
(2005) 08 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2378 Of 2002

Jarnail Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Civil Services Regulations, 1956 — Article 168A, 168C, 168D

Citation : (2005) JKJ 528 Supp : (2006) 1 SriLJ 92 : (2006) SriLJ 92

Hon'ble Judges : S.K.Gupta, J

Bench : Single Bench

Advocate : Vinod Bakshi, Sindhu Sharma, Advocates appearing for the Parties

Judgement

1. The petitioner superannuated from the office of Director Agriculture, Jammu, after completing 58 years of age in June, 1998. The grievance of

the petitioner is that though he was entitled to the pensionary benefits on the date of his retirement but the respondents authorities have withheld his

legitimate pension and death cum retirement gratuity illegally, unlawfully and without any justification. According to the averments made in the writ

petition, the petitioner is stated to have made certain appointments to the class IV posts after inviting applications and interview conducted by a

Committee constituted by the petitioner and on the basis of recommendation of the Selection Committee, appointment orders were issued to 32

persons against class IV vacancies. That the appointments were made strictly in accordance with the rules but still the respondents cancelled their

appointment orders soon after the retirement of the petitioner and did not release his retiral benefits on superannuation. It was after more than one

year of the retirement of the petitioner, the case of the petitioner was recommended to the Accountant General for the release of the provisional

pension. Respondent no.2, in his recommendation dated 20.08.1999, intimated the Accountant General that the commuted pension and deathcumretirement gratuity have been withheld pending settlement of allegation regarding appointment of classIV posts made by the petitioner while in service, under Article 168A of the J&K CSR. Further case of the petitioner is that in the absence of any allegation against the petitioner for having caused any loss to the government on account of his negligence, provision of Article 168A of the J&K CSR is not attracted. That even when the case of the petitioner was recommended for provisional pension, no departmental proceedings were pending or instituted against the petitioner. It is also stated that the petitioner has been victimized, harassed and deprived of his retiral benefits on superannuation though NoDemandCertificate stands issued by the respondents in his favour vide letter dated 20.08.1999 which clearly speaks of their mala fides. The petitioner, therefore, seeks the quashment of recommendation letter dated 20.08.1999 withholding the gratuity and commutation pension by issuance of a certiorari and further commanding the respondents to release the withheld pensionary benefits and gratuity in his favour from the date it fell due to him on superannuation with interest.

2. No counter was filed by the respondents despite opportunities. The right to file the counter was closed and the writ petition taken up for final hearing.

3. Heard learned counsel appearing for the respective parties and perused the record meticulously.

4. Mr. Vinod Bakshi, Dy. AG appearing for respondents, at the threshold submitted that no prima facie case was disclosed against the petitioner in case F.I.R.No.54/1998 by the Vigilance Organisation and on examining its report, the government directed departmental inquiry. He also stated that during departmental inquiry, the petitioner has been exonerated. According to

Mr. Bakshi, the provisional pension was recommended to be released in favour of the petitioner under Article 168A of the CSR during the pendency of the settlement of allegation regarding appointment of classIV employees. His further submission is that the petitioner had made some illegal appointments regarding which F.I.R. No.54/ 1998 was registered. As

regards the withholding of gratuity, Mr. Bakshi submitted that the same could not be released until the conclusion of the proceedings. Mr. Bakshi also contended that mere registration of a case against the petitioner was sufficient ground to deny full pension and withhold the gratuity.

5. The spinal question involved in this petition for consideration is as to whether the petitioner is entitled to full pension as due to him under Article 232 (Chapter XVIII) of the CSR. However, the provisional pension was authorized under Article 168D(I) of the CSR in case departmental and judicial proceedings have been initiated against the retiree in accordance with clause (a) of Article 168A of the CSR as is evident from the plain language of Article 168D(1) of the CSR.

6. It may further be pointed out that provision of Article 168A of the CSR would be applicable only if departmental proceedings have either been initiated while the petitioner was on duty or had been instituted within one year from the date of his superannuation i.e. 30.06.1998. In para 12 of the petition, it is stated in unequivocal terms that neither departmental proceedings are pending nor instituted until 20.08.1999, when respondent no.2 recommended the authorization of provisional pension in favour of the petitioner. This fact also finds support from the documents produced by Mrs. Sindhu Sharma, learned counsel appearing for petitioner, during arguments and have been taken on record. In view of the specific plea taken by the petitioner in his petition, which remained unrefuted and uncontroverted, the provisions of Article 168A of the CSR would not apply in this case. It is only when statement of charges has been served to the government servant, departmental proceedings are deemed to have been instituted. Similarly, judicial proceedings mean presentation of charge sheet before the Court and taking cognizance by the Special Judge. The scope of Article 168A of the CSR was considered by the Hon'ble Division Bench of this Court in case 'State of J&K and another v. Dr. Kulwant Singh and 'another' 2004 (1) JKJ 351 and speaking for the Bench, brother KakruJ in para3 of the judgment held as under:

Para3. Understanding subclause (iii) clause (a) read with clause (c) of Article 168A CSR from its grammatical meaning inter alia it is deducible that withholding of maturity of a retired officer is permissible during the currency of judicial proceeding if the proceeding relates to an event which

has occurred within one year preceding the date on which the officer was last on duty. Whether judicial proceeding has commenced within the

period so prescribed is a question which is required to be examined in the light of the year the event relates to and the date on which respondent

was superannuated. As is seen from pleadings of the parties it is crystal clear that the event which was the subject matter of the judicial proceeding

dates back to 1979/80 whereas date of respondent's superannuation is 31/05/1982. Reckoned as such there is a gap of one year and five months

between the occurrence of the event and the date on which respondent was last on duty, apparently beyond the period stipulated by Article 168A

CSR, resultantly violation of its mandate, rendering the action of the Government illegal which is sufficient for allowing the interest to the respondent

on withheld gratuity giving no option for us but to agree with conclusion arrived at by the Learned Single Judge. We may hasten to add that since

we are not called upon in this case to examine the fall out of prosecution instituted beyond the period envisaged by Article 168A CSR or to

examine the scope of the powers of the Government regarding the recoveries of outstanding from a retiree or to interpret expression 'judicial

proceedings or to examine amplitude of the term 'judicial proceeding' as to when it can be said to have commenced, we, therefore, make it clear

that interpretation of the Article above should not be misunderstood by deriving any conclusions by implication excepting the one we have

expressly laid down that in case a judicial proceeding is not instituted within the time limit prescribed by sub clause (iii) clause (a) of Article 168A

CSR, the gratuity of a retiree cannot be withheld by taking recourse to Article 240G CSR notwithstanding the commencement and pendency of a

judicial proceeding instituted beyond the period stipulated therein.

7. So applying the ratio of the aforesaid judgment to the facts of this case, the petitioner is held entitled to release of the gratuity because it could be

withheld only if the criminal proceedings are initiated against him within one year of his retirement because the consequence of clause (a) (ii) (iii) are

the same. In fact, respondents acted against the mandate of Rule 168C of the CSR while authorizing the provisional pension in favour of the

petitioner and for facility of reference, it is reproduced as under:

168C. In the case of a Government servant who retires on or after 1st May, 1971

it shall be presumed that there is no claim against the Government servant if none is made within six months after his retirement. After the lapse of this period any deposit or surety or gratuity withheld for meeting Government dues shall be released. Where a no demand certificate in favour of a Government servant has not been issued within six months after his retirement, it shall be presumed that there is no outstanding against him and finalisation of his pension case shall be processed accordingly. If some dues recoverable from a retired Government servant come to light more than six months after his retirement by which time normally the surety/withheld gratuity, would have been released, or the cash deposit would have been refunded, the question whether the recovery of the irrecoverable amount should be made from the Government servant responsible for not assessing and affecting the recovery in time or through the legal procedure should be considered on merits. In no case shall the dues of the Government be allowed to lapse. In respect of dues of any Department concerned with renting of Government buildings the period of six months shall be reckoned from the date of retirement of the officer or the date of complete vacation of Government accommodation whichever is later.

When NoDemandCertificate was issued in favour of the petitioner, as clearly indicated in the impugned communication dated 20.08.1999, withholding of commuted pension and deathcumgratuity was without any justification.

9. It is apt to point out that the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad vs. State of Bihar, 1971 Supp. SCR 634 (AIR 1971 SC 1409), wherein the Supreme Court authoritatively ruled that Pension is a right and payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. Same view was reiterated by a Constitution Bench of Apex Court in D S Nakara's case (1983 (1) SCC 305) and it was held that Pension is a payment for past service rendered and it is a social welfare

measure rendering socio economic justice to those who in their hey days ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch. This, in fact, is the underlying rationale for grant of pension and pensionary benefits to the employee which became due to him on his retirement from service.

10. It may further be pointed out that the right to receive pension is property under Article 31(1) and by a mere executive order the State has no power to withhold the same. It may also be added that denying the petitioner's right to receive pension affects the fundamental right of the petitioner under Articles 19(1) (f) and 31 (1) of the Constitution and, thus, a mandamus can be issued to the State for payment of pension to which an employee has been found entitled according to law.

11. On a careful consideration of the facts and circumstance of the case, in its cumulative, I am of the view that there is no other conclusion possible except to say that the petitioner is entitled to receive pensionary benefits, including full monthly pension, gratuity and leave encashment on his retirement to which he was entitled but the government had wrongly and illegally recommended the provisional pension in favour of the petitioner and withholding the deathcumretirement gratuity and commuted pension.

12. The writ petition is, accordingly, allowed and communication dated 20.08.1999, in authorizing provisional pension and withholding the deathcumretirement gratuity and commutation pension, is quashed. The respondents are directed to release full pension to which the petitioner is found and held entitled after deducting the provisional pension already authorized and if received by the petitioner and gratuity that has been withheld illegally and without any justification. The claim of the petitioner for interest on gratuity for the period it has been deprived on his retirement is also allowed and the respondents are directed to release interest at the rate of 9% per annum on the amount of gratuity for the period it remained withheld till the same is released. This shall be done by the respondents within a period of three months from the date the copy of the order passed by this Court is made available by the petitioner to the respondents and also to the counsel appearing for the respondents. In case the same is not done in compliance to the aforesaid directions by the respondents, the enhanced

interest at the rate of 3% per annum shall become payable on the amount of gratuity.

13. Writ petition is disposed of in the terms as indicated above.