(2010) 01 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 47 of 2010

G. Nagendrappa APPELLANT

Vs

The Director, Administration and Human Resources, KPTCL and Others RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Karnataka Electricity Board Employees Service Regulations — Regulation 171, 172, 172 (1)

Citation : (2010) 125 FLR 850 : (2010) ILR (Kar) 1665 : (2010) 2 KCCR 987

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M. Raghavendra Achar, for the Appellant; P.S. Dinesh Kumar, for the Respondent

Judgement

Ram Mohan Reddy, J.—The petitioner while in the services of the respondent as an Assistant Engineer was accused of offences punishable under the Prevention of Corruption Act by the Karnataka Lokayukta Police, in CC No. 3/1997 on the file of the Court of the Principal Sessions Judge, Shimoga, leading to the respondent-employer placing the petitioner under suspension from 16.8.1996 up to 7.4.1997 and on attaining the age of superannuation retired on 31.3.2001. On retirement, the petitioner was paid 75% (2/3rd) of the full pension while denying the terminal benefit of death-cum-retirement gratuity, earned leave and commutation.

2. According to the petitioner. CC No. 3/1997 ended in an acquittal by order dated 30.5.2002 as against which the Lokayuktha police preferred Criminal Appeal No. 2125/2002 which was dismissed by order dated 4.12.2008. On the culmination of the judicial proceedings, the petitioner addressed a letter dated 21.4.2009 calling upon the respondents to make payment of the terminal benefits including the full pension, which when considered, the respondents by letter dated 5.5.2009 Annexure-C (Annexure-R1 to the statement of objections of the respondent) directed payment of full pension and terminal benefits. That

order was given effect to by letter dated 6.8.2009-Annexure-R2. According to the petitioner'', the delay in making payment of the balance of the pension and the terminal benefits, invests a right in the petitioner and an obligation on the respondents to pay interest at the rate of 18% p.a. on the said sum from 31.3.2001, the date of retirement. The petitioner having made a request by letter dated 19.11.2009 - Annexure-D which when not responded to by the respondents has preferred this petition.

3. Petition is opposed by filing statement of objections dated 25.1.2010 inter alia contending that the petitioner was trapped for allegedly demanding Rs. 1.000/- as illegal gratification, subject-matter of special case 3/1997, in which the petitioner was acquitted by judgment dated 30.5.2002 and the continuation of the proceedings in Criminal Appeal No. 2125/2002 was dismissed by order dated 4.12.2008 of this Court. Having regard to compliance with Regulation 172(1) of the Karnataka Electricity Board Employees'' Service Regulations for brevity ''the regulations'', by payment of provisional pension of 75% and full pension on culmination of the proceedings, together with the balance due to the petitioner. 110 legal right is vested in the petitioner to claim interest on the balance terminal benefits. Reliance is placed upon the unreported decision of this Court in R. Ramabhadraiah v. Karnataka Electricity Board and Anr. WP No. 1734 of 1997, as affirmed in W.A. No. 2807/1999 and the SLP filed thereon. In addition it is contended that the decision in S. Thithappa v. The Secretary, Karnataka Electricity Board W.P. No. 3189/1998, Annexure-C to the Writ Petition is not applicable to the facts of this case.

4. Having heard the learned Counsel for the parties, perused the pleadings and the annexures, undoubtedly, the Lokayuktha Police charge sheeted the petitioner-an Assistant Engineer in the respondent, for certain offences under the Prevention of Corruption Act in C.C. No. 3/1997. During the pendency of the said proceedings petitioner attained the age of superannuation and retired on 31.3.2001 whence he was paid 2/3rd of full pension in terms of Regulation 172(1) of the ''Regulations''. It is indisputable that the petitioner was acquitted in C.C. No. 3/1997 by judgment dated 30.5.2002, followed by dismissal of Criminal Appeal No. 2125/2002 filed by the Lokayuktha Police, by order dated 4.12.2008. Petitioner''s representation dated 21.4.2009 led to payment of the value of the surrendered earned leave; death-cum-retirement gratuity; commutation; held up pay; and balance 1/3rd of the pension from 31.4.2001 to 1.10.2009, by letter dated 6.8.2009 - Annexure-R2, giving effect to the order Annexure-C. Value of leave encashment was paid on 12.6.2009 and 8.10.2009; death-cum-retirement gratuity on 31.7.2009; 10.9.2009 and 31.10.2009; commutation on 10.9.2009 and 31.10.2009; held up pay on 18.7.2009; 8.10.2009: 5.9.2009 and 30.11.2009 and the balance of pension on 31-10-2009, as set out in paragraph 3 of the memorandum of Writ Petition.

5. Regulation 172(1) of the Regulations invests a right in the employer to withhold pension partially, while in entirety the death-cum-retirement gratuity,

until conclusion of judicial proceedings or pending departmental proceedings, on the employee retiring from service. Explanation to Regulation 171 provides that a judicial proceedings shall be deemed to be instituted in a ease of a criminal proceeding, on the date on which the compliant or report of police officer is made, of which the Magistrate takes cognizance.

6. Viewed in the light of the aforestated regulations, which are not called in question in this petition, the respondents in the fact circumstances were fully justified in directing payment of 2/3rd of the full pension to the petitioner and withholding the amounts towards death-cum-retirement gratuity, on the petitioner retiring from service, due to the pendency of the Criminal Case.

7. Surrender of earned leave for encashment even according to the learned Counsel for the respondents is a terminal benefit and not a pensionary benefit which accrues to the petitioner on his retirement. In other words, it is on retirement the petitioner if surrenders the earned leave to his credit is entitled to en-cash its value.

8. Commutation is yet another sum payable post retirement to employees and, does not constitute sum payable as a pensionary benefit.

9. Held up pay is pay withheld during the period when the employee is under suspension. The decision as to whether the period of suspension could be treated as on duty, admittedly, in the Instant case is after the disposal of the criminal proceedings acquitting the petitioner of criminal charges, by the order Annexure-R1 the respondent reckoned the period of suspension as on duty and, the petitioner being entitled to full wages for the said period, the balance of the held up pay was made good.

10. The respondents having failed to pay the value towards encashment of surrendered earned leave, and commutation, immediately on the petitioner''s retirement, undoubtedly entitles the petitioner to interest on the said sums, from 1.7.2001 onwards, extending the benefit of three 1st months to the respondent-employer, after the petitioner retired on 31-3-2001 to make payment.

11. The answer to the question, as to whether the petitioner is entitled to interest on the amounts towards death-cum-retirement gratuity, held up pay and balance of pension, is no more res integra, in the light of the decision in R. Ramabhadraiah v. Karnataka Electricity Board and Anr. WP No. 1734 of 1997 when H.L. Dattu, J. as he then was, having regard to Regulation 172 of the regulations held that the Karnataka Electricity Board was not liable to pay interest on unpaid balance pension and death-cum-retirement gratuity. That order when called in question in W.A. No. 2807/1999 was confirmed by order dated 9.7.1999 dismissing the appeal as also by the Apex Court dismissing the Special Leave to Appeal (Civil C.C. No. 510/2000 by order dated 7.7.2000.

12. The respondents, mind full of the pendency of the judicial proceedings in CC. No. 3/1997 and its continuation in Criminal Appeal No. 2125/2002, the payment

of amounts towards death-cum-retirement gratuity; held up pay and balance of the pension, on the conclusion of the judicial proceeding, were fully justified in not paying interest on the said sums from 31.3.2001 up to the date of payment.

13. Although learned Counsel for the petitioner while contending that the respondent was not justified in not paying interest on withheld D.C.R.G. amount, points out to a decision of a learned Single Judge in W.P. No. 3189/1998 in the case of S. Thithappa v. The Secretary, KEB (Annexure-E), I am afraid is not a precedent to be applied to the facts and circumstances of this case. I say so because there is no consideration over the effect of Regulation 172 entitling the respondent to withhold amounts towards death-cum-retirement gratuity to employees against whom judicial proceedings are pending, on the date of their retirement. Moreover, the judgment does not lay down a law and is not a ratio decidendi.

14. As between the employer and employee there is no contract to pay interest on belated payment of monetary benefits. Suffice it to state that had the respondent paid the petitioner the value of earned leave encashment and commutation as on the date of retirement and if such sums were invested in a term deposit in a Bank, would fetch approximately 8% p.a. In that view of the matter, the claim for interest at the rate of 18% is rejected.

15. In the result, the petition is allowed in part. The respondents are directed to pay interest at the rate of 8% p.a. from 1.7.2001 onwards up to the date of payment towards earned leave encashment and commutation. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

