

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 448 of 2018 (S/B)

Chandra Mohan AroraPetitioner

Vs.

Uttarakhand State Co-operative Federation Dehradun and
othersRespondents

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.

Ramesh Ranganathan, C.J. (Oral)

Heard Mr. Harendra Belwal, learned counsel for the petitioner, Mr. Subhash Upadhyay, learned counsel for respondent Nos.1 and 2 and Mr. Ashish Joshi, learned Advocate for respondent No.3.

2. The petitioner has invoked the jurisdiction of this Court seeking a mandamus commanding the respondents to release his Gratuity, Earn Leave and other admissible dues; and for a mandamus commanding the respondent to award 10% interest per annum, pursuant to the notification dated 01.10.1987, in his favour.

3. Facts, to the limited extent necessary, are that the petitioner, hitherto an employee of the Uttar Pradesh State Co-operative Federation, was allotted to the State of Uttarakhand and joined service with the Uttarakhand State Co-operative Federation on 01.01.2005. He served the Uttarakhand State Co-operative Federation till 31.12.2014, when he retired from service as its General Manager. He invoked the jurisdiction of this Court by way of WPSB No.419 of 2017, and a Division

Bench of this Court, in its order dated 15.09.2017, noted that the petitioner had already given a representation to the Uttarakhand State Co-operative Federation (second-respondent). The second-respondent was directed to consider and take a decision, on the petitioner's representation, in accordance with law within a period of three weeks from the date of receipt of a certified copy of the judgment; and to take appropriate action on the basis of the decision.

4. The petitioner was informed, by order dated 24.10.2017, that his retiral benefits from 01.01.2005 (when he joined the Uttarakhand State Co-operative Federation) till 31.12.2014 (when he retired from service) was reckoned as service on which his retiral benefits should be paid by the Uttarakhand State Co-operative Federation and, accordingly, a sum of Rs.8,46,810/- towards gratuity of Rs.5,57,112/- and leave encashment of 90 days for Rs.2,89,698/- was being paid to him. The petitioner now claims payment of his retiral dues from the date he joined the Uttar Pradesh Co-operative Federation on 31.01.1984 till 31.12.2004 a day before he was allotted to the Uttarakhand State Co-operative Federation (i.e. for a period of around 21 years) which was neither paid to him by the Uttar Pradesh Co-operative Federation nor by the Uttarakhand State Co-operative Federation.

5. The dispute in this writ petition has been the subject matter of earlier rounds of litigation albeit at the instance of other employees. On its jurisdiction being invoked in WPSS No.1176 of 2005, this Court had, by its order dated 20.11.2006, directed the Uttar Pradesh State Co-operative Federation to pay the retiral dues of the employee prior to 01.01.2005 i.e. before the date on which he joined the Uttarakhand State Co-operative Federation. On the Uttar Pradesh Co-operative Federation preferring Special Appeal

No.176 of 2006, thereagainst, a Division Bench of this Court dismissed the said Special Appeal. The special leave to appeal, preferred by the Uttar Pradesh Co-operative Federation before the Supreme Court, was also dismissed. Thereafter another employee filed WPSS No.541 of 2009 and, on a similar order being passed, the Uttar Pradesh Co-operative Federation preferred Special Appeal No. 229 of 2019. A Division Bench of this Court, by its order dated 14.05.2010, dismissed the special appeal and directed the Uttar Pradesh Co-operative Federation to calculate the retirement benefits due and payable to the employee within one week, and disburse the said amount within the stipulated period of one week. The Uttar Pradesh Co-operative Federation was also directed to pay interest to the employee @8% per annum from the date on which the amounts became due till the same were paid. The Division Bench refrained from imposing exemplary costs taking note of the plea raised by the counsel for the appellant that they would henceforth be correct, and would not repeat these acts in future.

6. As the Uttar Pradesh Co-operative Federation continued to avoid its liability, of making payment of the retirement dues of employees for the period prior to 01.01.2005, the jurisdiction of this Court was again invoked by way of a batch of writ petitions. These writ petitions were filed as the Uttar Pradesh Co-operative Federation had contended that they could not be held liable to pay gratuity to these employees, on the basis of the wages last drawn by them, since the last drawn wages of these employees was not from the Uttar Pradesh Co-operative Federation, but from the Uttarakhand State Co-operative Federation. On their plea being negatived by the learned Single Judge, the appellate jurisdiction of this Court was invoked by way of Special Appeal No.137 of 2015 and a Division Bench of this Court, in its order

dated 03.07.2017, relied on the Memorandum of Understanding dated 09.08.2011, and directed that the gratuity amount, on wages last drawn, be calculated by the Uttar Pradesh Co-operative Federation, and be paid to the employees concerned.

7. In the present case, the Uttar Pradesh Co-operative Federation does not dispute its liability and has, by its order dated 18.12.2018, admitted that a sum of Rs.4,07,788/- is due and payable to the petitioner. They, however, contend that, since a sum of Rs.2.27 crores is due to them from the Uttarakhand State Co-operative Federation, the aforesaid amount should be directed to be paid by the Uttarakhand State Co-operative Federation, and such payment be adjusted from the amounts due and payable to them.

8. Mr. Harendra Belwal, learned Counsel for the petitioner, would submit that the Uttar Pradesh Co-operative Federation had computed the petitioner's gratuity and leave encashment on the basis of the wages last drawn by him on 31.12.2004 i.e. on a day before he joined service with the Uttarakhand State Co-operative Federation on 01.01.2005, though the order of the Division Bench of this Court, in Special Appeal No. 137 of 2015 and batch dated 03.07.2017, required the Uttar Pradesh Co-operative Federation to calculate gratuity on the wages last drawn by the petitioner i.e. on the wages drawn by him on 31.12.2014.

9. While it is true that the petitioner ceased to be an employee of the Uttar Pradesh Co-operative Federation from 01.01.2005 onwards, and the liability to pay his retiral dues from 01.01.2005 is that of the Uttarakhand State Co-operative Federation and not the Uttar Pradesh Co-operative Federation, the petitioner is entitled to have his retiral benefits computed

on the basis of the wages last drawn by him i.e. the salary and allowances which he drew on 31.12.2014 (the date of his retirement). The aforesaid orders of this Court required the retiral benefits of the petitioner, such as gratuity and leave encashment, to be computed as on the date of his retirement which, in the present case, is 31.12.2014; and, on computation of his retiral benefits, the Uttarakhand State Co-operative Federation is obligated to pay its proportionate share of his retiral dues from 01.01.2005 till 31.12.2014, and the obligation of the Uttar Pradesh Co-operative Federation is to make payment of the retiral dues, so computed, from 31.01.1984 till 31.12.2004 i.e. for a period of nearly 21 years.

10. The Uttar Pradesh Co-operative Federation has, conveniently, computed gratuity and leave encashment of the petitioner on the basis of the salary and allowances he drew on 31.12.2004, and not on the basis of the salary and allowances which was being paid to him on the eve of his retirement on 31.12.2014. This mode of computation by the Uttar Pradesh Co-operative Federation has been faulted in the judgment of the Division Bench of this Court in Special Appeal No.137 of 2015 and batch dated 03.07.2017. We are also not impressed with the submission of Mr. Ashish Joshi, learned Standing Counsel for the Uttar Pradesh Co-operative Federation, that the Uttarakhand State Co-operative Federation should be directed to pay the said amount to the petitioner, and adjust it from the amount they owe to the Uttar Pradesh Co-operative Federation, which he claims is in excess of Rs.2.27 crores. The amounts, which the Uttar Pradesh Co-operative Federation claims is due to them from the Uttarakhand State Co-operative Federation, can only be recovered in duly constituted legal proceedings, and not in a writ petition filed by an employee seeking payment of his retiral dues. The Uttar Pradesh Co-operative Federation

cannot avoid its liability towards its erstwhile employees by asking the Uttarakhand State Co-operative Federation to make payment.

11. We consider it appropriate, in such circumstances, to direct the Uttar Pradesh Co-operative Federation to compute the retiral benefit of the petitioner for the period from 31.01.1984 till 31.12.2014 (the period he served under the Uttar Pradesh Co-operative Federation), and pay him gratuity and leave encashment for the said period on the basis of the salary and allowances last drawn by him on 31.12.2014. The petitioners retiral benefits, as computed in terms of the aforesaid directions, shall be paid to him within three weeks, from the date of productions of a certified copy of this order, along with interest @ 8% per annum. Suffice it to make it clear that, in case the retiral benefits as directed to be paid, along with interest at 8%, is not paid within the time stipulated hereinabove, the petitioner shall thereafter be entitled for payment of these retiral benefits with interest @ 15% per annum.

12. The Writ Petition stands disposed of accordingly. No costs.

(Alok Kumar Verma, J.) (Ramesh Ranganathan, C.J.)

29.11.2019

Sanjay