(2024) 02 CHH CK 0043

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 188 Of 2017

I. J. Tripathi — APPELLANT

Vs

State Of Chhattisgarh — RESPONDENT

Date of Decision : 20-02-2024

Acts Referred:
M.P. Civil Services (Pension) Rules, 1976 — Rule 65, 74

Citation : (2024) 02 CHH CK 0043

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Ravindra Sharma, Kunal Das

Judgement

1. By way of the instant petition, the petitioner is challenging the legality of the demand notice issued to the petitioner vide letter dated 28.12.2016 (Annexure P/1) whereby the petitioner was directed to deposit a sum of Rs.7,43,956/- within a period of 7 days. It has further been directed to the petitioner to give undertaking/consent for recovery of the aforesaid amount from the amount of gratuity so as to finalize the gratuity amount.

2. Brief facts of the case as mentioned in the petition, are that the petitioner has retired as Assistant Director Agriculture, officiating at the office Deputy Director Korba on attaining the age of superannuation vide order dated 29.01.2016 (Annexure P/3). Respondent No.3 further issued letter dated 23.02.2016 (Annexure P/4) for payment of 90% of pension with dearness allowances payable time to time under Rule 74 of Civil Pension Rule 1976 till the final fixation of the pension. The said letter was also addressed to respondent No.4. Despite making several representations, respondent No.4 did not inform about any dues outstanding against the petitioner and deliberately decline to issue no dues certificate to him.

3. As the respondent department failed to release the retiral dues of the petitioner therefore, the petitioner had no option except to approach before this

Court for redressal of his grievances and he filed writ petition i.e. W.P.S. No. 5830/2016 pleading malafide action of respondent No.4 in delaying the payment of retiral dues and the same was disposed of with a direction to consider the representation within 45 days vide order dated 24.10.2016. Respondent No.4 inspite of issuing no dues certificate in favour of petitioner, issued the details of dues outstanding against him during his service period as per Annexure P/2 dated 23.09.2016.

4. As per Annexure P/6 dated 18.11.2016, respondent No.5 denied the issuance of letter against the petitioner with regard to recovery amount under National Employment Guarantee Scheme. As per Annexure P/7 dated 24.05.2016 and Annexure P/8 dated 22.12.2015, balance amount was directed to be recovered from the Deputy Director, the Senior Agriculture Extension Officer and from J.S. Markam, Rural Agriculture Officer. As per Annexure P/9, it has been certified by Senior Agricultural Officer, Katghora, District- Korba that 7 quintal gold certified paddy amounting to Rs.4067/- as mentioned in the letter dated 23.09.2016 as item No.2, has been deposited in Seed Corporation Khokhsa and the remaining quintal of seeds that is 5 quintal has been utilized under the Annapurna planning for the year 2008-09. Recovery of difference amount of exchange of paddy during the period 2002-2005, has also been deposited through challan and the copy of the challan has been sent to the office of respondent No.4. Thus, the whole dues amount shown against the petitioner was recovered. Therefore, the demand notice is baseless and was issued only for delaying the payment of retiral dues of the petitioner. The demand notice issued to the petitioner was contradicted by the department and the liabilities to pay the same have been ascertained, therefore the demand notice is illegal and liable to be quashed. Hence, the petition for following reliefs:-

10.1. The Hon’ble Court may kindly be pleased to issue a writ of certiorari directing to quash the demand notice dated 28.12.2016 as per Annexure P-1.

10.2. The Hon’ble Court may kindly be pleased to issue any writ or direction or order as deem fit in the interest of justice.

5. Learned counsel for the petitioner submits that the petitioner was posted as Assistant Director, Agriculture and he retired from service on attaining the age of superannuation on 31.01.2016 (Annexure P/3) and the impugned recovery notice has been issued after almost 11 years of his retirement from service which is illegal, Improper and contrary to the law laid down by the Hon'ble Apex Court. The details of total recoverable amount in different heads were mentioned in letter dated 23.09.2016 (Annexure P/2) which is contrary to the other document regarding the payment of dues and other letter issued by the Department i.e. Annexure P/6, P/7, P/8 P/9 & R/4. Respondent department failed to release the retiral due of the petitioner therefore, he made representation and filed the writ petition i.e. W.P.S. No. 5830/2016 before this Court and the same was disposed of with direction to consider the representation within 45 days vide order dated 24.10.2016. Respondent department under vengeance without deciding the

representation of the petitioner, issued the recovery notice to the petitioner which is illegal, improper and contrary to the law. Respondent department also filed the documents along with its reply wherein also it is evident that the other officers of the department are responsible for payment of dues (Annexure R/4). Petitioner is not solely responsible for payment of any dues and earlier after the inquiry, respondent department did not find any direct involvement of the petitioner and passed the order dated 22.07.2015 (Annexure P/11) for releasing the salary of the petitioner. After conducting the departmental inquiry, the show cause notice was issued to the petitioner on 29.09.2015 and the petitioner submitted the reply of the same on 04.10.2015 wherein the petitioner has specifically denied each and every allegation made against him (Annexure R/2). Being unsatisfied with the reply, the inquiry was conducted by the four members committee and out of four members, three were juniors to the petitioner and before conducting the inquiry, no notice was issued to the petitioner and no any opportunity of hearing was given to him.

6. Reliance has been placed on the judgments of Hon'ble Supreme Court in the matter of State of Punjab and others etc. v. Rafiq Masih (WhiteWasher) etc. in AIR 2015 SC 696 & Thomas Daniel v. State of Kerala and others in AIR 2022 Supreme Court 2153.

7. Learned counsel for the respondents/State strongly opposes the prayer of the petitioner and submits that the present petition is a second round of litigation. On earlier occasion, the petitioner approached this Court by way of filing writ petition which was registered as W.P. (S) No. 5830/2016 and the said writ petition disposed of vide order dated 24.10.2016. The said petition was filed by the petitioner against non issuance of no dues certificate in connection with the release of provident fund and other retiral dues. As per directions/order dated 24.10.2016 passed by this Court in W.P. (S) No. 5830/2016, the retrial dues with the Family Benefit Funds amounting to Rs. 1,35,706/-, Group Insurance Scheme amounting to Rs. 30,491/-, leave encashment amounting to Rs. 3,68,552/- and GPF amounting to Rs. 1,44,786/- have duly been paid to the petitioner. An anticipatory pension to the tune of Rs. 12,483/- alongwith the dearness allowances has also been sanctioned in favour of the petitioner and only the gratuity amount has not been paid to the petitioner. While the petitioner was in service, under MANREGA scheme, the construction of well (kup) was carried out by the petitioner. A complaint was made against the construction activities of well (kup) carried out by the petitioner, an inquiry was ordered by constituting an inquiry committee. The said inquiry committee conducted the inquiry by affording due opportunity of hearing to the petitioner and came to a conclusion that in the said construction activities, certain illegalities and irregularities have been committed by the petitioner culminating a huge financial loss to the public exchequer and therefore, a recommendation for recovery of the amount against the petitioner was made as per Annexure R/1. After receipt of the inquiry report, a show cause notice was issued to the petitioner seeking explanation / reply and in response to which, the petitioner submitted his reply/ explanation (Annexure

R/2). After considering the reply submitted by the petitioner to the show cause notice dated 29.09.2015 to be unsatisfactory, based upon the inquiry report submitted by the committee (Annexure R/1), an order dated 02.12.2015 (Annexure R/3) was passed directing recovery of an amount to the tune of Rs. 5,34,632/- from the petitioner. The order dated 02.12.2015 (Annexure R/3) has been issued prior to the retirement of the petitioner and the petitioner has never assailed the said order dated 02.12.2015 (Annexure R/3) and therefore, the said order has already attained its finality. While the petitioner was in service, there was another recovery against the petitioner under certain heads and despite directions/orders for depositing the amounts recoverable, the petitioner did not deposit the same which is clearly evident from perusal of the communications dated 01.09.2016 and 12.09.2016 (Annexure R/4 Colly). From perusal of Annexure P/7, it would be evident that, against the petitioner, some recovery amounting to Rs. 17,496/- for organic fertilizer pertaining to the year 2004-05, Rs. 2,727/- for organic fertilizer pertaining to the year 2005-06, Rs. 7651/- for organic fertilizer pertaining to the year 2006-07 which comes to Rs. 27,874/- are pending. During the period from 2000- 2001 to 2004-2005, against the certified seed, the amount of cultivator share between the upheld price determined by the State Government and the paddy so deposited by the farmers was collected by the petitioner from the farmers to the tune of Rs. 1,12,921/- and the same was not deposited by him with the state exchequer and therefore, vide communication dated 20.11.2007 (Annexure R/5), the petitioner was directed to deposit the aforesaid amount. So, it is clear that prior to retirement of the petitioner from service, there were certain recoveries recoverable from the petitioner which is clear from the documents filed by the respondent authorities. Hence, the impugned recovery notice/order dated 28.12.2016 (Annexure P/1) is just, proper and legal. Therefore, the instant petition is is liable to be dismissed.

8. In rejoinder, the petitioner filed objection on the ground that the respondent authorities initiated recovery proceeding against the petitioner on the basis of enquiry report dated 02.12.2015 treating the report as final report, whereas the enquiry was found incompetent. The enquiry of irregularities under the scheme of MANREGA comes within the purview/jurisdiction of Lokpal. Therefore, recovery on the basis of earlier enquiry report is illegal and incompetent, however the matter was referred to Lokpal vide letter dated 03.12.2015 (Annexure P/14) issued by the Chief Executive Officer, Jila Panchayat, Korba which is pending, therefore the dues against the petitioner is not final and conclusive.

9. Heard counsel for the parties and perused the material placed on record.

10. It is not disputed in this case that the petitioner was posted in respondent department and he was retired as Assistant Director, Agriculture after attaining the age of superannuation vide order dated 29.01.2016 (Annexure P/3). It is also not disputed that respondent No. 3 issued letter dated 23.02.2016 (Annexure P/4) for the payment of 90% of pension with dearness allowances payable time to time under Rule 74 of Civil Pension Rule 1976 till the final fixation of the

pension. When respondent authorities did not issue no dues certificate to the petitioner then he filed writ petition i.e. WPS No. 5830/2016 before this Court and the same was disposed of with direction to respondent No.4 to consider the representation within 45 days from the date of receipt of certified copy of this order. Thereafter, the respondent authorities issued letter dated 23.09.2016 (Annexure P/2) with regard to outstanding dues against the petitioner during his service period.

11. As per Annexure P/2 dated 23.09.2016, following recovery amount is pending against the petitioner which reads as under:-

12. As per item No. 8 of Annexure P/2 dated 23.09.2016, the recovery amount which is recoverable from the petitioner is Rs.5,34,632/- but as per Annexure P/6 dated 18.11.2016 filed by the petitioner, it was informed that letter No. 3358 dated 02.12.2015 was not issued by the office of Sub-divisional Officer (Agriculture) District Korba, Chhattisgarh.

13. Relevant para of Annexure P/7 dated 24.05.2016 reads as under:-

14. Annexure P/8 dated 22.12.2015 shows some recovery amount pending against the officers which is as under:-

15.Respondent authorities did not rebut the above mentioned letters and filed enquiry report Annexure R/1. Petitioner also filed letter dated 03.12.2015 (Annexure P/14) issued by the Chief Executive Officer, Jila Panchayat Korba. By this letter, two complaints were transferred to Lokpal, Jila Panchayat Korba (C.G.) by the Chief Executive Officer on 03.12.2015. Pursuant to which, no report of Lokpal was filed by the respondent authorities. Thereafter, Annexure P/2 dated 23.09.2016 was issued by respondent No.4.

16. Hon’ble Apex court in the matter of Thomas Daniel v. State of Kerala and others reported in AIR 2022 SC 2153 held in para 9 as under:-

9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepre- sentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

17. Rule 65 of the Pension Rules 1976 is reproduced as under;

"Rule 65 Recovery and adjustment of Government dues:- (1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable.-

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted."

Explanation:-1. The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961."

18. It is clear from all the documents placed on records that the petitioner has retired on 31.01.2016 and demand notice was issued on 28.12.2016 (Annexure P/1) after almost 11 months from the date of retirement of the petitioner. Annexure P/2 was issued on 23.09.2016 and it is evident from the said letter that pending recovery amount was not based on proper documentation. As per Annexure P/6 dated 18.11.2016, it is clear that, no such letter dated 02.12.2015 was issued by the concerned department and the respondent authorities did not clarify the said fact.

19. From Annexure P/14 dated 03.12.2015, it is evident that the complaints were sent to the Lokpal, but no final report was filed by the respondent authorities in this regard. It is also clear that when the petitioner filed the writ petition before this Court, thereafter, the recovery order was issued to the petitioner by the respondent authorities.

20. Having regard to the above, considering the facts and circumstances of the case and the decisions referred hereinabove, the impugned order dated 28.12.2016 (Annexure P/1) is set aside.

21. In the result, the petition succeeds and is accordingly allowed.