(2014) 09 KAR CK 0086

In the Karnataka High Court

Case No : Writ Petition No. 11936/2014 C/W W.P. No. 29142/2014 (S-R)

L. Narasegowda APPELLANT

Vs

The Karnataka Power Transmission Corporation Limited RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 143, 147, 149, 341, 427

Citation : (2015) 2 AKR 194 : (2015) 1 KarLJ 5 : (2015) 3 KCCR 2213 : (2015) LabIC 1857

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Advocate : Subba Rao, Sr. Adv., for Subba Rao and Company, Advocate for the Appellant; P.S. Dinesh Kumar and V.Y. Kumar, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—Heard learned counsel for the parties.

2. Rule. By consent of learned counsel for the parties heard forthwith.

3. The petitioners, in these writ petitions under Article 226 of the Constitution of India, retired as the employees of respondent No. 2-M/s. Bangalore Electrical Supply Co. Ltd., (for short "the BESCOM"). The petitioner in W.P. No. 11936/14 attained the age of superannuation on 30.06.2013 and with effect from 01.07.2013 became entitled to receive pension, DCRG and other retiral benefits. The petitioner in W.P. No. 29142/14 attained the age of superannuation on 31.05.2013 and with effect from 01.06.2013 he also became entitled to receive pension, DCRG and other retiral benefits.

3.1. Though initially the pension and other retiral benefits were withheld by BESCOM in view of the pendency of a criminal case against them, bearing C.R. No. 89/2007 for the offences punishable under Sections 143, 147, 149, 448, 341, 506, 427 r/w. section 149 of IPC, subsequently they sanctioned 50% of the pension as "provisional pension" to both the petitioners. When criminal case was registered against them they were in service. However, the offence was allegedly committed by them outside their working hours and also outside the premises of BESCOM. In other words, the alleged incident did not occur while they were on duty or has any connection with BESCOM. Further, admittedly no departmental enquiry was either initiated or pending, at the relevant time, against the petitioners. In other words, no departmental enquiry was initiated against them for having committed the alleged offence. By the impugned endorsements the petitioners were informed that they would be entitled for temporary/provisional pension. The relevant portion of the impugned endorsement dated 30.08.2013 (Annexure-F) in W.P. No. 11936/14 reads thus:

"With reference to the above subject, Sri L. Narasegowda, Mechanic, Grade-2, N3 Sub Division has retired on 30.06.2013. As there is a criminal case pending against him, without sanctioning his pension and retirement benefits, the file containing his service record and other documents is returned from this office as per ref. no. 1 above. As per the representation of Sri L. Narasegowda dated 14.9.2013 vide ref. 2, by enclosing the Judgment of the Hon''ble Supreme court, he has requested for sanction of pension and retirement benefits. As per the Company rules vide ref. 4 and as per Rule 172 of the BESR Rules, temporary pension is sanctioned.

While bringing this matter for your consideration, suitable directions are sought whether to consider interim payment of pension to Sri L. Narasegowda as per his request vide ref. 4 above or to consider his representation vide ref. 3 in terms of the decision of the Hon''ble Supreme Court to pay his full pension and other retirement benefits to him."

The another endorsement dated 26.10.2013 (Annexure-G), impugned in the present writ petition reads thus:

"With reference to the above subject you having retired as Mechanic Grade-2, having superannuated on 30.06.2013. In view of the criminal case pending against you, your pension and other retirement benefits are withheld. You have given a representation vide ref. 1 to release the withheld pension and other retirement benefits. Your representation is based on the decision rendered by the Hon''ble Supreme Court dated 14.08.2013 for payment of pension and other retirement benefits. In response to your representation, this office has sought for the suitable directions from the Bescom Company.

In connection with this letter vide ref. 3 clarification is obtained from the Company office. As per the said letter, since there is a criminal case pending against you, in terms of BESR Regulation No. 171 and 172, your retirement benefits are withheld and officials of the Bescom have opined that the decision of the Hon''ble Supreme Court referred by you is not applicable to your case. Therefore, it is informed that there is no possibility of sanctioning the retirement benefits to you."

4. I have heard learned counsel for the parties and with their assistance gone

through the entire materials placed before the Court including KEB Employees Service Regulations (for short "the Regulations"). According to learned counsel appearing for the BESCOM, the decision of granting 50% provisional pension was taken in exercise of the powers under Regulation 172(2) R/w Regulation 171 of the Regulations. These regulations, according to him, empower the BESCOM to grant temporary/provisional pension to the employee, if a criminal proceeding/ judicial proceeding is pending against him. It was submitted that since the criminal case is pending against the petitioners in the Court, the impugned decision has been taken by the BESCOM.

5. On the other hand, Mr. Subba Rao, learned Senior Counsel, appearing for the petitioners relying upon the judgment of the Supreme Court in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, and the Judgment of the Bombay High Court in Madhosingh Daulatsingh -vs.- State of Bombay (1961 LLJ 291) submitted that under any circumstances the BESCOM has no authority in law to withhold/withdraw any part of the pension unless the employee is found guilty in a judicial proceedings. In the present case, he submitted, departmental enquiry was not even initiated against the petitioners and so far petitioners are not found guilty by the Court, and in view thereof, the impugned order is unsustainable in law.

6. The arguments advanced by learned counsel for the parties were centered around Regulations 170, 171 and 172. Regulation 170 reads thus:

"Future good conduct is an implied condition of every grant of pension. The Board reserves to itself the right of withholding or withdrawing a pension, if the pensioner be convicted of a serious crime , or be guilty of grave misconduct.

(emphasis supplied)"

Regulation 171 provides for withholding or withdrawal of the pensions and recoveries therefrom. The relevant portion of Regulation 171, read thus:

"The Board further reserves to itself the right of withholding or withdrawing a pension, or any part of it, whether permanently, or for a specified period and the right of ordering the recovery from a pension of the whole, or part of any pecuniary loss caused to the Board, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct, or negligence, during the period of his service, including service rendered on re-employment after retirement; provided that

(emphasis supplied)

(a).............

(b)........... (i)..... (ii)...... (iii).........

(c).............

(d).............

(a).............

(b) a judicial proceedings shall be deemed to be instituted;

(i) in the case of a criminal proceedings, on the date on which the complaint or report of police officer of which the Magistrate takes cognizance is made."

Regulation 172 reads thus:

"172(1) Where any departmental or judicial proceedings is instituted under Regulation 171 or where a departmental proceedings is continued under clause (a) of the proviso thereto against an employee who has retired on attaining the age of superannuation or otherwise, he shall be paid the period commencing from the date of his retirement to the date on which upon conclusion of such proceedings final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

(2) Payment of provisional pension made under clause (1) shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension, or the pension is reduced or withheld either permanently or for a specified period."

(emphasis supplied)

7. A plain reading of Regulation 172(1), insofar as the present petitioners are concerned, would show that where any judicial proceedings is instituted against an employee, under Regulation 171, he shall be paid a provisional pension, not exceeding maximum pension, admissible on the basis of qualifying service. The judicial proceedings, as contemplated by Regulation 171, in my opinion, is one where the question, directly or indirectly, of pecuniary loss to the Board is involved. In other words, if judicial proceedings, such as the one against the petitioners, is pending, which has nothing to do with the Board or where the question of pecuniary loss and recovery is not involved, the power to grant provisional pension under Regulation 172 cannot be exercised.

8. Further, from plain perusal of Regulation 170, it is clear that the power conferred on the Board under this provision to withhold or withdraw a pension is only in case the pensioner is "convicted of a serious crime". Similarly, a reading of Regulation 171 shows that the Board can reserve to itself the right of withholding or withdrawing a pension, or any part of it, whether permanently or for a specified period, if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service.

9. Thus, a close look at these provisions and as contended by learned Senior Advocate appearing for the petitioners, show that unless the judicial proceedings result in conviction, causing pecuniary loss to the Board, the power to withhold or withdraw a pension cannot be exercised.

10. The Supreme Court in Jitendra Kumar Srivastava (supra) had an occasion to consider some what similar regulation and the situation, as falls for my consideration. In that case, Supreme Court was dealing with Rule 43(b) of the Bihar Pension Rules, which is similar to Regulation 271. The relevant part of the Rule 43(b) that fell for consideration of the Supreme Court reads thus:

"The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period., and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct, or to have caused pecuniary loss to Government misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement".

After reading Rule 43(b), the Supreme Court in paragraph-11 has observed thus:

"Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc., ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending."

11. Regulation 171, that falls for my consideration, also would show that it does not confer any power to either withhold or withdraw a pension when judicial proceedings are still pending. Moreover, in the present case, the judicial proceedings pending against the petitioner is not the one contemplated by Regulations 171 or 172 of the Regulations.

12. In the result, the writ petitions are allowed. The impugned endorsements are set aside. The respondents are directed to pay pension and other retrial benefits to the petitioners. The respondents shall pay arrears of pension with simple interest at the rate of 6% per annum and other retiral benefits, if any, as expeditiously as possible and preferably within a period of eight weeks from today.

With these observations, the writ petitions are disposed of.

