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(2011) 01 MAD CK 0379

In the Madras High Court

Case No : Writ Petition (MD) No. 5840 of 2006 and M.P. (MD) No''s. 1 to 3 of 2006

K. Chinnaiah APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:
Tamil Nadu Pension Rules, 1978 — Rule 45A, 9, 9(2), 9(5), 9(6)

Citation : (2011) 01 MAD CK 0379

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : J. Nisha Banu, for the Appellant; D. Sasikumar, Government Advocate for R1, R3 and R4 and P. Gunasekaran, for R2, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has filed this writ petition seeking a Writ of Certiorarified Mandamus, calling for the records on the file of the third Respondent in his proceedings Ka. No. PaNe3/10549/92-1 dated 07.06.2006 and quash the same and direct the Respondents to pay the pensionary benefits with all monthly and service benefits with 18% interest per annum with effect from the date of retirement i.e. 30.06.1995 with costs.

2. According to the learned Counsel for the Petitioner, the Petitioner has been selected for appointment to the post of Field Man and joined the service on 19.02.1959. He has been remained in the post of Field Man till 31.03.1964 and later, he has been promoted to the post of Development Inspector on 01.04.1964. He has been further promoted to the post of Deputy Agricultural Officer on 16.10.1980 and till 31.05.1995, he has served in that post.

3. By means of a Government letter dated 28.04.1994, the Petitioner has been asked to submit his explanation to certain allegations levelled against him in regard to the distribution of groundnut seeds under the Oil Seed Production

Development Scheme for the year 1986-1987. It is the case of the Petitioner that he has been asked to submit his explanation to the aforesaid allegations without any basis whatsoever. However, he has submitted his explanation dated 24.07.1994 denying the allegations and the Enquiry Officer has been appointed and he has submitted his report holding that the charges have been proved against him.

4. The Petitioner has submitted his explanation when he has been asked to submit his explanation in regard to the findings of the Enquiry Officer. He has attained the age of superannuation on 31.05.1995 and he has been permitted to retire from service without prejudice to the above charges pending against him. The stand of the Petitioner is that after a lapse of ten years, the Government has issued an order in G.O.Ms. No. (3D). No. 181 dated 03.08.2005 dropping the charges on the ground that already a punishment of stoppage of increment for two years without cumulative effect has been awarded for the same charges and that there need not be yet another punishment. Based on the said Government Order, the Agricultural Development Officer, Ilayankudi, has written a letter dated 28.11.2005 to the second Respondent/Accountant General for the payment of Death cum Retirement Gratuity and Commuted value of pension.

5. The Agricultural Development Officer, Ilayankudi, in his letter dated 28.11.2005 addressed to the second Respondent, has mentioned as follows:

I submit that Thiru.K. Chinniah Dy. Agrl. Officer of this office was permitted to retire on 31.5.95 without prejudice to the disciplinary case pending against him vide the Govt.orders second cited. In the reference first cited the following pensionary benefits were admitted to him.

Pension

- Rs.1,307/-

Commutation of Pension

- Rs.54,602/-

Family Pension

- Rs.1,250/-

D.C.R.G.

- Rs.46,728/-

2) The pensionary benefits were withheld and he has been paid provisional pension from 1.6.95 to till date. In the Govt. orders third cited, the disciplinary case against him is dropped and a copy of the Govt. orders has been sent to the Accountant General, Chennai, may kindly be issued and authorisation may kindly be issued for payment of DCRG and commuted value of pension.

6. The second Respondent/Accountant General, Chennai, has written a letter

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dated 02.12.2005 for the release of the pensionary benefits. The second Respondent/Accountant General, Chennai, has sought for some clarifications. The Joint Director of Agriculture, has written a letter dated 08.03.2006 to the second Respondent/Accountant General, Chennai, for the release of the pensionary benefits. The second Respondent/Accountant General, Chennai, has authorised the pensionary benefits by his proceedings dated 03.05.2006. The Treasury Officer has asked the Petitioner to meet him with relevant documents for pension. While that being so, the Senior Accounts Officer has sent a telegram for the stoppage of benefits on the ground that another case is pending against the Petitioner. The Joint Director by his letter dated 07.06.2006 has informed the fourth Respondent/District Collector, on the Petitioner''s representation on the grievance day that another disciplinary case for the year 1993-1994 is proposed to be initiated against him and therefore, the stoppage of benefits has been ordered.

7. The learned Counsel for the Petitioner urges before this Court that the Joint Director, Sivagangai, should not have ordered for stoppage of benefits for the lapse from the date of the Petitioner''s retirement and after lapse of 12 -13 years from the date of incident and moreover, as per Rule 9 of the Tamil Nadu Pension Rules, the order of the Joint Director is a time barred one.

8. The learned Counsel for the Petitioner, advancing her arguments, submits that though the disciplinary proceedings are proposed to be initiated against the Petitioner, they have not yet been commenced after lapse of nearly 11 years.

9. The learned Counsel for the Petitioner strenuously contends that the Joint Director has no jurisdiction to issue any stoppage of pensionary benefits ordered to the Petitioner when once the Government has passed an order as early as on 03.08.2005 and therefore, the third Respondent is estopped from going back on his own conduct.

10. The principle contention advanced on behalf of the Petitioner is that no disciplinary proceedings can be initiated after lapse of 12 -13 years and therefore, they are liable to be set aside as a unconstitutional and ultra vires.

11. The learned Counsel for the Petitioner relies on the decision of the Honourable Supreme Court in S.R. Bhanrale Vs. Union of India and others, , at pages 173 and 174, wherein it is laid down as follows:

4. The amounts now paid to the Appellant admittedly fell due to him much before his retirement. The same was wrongfully withheld. It was, to say the least, improper on the part of the Union of India to plead the bar of limitation against such claims of its employees, when it had defaulted in making the payments promptly when the same fell due. It is not as if the Appellant had woken up after a decade to claim his dues. He had been asking the Department to pay him his dues both while in service and after superannuation also but to no avail. In these circumstances it ill behoved the Union of India to plead bar of limitation against the dues of the Appellant. We need say no more about it because better sense

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has prevailed and claim of the Appellant has now been settled and payment made to him. The Appellant who had served the Department for almost 40 years before his superannuation was made to run from pillar to post to get his legitimate dues. It is a sad commentary of affairs. He has undoubtedly suffered a lot. Had the amount which has now been found due and paid, been paid to him at the appropriate time at least in 1984 when he retired, the Appellant would have been saved from a lot of unnecessary harassment; besides he would have earned interest on that amount also. He could have utilised that amount for other purposes. He was denied the same on account of the default of the Department. The Appellant in his reply to the statement of account filed by Shri Arya in this Court has claimed almost 18 lakhs of rupees from the Department out of which more than Rs. 16 lakhs has been claimed towards interest and compensation etc.

5. After hearing learned Counsel for the parties and discussing the matter with them and with a view to settle the equities and do justice between the parties, in the peculiar facts and circumstances of this case, we consider it appropriate to direct the Respondents-Union of India to pay to the Appellant a sum of Rs. two lakhs (Rs. 2,00,000) towards interest, compensation, litigation expenses etc. for the amounts wrongfully withheld from the Appellant for more than 12 years. This amount would be in addition to the claim amount already paid to the Appellant amounting to Rs. 19,551 and shall be paid to the Appellant in full and final settlement of all his claims within two months from today. In case the amount is not paid within two months, it shall bear interest @ 12% per annum from the date of this order till the payment is made. Keeping in view the agony through which the Appellant has gone through we hope that the Union of India shall not cause delay in making payment to the Appellant. We set aside the order of the Tribunal dated 4-3-1993 and dispose of the appeal in the above terms.

12. She also refers to yet another decision of the Honourable Supreme Court in AIR 2000 SC 3513a , wherein it is held thus:

3. In case of an employee retiring after having rendered service, it is expected that all the payment of retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstance the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the Respondent to pay to the Appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments.

13. In the letter dated 07.06.2006 of the third Respondent/Joint Director of Agriculture, Sivagangai, addressed to the fourth Respondent/District Collector, Sivagangai, it is mentioned that the Petitioner when he has been serving as Deputy Agricultural Officer at Ilayankudi Agricultural Extension Centre during

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1993-1994, has been concerned with the irregularities pertaining to the supply of seeds and grant of fertilizers in regard to the summer cultivation and his share in regard to the loss sustained by the Government has been worked out to Rs. 18,466/- (Rupees Eighteen Thousand Four Hundred and Sixty Six only) pertaining to the case and since the disciplinary proceedings in this regard is likely to be taken against him, his pensionary benefits are directed to be stopped as informed by the second Respondent/Accountant General, Chennai, in his telegram in Pen 7/03/Common Purport No. /Telegram No. /48, dated 23.05.2006.

14. The learned Counsel for the Petitioner draws the attention of this Court to Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, which runs as follows:

Rule.9(2)(b).- The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution;...

Further, Rule 9(5) and (6) of the Tamil Nadu Pension Rules, 1978, enjoins as follows:

Rule 9(5).-Where the Government decide not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,

(a) departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings;

(b) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date; and

(c) judicial proceedings shall be deemed to be instituted,

(i) in the case of criminal proceedings, on the date of complaint or report of a police officer, of which the Magistrate take cognizance, is made; and

(ii) in the case of civil proceedings, on the date on which plaint is presented in the Court.

15. The learned Counsel for the Petitioner expatiates her arguments in contending that as per Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, a departmental proceedings shall not be instituted in respect of any event which had taken place more than four years before such institution of the same and in

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the instant case on hand, the impugned order of the third Respondent dated 07.06.2006 addressed to the fourth Respondent/District Collector, Sivagangai, refers to an irregularity that has been committed during the year 1993-1994 when the Petitioner has served as a Deputy Agricultural Officer at Ilayankudi Agricultural Extension Centre wherein he has been concerned with the irregularities pertaining to the supply of seeds and grant of fertilizers in regard to the summer cultivation and his share in regard to the loss sustained by the Government has been worked out to Rs. 18,466/- (Rupees Eighteen Thousand Four Hundred and Sixty Six only) and accordingly, the same has been determined as the share amount to be paid by the Petitioner.

16. She further contends that since the irregularity has taken place during the year 1993-1994, wherein the Petitioner is said to be concerned with, the impugned order of the third Respondent dated 07.06.2006 addressed to the fourth Respondent specifying that since the disciplinary proceedings have to be instituted against the Petitioner, his pensionary benefits should be stopped as per the letter of the second Respondent/Accountant General, dated 23.05.2006, cannot be sustained in the eye of law, because no disciplinary proceedings can be taken in regard to an event which has taken place more than four years before such institution and till date, no disciplinary action in regard to the loss of Rs. 18,466/ (Rupees Eighteen Thousand Four Hundred and Sixty Six only) to the Government pertaining to the Petitioner''s involvement, has been commenced and since the letter of the third Respondent is contra to the Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, the impugned order is liable to be quashed in the interest of justice.

17. Therefore, the action to be initiated in respect of the second alleged irregularity where his share amount comes to Rs. 18,466/- (Rupees Eighteen Thousand Four Hundred and Sixty Six only), is barred by limitation as per Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978 and therefore, it is manifestly clear that no action can be taken against the Petitioner after lapse of four years for the alleged irregularity which has taken place during the year 1993-94 wherein the Petitioner is alleged to be involved and he has caused the loss to the Government a sum of Rs. 18,466/- (Rupees Eighteen Thousand Four Hundred and Sixty Six only) forming part of his share.

18. Per contra, it is the contention of the learned Counsel for the second Respondent that since another disciplinary case is pending against the Petitioner, the second Respondent has requested to stop payment of pension and CVP to the Petitioner.

19. It is the contention of the learned Government Advocate for the Respondents 1, 3 and 4 that the Petitioner has been involved in the alleged irregularity that has been taken place during 1993-1994 pertaining to the supply of seeds and grant of fertilizers in regard to the summer cultivation where he has caused the loss to the tune of Rs. 18,466/- (Rupees Eighteen Thousand Four Hundred and Sixty Six only) being his share and as against him, the departmental action has

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to be initiated and therefore, his pension benefits have been stopped as per the communication issued by the third Respondent dated 23.05.2006 addressed to the fourth Respondent.

20. It is to be noted that the second Respondent/Accountant General, Chennai, by his telegram dated 23.05.2006, has informed the Treasury Officer, Sivagangai, to stop payment of pension and CVP of PPO. No. 265519/AGR as disciplinary case is pending against the Petitioner/retired Deputy Agricultural Officer, because of another disciplinary case is pending against him and therefore, the second Respondent has requested to stop payment of pension and CVP and to return the both halves and CVP authorisations immediately with non-payment certificate.

21. It is to be borne in mind that the Government of Tamil Nadu, Finance (Pension) Department, Fort St. George, Madras -9, in the letter dated 07.09.1987, through the Joint Secretary to Government, has informed all the Secretaries of all Departments including all the heads of Departments, as follows:

It has been brought to the notice of the Government that Departmental Officers and Pay and Accounts Officers are requesting the Accountant General to issue necessary authorisation to the Treasury Officers for the calculation of the interest on the delayed payment of Death-cum-Retirement Gratuity and also for the payment of such interest. I am to clarify that for the payment of interest on the delayed payment of Death-cum-Retirement Gratuity, no specific authorisation from the Accountant General is necessary. I am also to state that on the strength of the sanction accorded by the Departments of Secretariat, interest may be worked out by the Department and a bill presented to the concerned Treasury/ Pay and Accounts Officer for the drawal and payment to the pensioners.

22. The sum and substance of the letter of the Government as aforesaid, indicates that on the strength of the sanction accorded by the Departments of Secretariat, interest may be worked out by the Department and a bill be presented to the concerned Treasury/Pay and Accounts Officer for the drawal and payment to the pensioners.

23. At this juncture, this Court pertinently points out that Rule 45-A of the Tamil Nadu Pension Rules, 1978, speaks of the interest on delayed payment of gratuity and the same runs as follows:

Rule 45-A. Interest on delayed payment of gratuity.-(1) Interest at the rate of eight per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond (a) period of two months from the date of retirement of a Government Servant.

Provided that on and from the 12th June 1987, the rate of such interest shall be as follows:

(a) seven per cent per annum beyond a period of three months and up to one year; and

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(b) ten per cent per annum beyond a period of one year; Provided further that no such interest shall be payable,-

(a) where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending; and

(b) for the fraction of a month.

24. Admittedly, in the present case on hand, as against the Petitioner, even though he is said to be concerned/involved with the case of irregularities that have taken place during the year 1993-1994, in regard to the supply of seeds and grant of fertilizers in regard to the summer cultivation and at that time, when the Petitioner has been serving as the Deputy Agricultural Officer at Ilayankudi Agricultural Extension Centre and further that, against him, a disciplinary case is to be taken as per the communication of the third Respondent addressed to the fourth Respondent/District Collector, Sivagangai and although the said impugned communication of the third Respondent/Joint Director dated 07.06.2006, is at the behest of the second Respondent/Accountant General (A&E), Chennai -18, through his telegram dated 23.05.2006, no disciplinary proceedings in regard to the alleged loss to the Government where the Petitioner''s share amount comes to Rs. 18,466/- (Rupees Eighteen Thousand Four Hundred and Sixty Six only), have been taken against the Petitioner till date so far and certainly, the Petitioner can avail the benefit of Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, which clearly stipulates in candid terms that departmental proceedings shall not be instituted while the Government servant has been in service whether before his retirement or during his re-employment in respect of an event which has taken pace even before such institution.

25. In the instant case on hand, the impugned communication of the third Respondent/Joint Director, Sivagangai, refers to the alleged irregularity during the year 1993-1994 wherein the Petitioner is alleged to be involved and hence, by virtue of Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, the third Respondent or any other competent authority for that matter, is not liable to take any departmental action beyond the period of four years.

26. Therefore, the impugned order of the third Respondent/Joint Director addressed to the fourth Respondent/District Collector, mentioning that as against the Petitioner, the disciplinary proceedings are to be initiated and therefore, his pensionary benefits are to be stopped as per the telegram of the second Respondent/ Accountant General (A&E), Chennai -18, is not legally sustainable one in the eye of law in view of the fact that Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, specifies four years limitation period in regard to the initiation of a departmental proceedings whether before his retirement or his during his re employment, etc. and accordingly, the impugned order of the third Respondent addressed to the fourth Respondent is liable to be quashed to prevent an aberration of justice.

27. As regards the rate of interest claimed by the Petitioner at 18% p.a, in

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regard to the delayed payment of monthly and service benefits as per the claim made in the petition, this Court is of the considered view that the Government in their letter dated 07.09.1987 has among other things mentioned that ''on the strength of the sanction accorded by the Departments of Secretariat, interest may be worked out by the Department and a bill be presented to the concerned Treasury/Pay and Accounts Office for the drawal and payment to the pensioners'' and moreover, as per Rule 45-A of the Tamil Nadu Pension Rules, 1978, the interest in regard to the delayed payment of gratuity will have to be worked out and in such view of the matter, this Court holds that the Petitioner is entitled to claim interest for the delayed payment of gratuity as per Rule 45-A of the Tamil Nadu Pension Rules and it is for the concerned Department of the Secretariat as to whether the Petitioner has served to work out the quantum of interest and to that extent, the Petitioner is entitled to that rate of interest and viewed in that perspective, this writ petition succeeds in part.

28. In the result, this writ petition is allowed leaving the parties to bear their own costs and the impugned order of the third Respondent in Ka. No. PaNe3/ 10549/92-1, dated 07.06.2006, is hereby quashed and the Respondents are directed to pay the pensionary benefits to the Petitioner with all monthly and service benefits not at the rate of 18% p.a., but at the rate specified as per Rule 45-A of the Tamil Nadu Pension Rules and the authority concerned is directed to work out the rate of interest as per the letter of the Government of Tamil Nadu, Finance (Pension) Department, Fort St. George, Madras -9, dated 07.09.1987, from the date on which the Petitioner is entitled to claim the pensionary benefits within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

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