(2014) 10 KL CK 0120

In the High Court Of Kerala

Case No : WP(C). No. 23168 of 2014 (U)

Francis. A — APPELLANT

Vs

The Kerala State Electricity Board Ltd. — RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:
Constitution of India, 1950 — Article 300A

Citation : (2014) 10 KL CK 0120

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : Elvin Peter P.J., T.G. Sunil and K.R. Ganesh, Advocate for the Appellant; K.S. Anil, SC, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner having worked as Regional Audit Officer, on attaining the age of superannuation retired from service on 31.07.2014. Despite his numerous representations, so far, his retirement benefits have not been settled and paid by the authorities. Under those circumstances he has approached this Court.

3. The learned counsel for the petitioner has strenuously contended that after repeated representations, both oral and written, when the petitioner approached the authorities enquiring why his terminal benefits had not been settled so far, he was informed by the authorities that the Non Liability Certificate for the period from 07.03.2005 to 31.10.2008 had not been issued by the department concerned to process his pension papers further. On his further enquiry, the petitioner has come to know that no disciplinary proceedings of whatever nature has been pending. The alleged cause for not issuing the Non Liability Certificate is based on an issue concerning purchase of certain UG cable material from a

company at Chennai against the additional purchase order dated 05.02.2007, made by the then Executive Engineer of the Board.

4. The learned counsel has contended that at the relevant time, i.e., from the years 2005 to 2008, the petitioner had been working as Senior Superintendent with the responsibility of only verifying the bills. According to the learned counsel, the very Executive Engineer, who raised the bill and got payment on the strength of the said bill, allegedly without prior sanction, has later been duly promoted and is said to be presently working as a Director in the respondent Board.

5. The learned counsel has also strenuously contended that the petitioner had no role at all in raising the bill and the subsequent payment; even otherwise, apart from some initial correspondence on the issue, no proceedings, either judicial or departmental, have been initiated against the petitioner or even against the then Executive Engineer, presently the Director. The learned counsel has also drawn the attention of this Court to Rule 3 Part III Kerala Service Rules (KSR) to emphasise the time limit that has been cast on the authority to initiate disciplinary proceedings against any alleged misconduct on the part of an employee. The learned counsel has placed reliance on a judgment of a learned Division Bench in Kerala State Electricity Board Vs. K. Kesavan, . Summing up his submissions, the learned counsel has submitted that even going by the statement filed by the respondent Board, it is difficult to discern any justification for the denial of pensionary benefits to the petitioner, despite his repeated representations to get what is constitutionally and statutorily a protected right. Accordingly, he urged this Court to allow the writ petition.

6. Per contra, the learned Standing Counsel, in tune with the pleadings in the statement filed by the third respondent, has submitted that though there is not much dispute that no proceedings, either judicial or disciplinary, are pending against the petitioner, the fact, however, remains that so far the Non Liability Certificate for the period from 07.03.2005 to 31.10.2008 has not been produced. With a particular reference to paragraph 8 of the statement, the learned Standing Counsel has further submitted that the petitioner, then being the Senior Superintendent, ought to have properly scrutinised the bills raised by the then Executive Engineer and could have taken immediate steps in that regard. In any event, the issue concerning raising of the bill, which has been adverted to in the submission of the learned counsel for the petitioner, has not been closed, and as such, it is difficult to accede to the request of the petitioner to pay his terminal benefits before putting an end to the controversy of unauthorised payment based on the bills referred to above.

7. To begin with, it can be very clearly seen recorded in the fourth paragraph of the statement filed by the third respondent that no proceedings, either judicial or disciplinary, are seen initiated against the petitioner as per his service records. There is no gainsaying the fact that the respondents, in the statement, have pleaded about a particular departmental transaction between 2005 and 2008

concerning purchase of UG cable from a company at Chennai against the additional purchase order dated 05.02.2007, made by the then Executive Engineer of the Board. The entire issue revolves around the aspect of effecting payment without getting sanction regarding re-fixation of price of the said material. Be that as it may, it is not in dispute that the petitioner does not have any direct role either in raising the bill or in ensuring payment thereof without getting sanction regarding re-fixation of price. The then Executive Engineer is said to have already been promoted and is presently working as a Director in the Board. It is discernible from the record that there was some initial correspondence departmentally, but it ended way back in 2008.

8. Given the importance of the issue that a retired employee has been struggling to get his terminal benefits, the right to which he is entitled, as has been reiterated by this Court as well as by the Honourable Supreme Court, the inaction on the part of the respondent Board in settling the terminal dues of the petitioner cannot easily be brushed aside. Even statutorily Rule 3 Part III KSR, especially sub-clause (2) thereof, mandates that no departmental proceedings shall be initiated in respect of an event which took place more than four years.

9. In the first place, the respondents themselves have placed on record that till this day no proceedings have been initiated. Even the issue, which is said to have come in the way of the petitioner not getting his Non Liability Certificate, happened in the year 2008. The departmental correspondence on the issue ceased by 04.09.2008. In terms of Rule 3 Part III KSR, at this juncture, the respondent Board cannot initiate any disciplinary proceedings against an employee, assuming that there was any lapse on his part while he had been discharging the functions of a Senior Superintendent way back from 2005 to 2008. A learned Division Bench of this Court in Kesavan''s case (supra) has also categorically held that the retiral benefit like gratuity, being a property as enshrined in Article 300A of the Constitution, cannot be deprived or withheld without any statutory prescription.

10. In the facts and circumstances, this Court is of the considered opinion that there is no justification of whatever nature for the respondent to tarry on the issue of settling the terminal benefits of the petitioner. Accordingly, this Court directs the authorities to duly process the application of the petitioner and settle all his terminal benefits as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

With the above direction, the writ petition is disposed of. No order as to costs.

