SUPREME COURT OF INDIA

Gorakhpur University

Vs.

Dr.Shitla Prasad Nagendra

C.A.No.1874 of 1999

(S. Rajendra Babu and Doraiswamy Raju JJ.)

07.08.2001

JUDGMENT

Doraiswamy Raju, J.

1. The first respondent in the above appeal was initially appointed as a Teacher in the Sociology Department of the appellant-university on 23.3.63 (Sic 73) and subsequently promoted as a Professor. The appellant-university had provided him with university accommodation. During the period between 20.5.86 and 19.5.89 the first respondent was appointed as Vice-Chancellor of the University of Lucknow but, in spite of the same, he appears to have continued to hold the accommodation without vacating the same. It is obvious from the facts stated that after his tenure as Vice-Chancellor he rejoined the appellant-university and continued to serve till 11.1.90, the date on which he attained the age of superannuation and even thereafter was continued on re-employment basis in terms of the First Statutes of the University till 30.6.90. It is an undisputable fact that he will be entitled to the payment of pension and settlement of his claim as such with effect from 1.7.90. Though, it is stated that the first respondent or for that matter any employee is entitled to retain the university accommodation for 4 months after retirement, the fact remained that he held the accommodation till 25.3.96. The appellant also does not seem to have taken steps to settle the claim relating to terminal benefits.

2. Since the appellant-university did not settle the first respondents claim for terminal benefits including the fixation and disbursement of the pension, the first respondent filed C.M.W.P. No.30428/97. The Writ Petition was opposed by the appellant- university contending that the first respondent, having not vacated the quarter held by him when he retired and within the permissible extended period, was liable for payment of penal rent in respect of such accommodation and that as a matter of fact the Finance Controller, Office of Directorate of Higher Education, U.P., who examined his pension papers, ordered on the recommendation of the university-authorities the adjustment of Rs.3,20,638.04 from the amounts due towards the retiral benefits. Further, a sum of Rs.64,441.54 was also ordered to be deducted from the Provident Fund amount due to first respondent. On a consideration of the respective claims of parties, a Division Bench of the Allahabad High Court by its Order

dated 17.8.98, applying the principles laid down in *Som Prakash vs Union of India*[1] *and R. Kapur vs Director of Inspection (Painting and Publication) Income Tax & Anr.*[2] overruled the objections of the University holding that the pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any other dues outstanding against the retired employee. The action of the university authorities to the contrary was held to be illegal and while allowing the claim of the first respondent, a direction came to be issued to pay the entire pension and Provident Fund etc. due to first respondent, with penal interest @ 18% within two months from the date of the order.

3. Aggrieved, the university authorities have come up before this Court. The learned senior counsel for the appellants contended that when the respondents did not vacate the official quarters even after retirement and rendered himself liable for penal rent for such unauthorized occupation, there is every justification in law to adjust the amounts due therefor to the university before settling and disbursing the terminal benefits and no exception could be taken for the move made on behalf of the University. It was contended further that unless certificate of no dues or `no liability could be issued the question of finalising pension papers will not arise at any rate, as long as the claims relating to payment of penal rent remained unsettled. The decision in *Daya Shankar Lal vs Vice Chancellor, University of Allahabad*[3] was relied upon to contend that the Division Bench in this case committed an error in taking a contra view. Reliance has also been placed on the decisions reported in *Wazir Chand vs Union of India & Others*[4] as against the decisions noticed by the Division Bench of the High Court while deciding the case on hand.

4. Per contra, the learned senior counsel appearing for the contesting respondents, while justifying the relief granted to his client, highlighted certain facts which, according to the learned counsel, were peculiar to the case on hand and the stand taken for the appellant-university both before the High Court and this Court is unreasonable, unjust and only demonstrated an attitude of vindictiveness. The relevant facts so pointed out from the materials on records before us are that, every month the normal rent that was payable was being remitted continuously to the university and the same was being accepted without demur till 23.3.96 when the quarter was vacated, that in spite of a request and application made, as per practice in vogue for the allotment of the quarter in the name of his son who is also in the employment of the appellant-university as Lecturer no orders were passed thereon, that there are resolutions of the university to waive penal rent and grant of such benefit to persons even as late as in 1996, showed that a different stand and treatment to the respondent alone constituted hostile discrimination, that it was unreasonable to charge also rates stipulated by the Government in the year 1998 in the case of the respondent who retired in 1990 and vacated in 1996 and that the appellant not only did not choose to take any action to get the respondent vacated in accordance with law but on the other hand acquiesced in the occupation by accepting regularly the normal rent. A grievance has also been made that no notice or opportunity was given before determining and fixing liability for the penal rent. It was also contended that apart from these facts demonstrating lack of bona fides in the appellant, the withholding of information about the dismissal of the appeal filed by it on 22.7.96 in SLP (C) CC..329/96, against the earlier decision of a Division Bench reported in *S.N. Mathur vs Gorakhpur University, Gorakhpur, & Others*[5] taking the very same view as

in the present case in respect of another employee of the appellant- university, indicated the unethical approach of the University and therefore, this appeal is liable to be dismissed as of no merit.

5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very university reported in 1996 (2) ESC 211 (All.) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in 1994 (6) SCC 589 (supra) which, in turn, relied upon earlier decisions in *State of Kerala vs M. Padmanabhan Nair*[6] and AIR 1981 SC page 212 (Supra). This court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant university on the decision reported in JT 2000 Suppl. (1) SC 515 (Supra) does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the university authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the university, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the university resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18.7.1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the university cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be

entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the university cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.

6. The appeal fails and, therefore, shall stand dismissed. No costs. We make it clear that this shall not have the effect of foreclosing the rights of the university, if any, if the appellant chose to workout the same, as is permissible in law.

[1]*AIR 1981 SC 212*
[2]*1994) 6 SCC 589*
[3]*1992 (1) UPLBEC 654*
[4]*JT 2000 Supp.1 SC 515*
[5]*1996 (2) ESC 211 (All.)*
[6]*1985 (1) SCC 429*