(2003) 08 MP CK 0020

Madhya Pradesh High Court

Case No: Writ Petition No. 4964 of 2001

Dr. H.K. Saxena		APPELLANT
	Vs	
Dr. Hari Singh Gaur Vishwavidyalaya and Another		RESPONDENT

Date of Decision: Aug. 27, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2003) 4 MPHT 217 : (2004) 1 MPLJ 69 : (2004) 1 MPLJ 125

Hon'ble Judges: S.P. Khare, J

Bench: Single Bench

Advocate: Party in person, for the Appellant; K.N. Agrawal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 13-1-1997 by which the amount of gratuity and provident fund has been adjusted against the penal rent and for a direction to the respondents to make payment of this amount to the petitioner.

It is not in dispute that the petitioner retired from the post of Professor of Dr. Harisingh Gaur University, Sagar on 31-7-1990. An amount of Rs. 72,000/- was payable to him as gratuity and an amount of Rs. 26,754/- as provident fund. The petitioner was allotted a quarter by the University while in service and he remained in its occupation after retirement upto 16-6-1996. The University computed the penal rent of this quarter at Rs. 1,02,352/- and adjusted the amount of gratuity and provident fund against the same by the impugned order dated 13-1-1997 (Annexure P-5) and asked the petitioner to pay the remaining amount of Rs. 4,598/-.

The petitioner''s case is that there was no timely payment of his gratuity and provident fund and for that reason he could not complete the construction of his own house and had to remain in occupation of the University quarter. He is not liable to pay penal rent because of the delay in the payment of his retiral dues. According to him his dues could not be legally adjusted against the alleged penal rent.

The respondents'' case is that the petitioner did not vacate the quarter and did not obtain "no dues certificate" and therefore, he could not be paid the amount of provident fund and gratuity. As per rules he could occupy the quarter after his retirement for two months only but he retained it for 71 months.

The learned Counsel for both the sides have been heard. It is true that the University quarter could be retained by the petitioner for two months only after his retirement. It is equally true that the amounts of gratuity and provident fund were payable to him on the date of his retirement. The respondents are laying too much stress in their return for the petitioner''s default in not vacating the quarter in time but the respondents do not show proper justification for the unusual delay in the payment of provident fund and gratuity. The petitioner is right in contending that if his dues had been paid in time he could have completed the construction of his own house in time and shifted there after vacating the University quarter. If the dues of an employee on his retirement are not paid in time he is entitled to claim penal interest from the employer and therefore, the penal rent can be adjusted against the penal interest.

The Supreme Court has held in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, , that the amounts of gratuity and provident fund can not be adjusted against the penal rent. The legal position has been stated as under :--

"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 is 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 view of the above legal position the impugned order dated 13/15-1-1997 (Annexure P-5) of the respondents is quashed. The respondents are directed to pay the amount of Rs. 97,754/- as gratuity and provident fund to the petitioner with interest at the rate of 9% per annum from 16-6-1996 to the date of payment.