

Court No. - 7

Case :- WRIT - A No. - 1063 of 2022

Petitioner :- Shiv Kumar Bahadur Singh

Respondent :- State Of U.P. Thru. Prin. Secy.Dairy
Development And Others

Counsel for Petitioner :- Dileep Singh

Counsel for Respondent :- C.S.C.,Ajai Pratap Singh
Chauhan,Pankaj Patel

Hon'ble Irshad Ali,J.

Heard learned counsel for petitioner, learned State Counsel appearing for opposite party No.1, Mr. Pankaj Patel, learned counsel appearing for opposite party No.2 and Sri Ajai Pratap Singh Chauhan, learned counsel for opposite party Nos.3 and 4.

Petition has been filed seeking the following reliefs:-

"(i) issue a writ, order or direction in the nature of mandamus commanding the opposite parties 3 and 4 to make payment of full amount of gratuity to the petitioners along with interest in view of the amended provisions of Section 4 of Payment of Gratuity Act, 1972 (amended vide Government of India Notification dated 24.05.2010) as well as the order dated 28/31 December 2019 passed by the Opposite party No. 4 contained as Annexure No.1 to the writ petition.

(ii) Issue such other suitable order or directions which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iii) Allow the writ petition with cost."

Learned counsel for petitioner submits that the petitioner is Class III employees of opposite party No.3. Learned counsel for petitioner submits that thereafter the opposite parties have admitted to make payment of complete amount of gratuity and also paid Rs.19,200/- in the month of May, 2021, but since then remaining amount of Rs.3.06 lacs and statutory interest accrued thereon is still due. He next submits that the opposite party had indicated a condition that due to the precarious financial condition of the corporation, payment to petitioner would be made in future whenever the funds are available.

Learned counsel for petitioner submits that the gratuity amount of an employee like the petitioner is not a bounty to be distributed at the sweet will of the employer and that the

petitioner has a vested right to be paid his gratuity amount within a reasonable time from the date of superannuation.

Learned counsel appearing on behalf of the opposite parties has reiterated the fact that while the corporation admits its liability towards payment of pensionary benefits of petitioner, the same can not be paid instantly in view of precarious financial condition of the corporation whenever the funds are available with corporation.

Considering the material on record and submissions advanced by learned counsel for parties, it is apparent the the opposite parties do not deny their liability for making payments of pensionary benefits to petitioners.

Precarious financial condition of a corporation can not be a ground to delay payment of pensionary benefits that are due to superannuated employee. It is settled law in the case of **D.S. Nakara versus Union of India** reported in **AIR 1983 Supreme Court Cases 130**. Hon'ble the Supreme Court has already held that pensionary benefits are not a bounty to be distributed at the sweet will of the employer. Similarly in the case of **Kapila Hingorani versus State of Bihar** reported in **(2003) 6 SCC 1** Hon'ble the Supreme Court has already held that the precarious financial condition of the employer is not a valid ground for delaying or not making payment of pensionary benefits of a superannuated employee in which it has been held as under:-

"Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. This Court has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. See Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors.. AIR (1987) SC 359 = [1986] Supp. SCC 517, Ratlam Municipality v. Vardi Chand, [1980] 4 SCC 162 and B.L. Wadhwa v. Union of India, AIR (1996) SC 2969."

Learned counsel for petitioners, Mr. Pankaj Patel, learned counsel appearing for respondent-State submits that the federation has sent requisition to the State Government seeking grant/loan in order to provide benefits to its employees as directed by the Court although learned counsel for petitioner submits that such a requisition is irrelevant in view of the fact that the same contention has already been rejected earlier by this Court.

In view of the aforesaid facts, the opposite parties are directed to make payment of the outstanding gratuity amount of the

petitioners as indicated in the order dated 31st October, 2020 within a period of four months from the date a copy of this order is produced. Grant of interest to the petitioners shall also be considered by the opposite parties within the same time period and if found eligible, the petitioners shall be paid the same along with the gratuity.

Consequently, writ petition stands **allowed** at the admission stage itself.

Order Date :- 2.3.2022

GK Sinha