(1963) 03 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 948 of 1960

K.O. Uthup-died and another — APPELLANT

Vs

The Director of Postal, Services, Madras-2 and another — RESPONDENT

Date of Decision : 05-03-1963

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1963) 03 MAD CK 0004

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : S. Mohan Kumaramangalam and P.S. Madhusudanan, for the Appellant;

Judgement

Srinivasan, J.—The petitioner retired from service in the Posts and Telegraphs Department on 13th June, 1956, on superannuation. By the

order directing his retirement, anticipatory pension and D.C.R. gratuity were directed to be paid to him. It was stated in that order that a case was

pending against him and that was why only anticipatory pension was directed to be paid. The petitioner took objection to the statement that a case

was pending against him. He addressed the Postmaster-General stating that as far as he was aware, no departmental or any other case was

pending, and asked for the details thereof. He pointed out that if the reference to the case was to the Trichur head office establishment fraud case,

he was only a prosecution witness in that case. The reply to his reference proceeding from the Postmaster-General stated that the case referred to

related to the question of contributory negligence on the part of the petitioner in signing the establishment pay bills without proper scrutiny and

which led to the fraud case. Following further correspondence, the petitioner was paid anticipatory pension of Rs. 50 per month from the date of

his retirement to 31st January 1957. Thereafter this pension was raised to Rs. 100 per month. He was also paid gratuity amounts totalling Rs.

3,000 by 4th June 1957. According to the petitioner, the pension to which he is entitled is Rs. 128-50 nP., per month and the total gratuity amount

is Rs. 5,400. On 7th April, 1958, the Superintendent of Post Offices addressed a reference to the petitioner. It stated therein that the passing of

the pay bills to the extent of Rs. 9940-37 by the petitioner was in violation of the departmental rules and his act had contributed to the perpetration

of fraud by the Accountant, one S.S. Krishnan. The letter stated:

It is therefore considered that you have to make good a portion of the loss occasioned by the fraud and that 40 per cent of the unadjusted loss will

be the reasonable share recoverable from you. Please signify your willingness to remit to the Government the sum of Rs. 1749-03...

The petitioner thereupon placed the matter in the hands of his Advocates. He denied the contributory negligence attributed to him and pointed out

that no departmental action of any kind had been taken against him and that in the fraud case the petitioner was not implicated in any manner. He

further stated that no charges had been framed against him, no explanation had been called for, nor was an enquiry conducted, and that being so,

he questioned the right of the department to make him liable to any extent on the allegation of contributory negligence. In addition, he claimed that

no rule applicable to the Post and Telegraphs department existed, which empowered the Department to recover any amount on such grounds of

negligence. The department replied stating that the matter was receiving attention. The petitioner again addressed the department, but the matter

continued to remain unsettled. Finally, by a Memorandum dated 29th June 1959, a notice was given to the petitioner stating that it was proposed

to order recovery of Rs. 1749-03 from his D.C.R. gratuity still due to him and before such recovery was ordered, he was called upon to make any

representation against the proposed action. The statement of allegations which accompanied this notice was to the effect that establishment pay

bills had been prepared fraudulently and drawn by S.S. Krishnan, the Accountant of the Trichur head post office, during the years 1952, 1953 and

1954. After investigation, this person S.S. Krishnan has been prosecuted and convicted. He was also dismissed from service. It was alleged that

the acquittance rolls and bills so prepared by the dismissed Accountant S.S. Krishnan had also been passed by the petitioner, who was the

Postmaster, Trichur, during the relevant period. The petitioner had also in the course of his evidence as prosecution witness admitted that he had

not scrutinized all of these bills and that he passed the bills as the several clerks in the Accounts Branch and the Accountant had in their turn passed

them. The department therefore charged the petitioner with having failed to observe the various rules and on the basis of such failure attributed

negligence in the discharge of duties to the petitioner, and it was this charge of negligence which the petitioner was asked to meet and to show

cause why he should not be required to make good a portion of the loss sustained by the Government.

2. The petitioner replied to this notice claiming that the department, that is to say, the Postmaster-General, had no authority under the Civil Service

Regulations to proceed against the petitioner. The same contention was also placed before the Postmaster-General through the Advocate of the

petitioner. The Postmaster-General, however, passed an order on 20th July 1959, where-under the superannuation pension of Rs. 128-50 was

sanctioned as well as the death-cum-retirement gratuity of Rs. 5400. The order further directed that a sum of Rs. 1765-34 nP. made up of Rs.

1749-03 nP. already referred to and a sum of Rs. 6-31 nP. being recovery by way of house rent allowance, should be deducted from the sum of

D.C.R. gratuity payable to the petitioner. On the 22nd August, 1959, the Postmaster-General purported to make an order which set out the

several allegations of failure to observe the rules in the passing of the pay bills which resulted in the fraud, and this order finally concluded :

I therefore hold that Sri K.O. Uthup has by his above failure contributed to the frauds committed by Sri S.S. Krishnan and hereby order that a sum

of Rs. 1749-03 in adjustment of a portion of the loss caused to Government in this case be recovered in one lump sum from the balance of D.C.R.

gratuity payable....

Subsequent petitions by the petitioner to have this order revoked failed and it is in these circumstances that the petitioner has moved this Court

under Art. 226 of the Constitution for the issue of a writ in the nature of a writ of certiorari to quash the order directing the recovery of the sum

mentioned. The principal ground that has been advanced and the only one that has been urged before me during the course of the hearing is that

the direction to recover any amount from the petitioner is in violation of Art. 351-A of the Civil Service Regulations and further that this order to

recover the amount was made even before the department arrived at the conclusion that the petitioner was liable by way of contributory

negligence.

3. On behalf of the Director of Postal Services and the Postmaster General, Madras, a counter affidavit has been filed. The larger part of the

contents of this counter affidavit is hardly to the point. The contention of the department appears to be that the payment of the D.C.R. gratuity is a

gift"", and not a ""debt"" and it is stated in paragraph 8 of the counter affidavit :

The whole question of recovery from it before deciding the case on merits is merely an academic one with no legal consequence.

4. What this contention means precisely is not quite clear, but apparently it is suggested that withholding of any portion of the D.C.R. gratuity,

which is only a gift, does not amount to imposing any penalty upon the petitioner, and on the basis of that contention it is claimed that the

withholding of a portion of the D.C.R. gratuity does not come within the scope of the Liberalised Pension Rules or of Art. 351-A; that is to say,

while the petitioner contended that the department has no authority by reason of Art. 351-A to order the recovery, the particular contention

advanced in the counter affidavit is an attempt to take the case outside the scope of the relevant Article of the Civil Service Regulations. I may

however point out that the learned Counsel appearing for the department did not pursue this line of reasoning in the course of his argument before

me.

5. Whether or not death-cum-retirement gratuity benefit is a gift is not very pertinent. The grant of the gratuity is governed by rules applicable to all

members of the service and it is not stated that at the whim of the department any person can be denied this benefit. If this gratuity is a gift pure and

simple, no person would have a claim to it. The framing of elaborate rules governing the payment of this gratuity is a clear indication that this is a

benefit which is conferred upon the retiring or deceased members of the service on the basis of the length of their service. It should not normally be

open to the department to say on the basis of no reasons whatsoever that it would not consider the payment of gratuity to any member of the

service, who according to the rules, would appear to be entitled to it. Coming to Rule 10 of the Liberalised Pension Rules, it states:

Government will have the right to effect recoveries from a gratuity or pension sanctioned under Ss. II and III in the same circumstances as

recoveries can be effected from an ordinary pension under Art. 351-A of the Civil Service Regulations......

6. The very rule speaks of recoveries from a gratuity sanctioned. The question of any recovery from a gratuity or pension can obviously arise only

after the sanction of the gratuity or pension. The rule does not contemplate any recovery at the arbitrary will of the Government. Any recoveries

from the gratuity can be effected Only as specified. That naturally takes us to Art. 351-A. This Article reads thus :

The State Government however reserve to themselves the right of withholding or withdrawing a pension or part of it, whether permanently or for a

specified period and the right to order the recovery from a pension of whole or part of any pecuniary loss caused to Government if the pensioner is

found in departmental or judicial proceedings to have been guilty of gross misconduct or to have caused pecuniary loss to Government by

misconduct or negligence during his service, including service rendered on re-employment after the retirement.

One of the provisos to this Regulation reads thus:

Provided that - (a) such departmental proceedings....... (ii) shall be in respect o an event which took place not more than four years before the

institution of such proceedings.

7. The Explanation to this Rule states that departmental proceedings shall be deemed to have been instituted when the charges framed against the

petitioner are issued to him. Reading Rule 10 of the Liberalised Pension Rules with Art. 351-A of the Civil Service Regulations, it follows that the

right to withhold or recover any portion of the gratuity can stem only from departmental proceedings in which the pensioner is found to have been

guilty of negligence and to have caused pecuniary loss to Government by such negligence, and such departmental proceedings shall not be undertaken in respect of an incident which took place four years prior to the institution of those proceedings.

8. Turning now to the statement of allegations that purports to be the charge against the petitioner, it is stated therein that the fraud was perpetrated

during the years 1952, 1953 and 1954. Obviously, therefore, the charge of negligence on the basis of which the departmental proceedings were

instituted related to these years. In terms of the wording of Art. 351-A, of the Civil Service Regulations, the departmental proceedings should be in

respect of an event, that is to say, the act or acts of negligence leading to the pecuniary loss to the Government, which took place not more than

four years before the institution of the proceedings. The institution of the proceedings by a Memo of the Postmaster General was dated 29th June

1959. Clearly it was more than five years from the date on which the petitioner is alleged to have neglected the observance of the rules. If follows

therefore that the departmental proceedings for recovery in the present case is not sanctioned in the terms of the proviso to Art. 351-A.

9. To my mind, the contention of the petitioner that the recovery in the instant case is not supported by the authority of R.10 of the Liberalised

Pension Rules or of Art. 351-A of the Civil Service Regulations is well-founded.

10. It is sought to be argued however that even in 1956, when the petitioner was directed to retire on superannuation, he was informed that a case

was pending against him and further that in the Memorandum dated 7th April 1958 issued by the Superintendent of Post Offices, he was called

upon to accept his liability to make good the sum of Rs. 1749 lost to the Government as a result of his negligence. If the date 7th April 1958 is the

operative date for the purpose of computing the four-year period mentioned in Art. 351-A, undoubtedly the department would be justified in

ordering the recovery. But it has to be noticed that this letter inviting the petitioner to shoulder the liability dated 7th April 1958 was not the result

of any departmental enquiry in consequence of which the petitioner was found guilty of negligence leading to the pecuniary loss of governmental

moneys. I do not understand the learned Counsel for the department to say that recovery could be ordered without any departmental enquiry.

Such departmental enquiry was started for the first time by the service of a Memo of Charge on 29th June 1959. It is clear therefore that Art. 351-

A prohibits the launching of any departmental enquiry directed towards the recovery of any moneys after the lapse of four years from the event

which amounted to negligence on the part of the officer.

11. The petitioner is also fully justified in his complaint that even before the departmental enquiry terminated, the department purported to make the

order of recovery. I have pointed out in the statement of the facts that the order sanctioning pension and death-cum-retirement gratuity was passed

on the 20th July 1959, and as part of that order the sum of Rs. 1755 and odd was directed to be recovered. It was only on a subsequent date, viz.

22nd August 1959, that there was a formal order as a result of the departmental enquiry holding the petitioner to be liable in the said sum. The

order for recovery in the instant case was made in complete defiance of both R. 10 of the Liberalised Pension Rules and Art. 351-A of the Civil

Service Regulations. The order is liable to be quashed. The petitioner will be entitled to his costs. Counsel''s fee, Rs. 200.