

Mela Ram Vs. Senior Superintendent of Post Offices, Agra Division and anr.

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Court : Allahabad

Decided On : Aug-13-1968

Reported in : AIR1970All234

Judge : Jagdish Sahai and ;Gangeshwar Prasad, JJ.

Acts : [Pensions Act, 1871](#) - Sections 4; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : Special Appeal No. 510 of 1966

Appellant : Mela Ram

Respondent : Senior Superintendent of Post Offices, Agra Division and anr.

Advocate for Def. : H.N. Seth, Adv.

Advocate for Pet/Ap. : S.C. Khare, Adv.

Disposition : Appeal dismissed

Judgement :

Jagdish Sahai, J.

1. This special appeal by Sri Mela Ram, is directed against the judgment of Hon. R. S. Pathak, J. dated 24-9-1966 dismissing writ petition No. 2641 of 1960 filed by the petitioner appellant. The petitioner was in service of Government of India in the

Postal Department in the capacity of Supervisor.

2. He retired from service. After calculation it was proposed to give him a certain amount of money as gratuity in addition to his monthly pension.

3. But before the pension or gratuity was paid and a pension slip or gratuity slip issued to the petitioner a sum of Rs. 3,300 was sought to be deducted from the amount of gratuity proposed to be paid to him.

4. He filed writ petition No. 2641 of 1960 challenging the order of the Director, Postal Staff, Lucknow directing the deduction of Rs. 3.300 from his gratuity.

5. The writ petition came up for final hearing before Hon. R. S. Pathak, J. who took the view that considering the nature of allegations made, he considered that the proper remedy of the petitioner was to file a regular suit in a competent Civil Court and that in the circumstances of the case the relief by means of a writ petition was not the proper remedy. Dissatisfied with the judgment of Hon. R. S. Pathak. J. dated 29-4-1966, the petitioner-appellant has filed the instant special appeal It was strenuously contended by Mr. S. C. Khare, the learned counsel for the petitioner-appellant, that the learned single Judge failed to notice that under Section 4 of the Pensions Act the suit was barred. Section 4 of the Pensions Act reads:

'Except as hereinafter provided no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the Government or by any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted'

6. It is well settled that the ouster of the jurisdiction of a Civil Court cannot be assumed. The ouster must be the result of an express provision in a legislative enactment or one of necessary implication therefrom.

7. Clearly if the amount of gratuity can be treated to be pension it would be doubtful whether the Civil Court would have jurisdiction to try any suit relating to it.

8. If on the contrary a gratuity cannot be comprehended in the expression 'pension' as occurring in Section 4 of the Pensions Act then that provision would be no bar to the maintainability of a suit in a Civil Court relating to any deduction made from the amount of gratuity. In view of the rules operating in the present case a gratuity must be taken to be commuted pension. It is well settled that commuted pension is a capital sum and not an accumulated pension. See *Municipal Council Salem v. B. Gururajah Rao*, AIR 1935 Mad 249.

9. A pension is a periodical payment. Once a part of it is converted into a capital sum it ceases to partake the nature of pension.

10. Mr. Khare contended that assuming that gratuity is not pension it is still a 'grant of money' within the meaning of Section 4 of Pensions Act. In our opinion the expression 'grant of money' does not include gratuity or a capital sum converted out of a part of pension,

11. We are, therefore, of the opinion, that a Civil Court would be competent to go into this matter.

12. In the present case the deduction has been made from the gratuity calculated as payable to the petitioner appellant on the ground that he was guilty of negligence of duty. Whether or not he was so guilty is a question of fact which can only be decided on the basis of evidence and not in the summary proceeding of a writ petition. Consequently we agree with R. S. Pathak, J. that in the circumstances of the present case the proper remedy of the petitioner is to file a regular suit.

13. We express no opinion on the merits of the controversy between the parties. The appeal is dismissed. There is, however, no order as to costs.

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