(2022) 04 CHH CK 0093

In the Chhattisgarh High Court

Case No : Writ Appeal No. 36 Of 2022

Chhattisgarh State Power Generation Company Ltd — APPELLANT

Vs

Girdhari Lal Sahu — RESPONDENT

Date of Decision : 26-04-2022

Acts Referred:

Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 10(vii), 14
Chhattisgarh Civil Services (Pension) Rules, 1976 — Rule 37, 37(1)
Central Civil Services (Pension) Rules, 1972 — Rule 40(1)

Citation : (2022) 04 CHH CK 0093

Hon'ble Judges : Arup Kumar Goswami, CJ;Rajendra Chandra Singh Samant, J

Bench : Division Bench

Advocate : Jitendra Pali, K.P.S. Gandhi

Final Decision : Partly Allowed

Judgement

1. Heard Mr. Jitendra Pali, learned counsel for the appellants. Also heard Mr. K.P.S. Gandhi, learned counsel, appearing for the respondent.

2. This appeal is presented against an order dated 20.09.2021 passed by the learned Single Judge in WP(S) No. 1244 of 2016, whereby, the writ petition filed by the respondent herein was allowed.

3. The case of the petitioner, as presented in the writ petition, is that while serving as an Assistant Grade-I in Korba Thermal Power Plant (East), a charge-sheet was issued to him, alleging that he had committed misconduct of submitting forged certificates in his service record. In the reply submitted, the petitioner denied that he has submitted any forged documents. In his reply dated 19.03.2015, the petitioner had prayed for allowing him to go on voluntary retirement. It is further stated that an enquiry was conducted, which, however, was not in accordance with Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, the ‘Rules of 1966’). Holding that misconduct was proved as against the petitioner, an order dated

30.11.2015 was passed imposing the penalty of compulsory retirement under Rule 10(vii) of the Rules of 1966.

4. It is pleaded in the writ petition that he lost his daughter in a case of dowry death and that is why he could not challenge the order of compulsory retirement.

5. Subsequently, by an order dated 17.02.2016, pension of the petitioner was sanctioned along with Death cum Retirement Gratuity (DCRG) and commuted pension. However, before any benefit was received by him, the order dated 17.02.2016 was cancelled by an order dated 23.03.2016. Accordingly, challenging the aforesaid order dated 23.03.2016, the writ petition was filed, praying for direction to grant pension and other benefits with interest @ 18% per month from 01.12.2015. During the pendency of the writ petition, an order dated 30.05.2016 was passed by the respondent No.4, granting sanction for payment of 70% pension and 90% gratuity to the petitioner after reviewing earlier orders dated 30.11.2015 and 23.03.2016. The writ petition was, accordingly, amended to assail the order dated 30.05.2016.

6. The entitlement of pension of a Government servant compulsorily retired is laid down in Rule 37 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short, 'the Rules of 1976').

7. It is an admitted position that the said Rule governs the service condition of the petitioner though the appellant No.1 is a Government Company.

8. Rule 37(1), which was noticed by the learned Single Judge reads as follows :

"37. Compulsory retirement pension.-(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement."

9. Rule 37(1) of Rules of 1976 is pari materia to Rule 40(1) of the Central Civil Services (Pension) Rules, 1972 (for short, 'the Rules of 1972').

10. The learned Single Judge had taken note of a guideline of the Government of India in respect of reduction of pensionary benefits under Rule 40(1) of the Rules of 1972. The same reads as under :

"(1) Guiding principles for reduction of pensionary benefits under rule 40(1). - Rule 40 prescribes the limit for retirement benefits which would be admissible to an officer on whom the penalty of compulsory retirement may be imposed. This form of penalty has been introduced to provide for cases in which the continuance of a Government servant in service is considered to be undesirable but the extreme penalties of removal or dismissal, with the consequent loss of pension, is considered to be too severe.

The intention is that, persons on whom the penalty of compulsory retirement is imposed should ordinarily be granted the full compensation pension and retirement gratuity, admissible on the date of compulsory retirement. Where, however, the circumstances of a particular case so warrant, the authority competent to impose the penalty of compulsory retirement may make such reductions in the pensionary benefits, within the limits prescribed, as it may think appropriate. In the case of a person governed by the New Pension Rules, reduction may be made either in the retirement gratuity or in the pension or in both."

11. The learned Single Judge recorded as follows :

"18. In the considered opinion of this Court, Rule 37(1) of the Rules of 1976 is not by itself a penal rule or provision, it only lays down the limitation of the penalty of reduction in pension and gratuity wherever under rules such penalty is provided for. There must be a cogent reasons for taking the decision of reducing pension and gratuity, which should appear on the face of record and which is totally lacking in the instant case. As such, the orders reducing pension and gratuity dated 23-3-2016 and 30-5-2016 are vulnerable and are liable to be quashed

19. There is one more reason for not sustaining the orders dated 23-3-2016 and 30-5-2016. The petitioner was granted full pension and gratuity vide order dated 17-2-2016 exercising the discretion which the authority competent had under Rule 37(1) of the Rules of 1976 and immediately thereafter, the said order has been withdrawn on 23-3-2016 without assigning any reason and without affording any opportunity to the petitioner to defend the order dated 17-2-2016. Not only this, when order dated 30-5-2016 whereby 70% of total pension and 90% of gratuity was granted to the petitioner to the extent indicated in order dated 23-3-2016 was passed, the petitioner was again denied opportunity to put forth his grievance and he was not given the benefit of full pensionary benefits which he is otherwise entitled for. This action of the respondent Company is in teeth of the principles of natural justice."

12. Holding as aforesaid, the learned Single Judge set aside the orders dated 23.03.2016 and 30.05.2016 and also held that the petitioner would be entitled to pension and gratuity and the same shall be paid to him along with 9% interest per annum from the date of his entitlement till the date of payment.

13. Though Mr. Pali has submitted that the competent authority had a discretion to grant pension and gratuity, as may be considered appropriate by him, and therefore, a decision was taken to grant 70% of the pension and 90% of the gratuity, we are of the opinion that for the reasons assigned by the learned Single Judge, in the attending facts and circumstances of the case, the orders dated 23.03.2016 and 30.05.2016 cannot be sustained in law. However, we find sufficient force in the argument of Mr. Pali that present is not a case where the authority was negligent in making payment of pension or pensionary benefits. A decision was taken to withhold pension and gratuity as noted above. It is another matter that the said decision failed to receive judicial imprimatur.

14. In that view of the matter, grant of 9% interest by the learned Single Judge, according to our perception, was not called for and therefore, the order of the learned Single Judge is interfered with to that extent.

15. With the aforesaid observations and directions, the writ appeal stands party allowed. Order of the learned Single is interfered with to the extent of direction of granting 9% interest from the date of entitlement till the date of payment. It is, however, made clear that in case the balance amount of pension and gratuity, which will be due to the petitioner in terms of this judgment, is not paid within a period of two months from today, the petitioner would be entitled to interest @ 9% in terms of the order of the learned Single from the date of entitlement till the date of payment.

