institute. He has further placed reliance upon a notice dated July 16, 2012, wherein the petitioner has again been described as "Non-Member Engineer-in-charge". Mr. Gupta argues that an Assistant Engineer reports to the University Engineer. Since the petitioner was directed to report to the Registrar of the University, it has to be inferred that the petitioner was discharging a higher responsibility.

I do not find any substance in the submission advanced on behalf of the petitioner. The petitioner cannot be said to have discharged any additional responsibility or held any higher post simply because he was directed to report to the Registrar of the University instead of the University Engineer.

There is no office order or notification to suggest that the petitioner was ever appointed to any higher post or ever any discharged any responsibility attached to the said higher post..

The petitioner might have been given the charge of engineering works of a particular project, for which he was described as the "Engineer-in-charge" of that project, but the same does not necessarily mean that the petitioner discharged any higher responsibility or held any higher post. The petitioner has also failed to demonstrate that there was existence of any post of "Engineer-in-charge" under the University.

I, however, find justification in the submission of the petitioner that the University has illegally withheld of Rs. 1 lakh from his retiral dues. The impugned Pension Payment

Order mentions that the said deduction has been made on account of 'Unassessed U dues'. The said term, however, has not been explained in the affidavit-in-opposition of the University. The opposition suggests that the deduction was made following a notice dated November 24, 2012 issued by the Registrar of the University.

It is the case of the University that the petitioner did not return four measurement books, for which the said deduction was made. The said fact, however, has been denied by the petitioner by referring to page 62 of the writ petition, which suggests that the petitioner returned all the measurement books to the Section Officer, Engineering Accounts Department of the University.

I need not go into the question as to whether the petitioner actually returned the said measurement books or not.

The relevant part of the notice dated November 24, 2012 reads as follows :-

> **"1. The Accounts Officer, V.B will collect the 'Due certificate'/ 'No dues Certificate' before the date of retirement from the departments/sections concerned. A maximum time frame/limit of 15 days may be given to the departments/sections for sending 'Due Certificate' 'No dues certificate' to Accounts Office.**
>
> **2. The Departments/Sections concerned are informed that if Due Certificate/No dues certificate is not received within the aforesaid time limit from the Departments/Sections, it will be presumed**

> **that there is no dues from the retiring employees lying in the Departments/Sections and the Retirement Benefit will be settled accordingly.**
>
> **3. A token sum of Rupees 50,000 in case of employees whose Grade pay is upto Rs. 4,800/- and Rupees 1,00,000/- in case of employees whose Grade Pay is Rs. 5,400/- and above maybe kept with the University from the gratuity of the employees to adjust outstanding dues, if any, at the time of superannuation. This amount will be paid to the employees within three weeks subject to receipt of Dues Certificate/No due certificate after adjustment of the outstanding dues, if any. However, for employees residing in university quarters, entire gratuity amount will be kept unpaid till vacating the quarters.**
>
> **4. All the Offices concerned will take necessary action in this regard."**

The said notification can be applied only when there are some outstanding dues from an employee. Non submission of some measurement books cannot be a ground to invoke the notice dated November 24, 2012 when there were no outstanding dues payable by the petitioner to the University. Withholding of some measurement books might give rise to a disciplinary action against the petitioner. The University chose not to do so.

I am of the view that the University has illegally withheld Rs. 1 lakh from the retiral dues of the petitioner and accordingly, this writ petition is disposed of with a direction upon the respondents to refund said sum of Rs. 1

lakh within a period of two weeks from the date of communication of this order together with the interest @ 8% per annum. The interest will be calculated from the date of issuance of Pension Payment Order till the date of actual payment is made to the petitioner by the University.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)