

(2013) 02 CAL CK 0068
In the Calcutta High Court
Case No : W.P.C.T. No. 49 of 2011

Comptroller and Auditor General of India and Others

APPELLANT

Vs

Ram Debabrata Ghosh and Another

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2013) LabIC 1303

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Bhaskar Prosad Banerjee and Ms. Sandip Kumar Bhattacharyya, for the Appellant; Sandhan Roy Chowdhury, Md. Selim and Miss Reshmi Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The petitioners have challenged the decision of the Central Administrative Tribunal, Calcutta Bench by which the Tribunal has directed the petitioners and Respondent no. 3 that is the Secretary, Ministry of Personnel Public Grievance and Pension, Department of Personnel and Training New Delhi to pay Respondent no. 1 his retiral dues in accordance with the rules within a period of three months from the date of the order. The respondent was employed as an Auditor in the office of the Principal Accountant General (Audit), West Bengal that is Petitioner no. 2. He retired as an auditor on 31st January 2010, after forty years of service. Respondent no. 1 was suspended during the period from 13th March 1999 to 16th July 2002 in connection with a Criminal Case No. CPS 90 dated 19th March 2009. He was charged under Sections 498A, 406 read with 34 of the Indian Penal Code. Respondent No. 1 was permitted to join duty later and his period of suspension was regularised. There is no dispute that the Respondents No. 1 was in custody for four days, from 13th to 17th March 1999.

2. The respondent filed the original application before the Tribunal contending that he should be paid gratuity on his retirement as the criminal case against him

had not proceeded although ten years had elapsed. The respondent no. 1 contended that he was entitled to full pension and not provisional pension which had been granted to him on the ground that there was a criminal case pending against him.

3. The Tribunal has not accepted these contentions of the petitioners for several reasons. It has observed that there was no disciplinary proceedings drawn up against the respondent No. 1 although the retiral benefits had been withheld on the ground that the criminal case of the year 1999 was still pending against respondent no. 1. The Tribunal has observed that no charge sheet had been filed despite the passage of ten years. It has noted that no allegations involving any financial loss had been made against the respondent no. 1 for which a disciplinary proceeding was pending. The Tribunal, therefore, directed that the retiral benefits should be paid to the respondent no. 1 immediately.

4. The Learned Counsel, Mr. Bhattacharyya, appearing for the petitioners has relied on rule 69 of the Central Civil Service (Pension) Rules 1972 to submit that where a departmental or judicial proceeding is pending against a government servant he is only entitled to provisional pension. He has drawn our attention to clause (c) of Sub-Rule 1 of Rule 69 which stipulates that no gratuity shall be paid to a government servant until the conclusion of the departmental or judicial proceeding and issuance of final orders thereon. He points out further that under rule 3 pension has been defined to include gratuity except where the term pension is used in contradistinction to gratuity. Mr. Bhattacharyya submits that the pendency of a criminal case against a government servant precludes him from receiving the full pension and it matters little whether the criminal case has been pending for a long period of time. He relies on the judgment of the Supreme Court in Manohar Lal Vs. Vinesh Anand and Others, and submits that since the Respondent No. 1 is a criminal he cannot escape his liability. The Learned Counsel has also relied on the judgment of the Supreme Court in the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another,

5. The Learned Counsel for the respondents Mr. Roy Chowdhury appearing for the respondent no. 1 submits that there is no error committed by the Tribunal much less an error apparent on the face of the record. He submits that merely because a criminal case has been pending from the year 1999 against the petitioner he cannot be deprived of his pension, including gratuity. The Learned Counsel further submitted that ten years having elapsed from the date when the petitioner had been charged for offences allegedly committed under Sections 498A /406 /34 of the IPC, the petitioners were bound to pay respondent no. 1 full pension. He further submitted that a government servant cannot be deprived of his pension in view of the criminal proceedings pending against him when those proceedings had no bearing on the conduct of respondent no. 1 in his work place. The Learned Counsel pointed out that the charges which had been framed against respondent no. 1 because of a complaint by his sister-in-law and, therefore, although he was not responsible for any cruelty towards her. Mr. Roy

Chowdhury fortified his submissions by relying on the judgments of the Delhi High Court in the case of Union of India & Another, Petitioners vs. Shri J.P. Sharma, Respondents [W.P. (C) No. 6465 of 2003] decided on 4th July 2008 and in W.P. (C) No. 383 of 2010 Union of India and Another, Petitioners vs. Prabhu Lal, Respondent decided on 25th January 2010 and the judgment of the Allahabad High Court in Dukhan Prasad Singh vs. Union of India decided on 22nd May 2006.

6. Before we proceed further it would be appropriate for us to set out rule 69 of the Central Civil Services (Pension) Rules, it reads as under

69. Provisional pension where departmental or judicial proceedings may be pending (1)(a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i),(ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

7. Rule 9 deals with right of the President of India to withhold or withdraw pension. Sub-Rule 4 of rule 9 stipulates that a government servant who has retired on attaining the age of superannuation or otherwise, against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule 2, would be sanctioned only provisional pension as mentioned in Rule 69. Sub-rule 6 of Rule 9 provides (a) that departmental proceedings shall be deemed to be instituted on the date of which the statement of charges is issued to the government servant or pensioner and negligence of a government servant who has been placed under suspension

it would be from the date of such suspension. Clause (b) provides that the judicial proceedings shall be deemed to be instituted, in the case of criminal proceedings, on the date on which the complaint or report of a police officer was taken cognizance of by the Magistrate. As regards civil proceedings a judicial proceeding is deemed to have been instituted on the date the plaint is presented in the Court.

8. The Learned Counsel for the petitioners argued that under Rule 9 pension or gratuity or both can be withheld, either permanently or for a specified period. Recovery from the pension or gratuity of the whole or part of a pecuniary loss caused to the government can be made, if the employee is found guilty of grave misconduct or negligence during the period of service in a departmental inquiry. The departmental proceedings however must be instituted in respect of an event or incident which occurred less than four years prior to the institution of such departmental proceedings. It is trite that pension is neither a bounty nor a charity nor a largesse doled out by the government to its employees. It is an amount paid to a retired employee as deferred wages. Pension including gratuity can be denied to an employee only under circumstances which are mentioned in the statute or rules governing payment of pension.

9. The submission of the learned counsel for the petitioners is that the very fact that the judicial proceedings are pending against the respondent no. 1 prevents them from disbursing full pension. The institution of judicial proceedings is sufficient to deny an employee his pension and it matters little whether the criminal proceedings filed against a government servant are related to his work. It is not possible to accept this submission of the learned counsel. Rule 9 permits withholding of pension where the pensioner is found guilty of grave misconduct or negligence during the period of his service. Therefore, only such judicial or departmental proceedings which are instituted in respect of grave misconduct or negligence during the period of service of a government servant can deny him full pension. A bare perusal of rule 9 would indicate that the departmental or judicial proceedings must relate to the negligence of pensioner which has occurred during the period of his service. Any judicial proceedings which does not relate to his work cannot be considered for the purpose of rule 9 to deprive a retired employee of his pension. Sub-rule 6 of rule 9 cannot be read in isolation as the learned counsel for the petitioners wants us to do. The Sub-rule opens with the words "for the purpose of this rule". This rule is rule 9 where under sub-rule 1 withholding of pension or gratuity where an employee is found guilty of grave misconduct or negligence during the period of service in any judicial proceedings or departmental proceedings. Rule 8 stipulates that pension is to be paid depending on the future good conduct of a government employee who has retired. Rule 3 of the Central Civil Service Conduct Rules speaks about the conduct of government servant at all times. Obviously, therefore, this conduct is related to the work performed by him. Rules 3(A), 3(B), 3(C) also speaks about the promptness and courtesy, observance of government policy and prohibition of sexual harassment of working women respectively in the workplace. Thus it is

obvious from a perusal of the rules applicable that the words "grave misconduct and negligence" used in Rule 9 of the pension rules refer to misconduct which occurs in the workplace and departmental or judicial proceedings undertaken because of such conduct.

10. The Learned Counsel for the petitioner had argued that prosecuting an offender is a social need by relying on the judgment of the Supreme Court in Manohar Lal's case (supra). According to him, therefore, the fact that a government servant has been arrested and criminal proceedings are pending against him cannot be obliterated by the passage of time. He submitted that the criminal proceedings pending against the respondent relate to violence against women and, therefore, those proceedings must be seen to their logical end before the grant of pension. This submission of the learned counsel, though attractive at the first blush, is unsustainable as the criminal proceedings do not relate to the conduct of the employee while in his workplace. The criminal proceedings have nothing to do whatsoever with the job performed by the respondent. The submission of the learned counsel is that if he is ultimately convicted the Respondent No. 1 would not be entitled to pension. It is for this reason according to the learned counsel that only provision pension can be paid to the Respondent No. 1. This submission of the learned counsel is incorrect in as much as the right to withdraw pension, again is only with reference to the pensioner being found guilty in a departmental or judicial proceedings for grave misconduct or negligence.

11. In our opinion, for the same reason the pension a government servant cannot be withheld for any act committed by him outside the workplace of the government servant.

12. It must be borne in mind in the present case that no charge sheet has been filed in the criminal case. The petitioners have not initiated any disciplinary inquiry against respondent no. 1, and, therefore, he cannot be deprived of his pension. In fact it is doubtful whether the criminal proceedings would subsist today when the period of limitation is over.

13. In Union of India & Another, vs. Shri J.P. Sharma, (supra) the Delhi High Court has observed that under Sub-rule 6(b) of rule 9 judicial proceedings are deemed to be instituted in the case of criminal proceedings on the date on which the complaint or report of a police officer is made of which the ministry takes cognizance.. The date on which the charge sheet or the police complaint is filed before the Court is relevant. The facts in Union of India & Another, vs. Shri J. P. Sharma, (supra) were similar to the facts in the present case where the Court, noted that neither the charge sheet/challans/report nor the complaint filed by the CBI was filed before the magistrate. The Delhi High Court therefore concluded that it could not be said that judicial proceedings were instituted against the employee in view of rule 9(6) (b) (i) of the pension rules.

14. Similarly in Union of India vs. Prabhu Lal, the Delhi High Court held that

gratuity cannot be withheld under Rule 8 of the CCS Pension Rules unlike the provision of rule 9.

15. The Allahabad High Court in *Dukhan Prasad Singh vs. Union of India* (supra) has held that the words "judicial proceedings are instituted do not speak of judicial proceedings being continued as it has not been specifically mentioned whereas in the case of departmental proceedings the contention of the proceedings is mentioned". The Court held in Para 26 as follows:-

26. Thus, it is well settled by the Apex Court that the pension is not a bounty. It is a legal entitlement which can only be curtailed by an express provision of law and not otherwise. Non-mention of the word "continued" in respect of the judicial proceeding in Sub-rule (4) of Rule 9 of the Pension Rules is significant. As Sub-rule (4) of Rule 9 of the Pension Rules does not contemplate a situation where judicial proceedings have been instituted prior to the superannuation of the Government servant and are continued after his superannuation, we are of the considered opinion that the order of provisional pensions provided in Rule 69 of the Rules could not have been passed and instead the regular pension ought to have been given. It may be mentioned here that under Rule 8 of the Pension Rules future good conduct is an implied condition of every grant of pension and its continuance and if the pensioner is convicted of a serious crime or is found guilty of grave misconduct, the appointing authority may, by order in writing withhold or withdraw a pension or a part thereof, whether permanently or for a specified period. Thus, the authorities have been given sufficient powers to withhold or withdraw the pension either in full or in part, permanently or for a specified period in case of conviction of a pensioner in a serious crime or he being found guilty of grave misconduct.

16. In each of the cases cited at the bar before us the criminal proceedings initiated against the government servant related to his work or performance of his duty. In the present case admittedly the allegations against the respondent no. 1 have no relevance to his workplace or matters with which the employer of the government servant is concerned. In these circumstances in our there is no reason to deny pension and gratuity to respondent no. 1. The Tribunal has correctly appreciated the facts and the law and has drawn a proper conclusion.

17. The petition is, therefore, dismissed with costs, quantified at Rs. 2000/-. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Anindita Roy Saraswati, J.

I agree.