(1998) 09 GAU CK 0032

In the Gauhati High Court

Case No : Civil Rule No. 313 of 1997

Mihir Kanti Bhattacharjee APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 05-09-1998

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49(5), 75, 75(2), 9, 9(1)
Constitution of India, 1950 — Article 226

Citation : (1998) 4 GLT 266

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : Amitabha Roy Barman, for the Appellant; U.B. Saha, G.A. and T.D. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The Petitioner was working as a Forest Ranger under the Government of Tripura and retired from service on 29.2.96. As he did not receive his pension and other retirement benefits, he moved this Court in a writ petition numbered as Civil Rule No. 117/97 and by order dated 6.2.97 this Court disposed of the said writ petition with the direction to the Respondents to finalise the retirement benefits of the Petitioner within two months from the date of receipt of the said order. Thereafter, the Divisional Forest Officer, Teliamura Division, accorded sanction of 3/4th DCRG amounting to Rs. 39,043/- in favour of the Petitioner as per the Central Civil Services (Pension) Rules, 1972, (for short, "the Pension Rules"). But when the Petitioner went to the office of the Divisional Forest Officer, Teliamura Division, he was informed that the said amount of Rs. 39,043/- had to be adjusted towards his liability to the State Government. Aggrieved, the Petitioner submitted a representation dated 31.3.97 before the Principal Chief Conservator of Forests, Tripura, requesting to effect payment of the said amount of Rs. 39,043/- to him. The Petitioner was however not paid the said amount of Rs. 39,043/- and instead received a copy of the letter dated 2.4.97 of the Divisional Forest Officer, Teliamura Division to the

Accountant General, Tripura, wherein it was stated that a total amount of Rs. 71,937.80 was lying as outstanding dues against the Petitioner out of which Rs. 39,043/- only had been recovered from his 3/4th DCRG bill and the balance amount of Rs. 32,894.80 was still lying outstanding against the Petitioner. In the said letter dated 2.4.97 to the Accountant General, it was further stated that the unpaid 10% provisional pension with effect from 1.9.96 and 1/4th DCRG admissible to him might be adjusted against the said outstanding dues of Rs. 32,894.80. On these facts, the Petitioner has filed the present writ petition under Article 226 of the Constitution for directions on the Respondents to refund the said amount of Rs. 39,043/- to the Petitioner illegally recovered from him and not to make any further recovery from the Petitioner and for a further direction to the Respondents to finalize his retirement benefits in accordance with the order dated 6.2.97 passed by this Court in Civil Rule No. 117/97.

2. At the hearing of the writ petition, Mr. A. Roy barman, learned Counsel for the Petitioner, submitted that in the earlier Civil Rule No. 117/97, no plea was taken by the Respondents that any amount was due from the Petitioner to the State Government and that after the said Civil Rule was disposed of by ibis court by order dated 6.2.97 directing the Respondents to finalize the retirement benefits of the Petitioner, the Respondents now could not take a stand that an amount of Rs. 71,937.80 was due from the Petitioner to the State Government. He further submitted that under Rule 9 of the Pension Rules, it was only the Governor of Tripura who had the right of withholding or withdrawing a pension or part thereof or of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner was found guilty of grave misconduct or negligence during the period of his service. But, in the instant case, no order has been passed by the Governor either for withholding of pension or for recovery from pension for any pecuniary loss caused to the Government. He further submitted that although a departmental proceeding was drawn up against the Petitioner, said proceeding was dropped by order dated 16.10.96 by the Governor and in the absence of any finding in the departmental proceeding that the Petitioner was guilty of misconduct or negligence as a result of which pecuniary loss had been caused to the Government, no part of the pension of the Petitioner could be withheld and no recovery could be made from the pension. Mr. Roy Barman also relied on the notification dated 8th April, 1997 of the Government of Tripura in the department of Finance which indicates that the State Government has adopted the provisions of the notification No. 7/10/89-DSPW (F) dated 28.11.91 of the Ministry of Personnel, P.G. and Pensions (Department of Pension and P.W.), Government of India, to the extent it provides for payment of interest in case of delayed payment of gratuity to an employee. He vehemently argued that this is a fit case in which this Court should direct the authorities to pay not only the pension and retirement benefits to the Petitioner but also interest and exemplary cost against the State Government.

3. Mr. U.B. Saha, learned Government Advocate, Tripura, on the other hand,

contended that Rule 9 of the Pension Rules had no application on the facts and in the circumstances of the present case and instead relied on Rule 75 of Pension Rules which clearly stipulated that it was the duty of every retiring Government servant to clear all Government dues before the date of his retirement and which authorised deduction of Government dues from the gratuity payable to such Government servant. Mr. Saha submitted that the counter affidavit filed on behalf of the Respondents would show that an amount of Rs. 71,937.80 was outstanding against the Petitioner at the time of his retirement and the Divisional Forest Officer was therefore right in directing recovery of an amount of Rs. 39,043/- out of the 3/4th DCRG payable to the Petitioner and the balance amount of Rs. 32,894.80 from the balance 1/4th DCRG and the provisional pension of the Petitioner. Mr. Saha also referred to the copies of the orders dated 3.7.90, 27.8.90 and 21.11.90 annexed to the Affidavit-in-opposition of the Respondents to show that it was as far back as in the year 1990 that the Petitioner was asked to pay the amounts of Rs. 4,060/-, Rs. 7,175/ and Rs. 14,592/- on account of excess expenditure incurred by him as a Forest Ranger in different plantations. He also referred to the order dated 22.1.96 annexed to the affidavit-in-opposition as Annexure-7(d) whereby the Petitioner was asked to pay an amount of Rs. 11,235/- for excess booking in 1989 plantation at Durgapur and Tuttaibari and Rs. 16,166.90 for missing and stealing of Sal posts at Gandacherra under Ambassa Division and yet the Petitioner did not pay the said amounts. Finally, Mr. Saha argued that in the earlier Civil Rule No. 117/97, this Court did not give any direction in the order dated 6.2.97 to pay the pension and retirement benefits to the Petitioner but only directed the authorities to finalize the retirement benefits of the Petitioner and it was only at the time of finalising the retirement benefits of the Petitioner that all these difficulties have arisen. He contended that since there was a dispute between the Petitioner and the Respondents as to whether the Petitioner was liable for the amount of Rs. 71,937.80 as claimed by the Respondents, the Petitioner should have pursued his remedies in a Civil Court and this Court should not exercise its jurisdiction under Article 226 of the Constitution on the facts and in the circumstances of the case.

4. Mr. Saha was right in submitting that in the order dated 6.2.97 of this Court in Civil Rule No. 117/97, no direction as such was given to the Respondents to pay to the Petitioner his retirement benefits but the Respondents were only directed to finalize the retirement benefits of the Petitioner. While finalizing the retirement benefits of the Petitioner the authorities could take into account any dues which were payable by the Petitioner to the Government and the argument of Mr. Roy Barman that the Respondents could not now take a stand before this Court in this Civil Rule that certain dues were payable by the Petitioner to the Government and the same needed to be deducted from the retirement benefits of the Petitioner, is therefore not correct. But it is difficult to accept the further submission of Mr. Saha that this Court should not exercise its jurisdiction under Article 226 of the Constitution of the facts and in the circumstances of the present case and should instead relegate the Petitioner to a civil Court for

determination of the dispute between the Petitioner and the Respondents. The Petitioner''s grievance before this Court is that an amount of Rs. 71,937.80 is sought to be recovered from the retirement benefits and pension of the Petitioner contrary to the provisions of the pension Rules. In case this Court comes to the conclusion that the said recovery of Rs. 71,937.80 or any part thereof is sought to be made by the Respondents contrary to the Pension Rules, this Court can always issue appropriate direction in exercise of its power under Article 226 of the Constitution to the Respondents not to act contrary to law and in particular the Pension Rules.

5. The question for consideration therefore is as to whether the said recovery of Rs. 71,937.80 or any part thereof can be made by the Respondents from the pension and other retirement benefits of the Petitioner under the Pension Rules. Rules 9(1) and (2) and 75 of the Pension Rules, 1972 on which reliance has been placed by Roy Barman and Mr. U.B. Saha are quoted herein below:

9. RIGHT OF GOVERNOR TO WITHHOLD OR WITHDRAW PENSION.

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, it, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement:

Provided that the Tripura Public Service Commission shall be consulted before any final orders rare passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced before the limit specified in Sub-rule (5) of Rule 49.

(2) (a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceeding under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report recording its findings to the Governor,

(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 Governor,

(ii) Shall not be in respect of any event which took place more than four years before such institution, and

(iii) Shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made m relation to the Governor servant during his service.

75. 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 an amount equal to that recoverable on account of ascertainable Government dues shall be deducted therefrom.

EXPLANATION.- 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, overpayment of pay and allowances and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

A reading of Rule 9(1) quoted above would show that the whole or part of any pecuniary loss caused to the Government can only be recovered if the pensioner is found guilty of grave misconduct or negligence during the period of his service and the Governor passes an order for such recovery from the pension of the pensioner. A reading of Rule 75 quoted above, on the other hand, shows that a Government servant is under a duty to clear all Government dues before the date of his retirement and where a retiring Government servant does not clear the Government dues and such dues are ascertainable, equivalent cash deposit may be taken from the Government servant, and such ascertainable Government dues can be deducted or recovered out of the gratuity payable to the Government servant. The expression "ascertainable Government dues" has been described in the Explanation to Sub-rule (2) of Rule 75 of the Pension Rules to include balance of House Building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, overpayment of pay and allowances and arrears of Income Tax deductible at source under the Income Tax Act, 1961. It is thus clear that under Rule 75 it is only Government dues which can be recovered from the Government servant. But pecuniary loss caused to the Government does not become Government dues of a Government servant unless the same has been caused due to the misconduct or negligence of the Government servant during the period of his service and such misconduct or negligence is established in a departmental proceeding or judicial proceeding. This would be clear from a harmonious reading of Rule 75 with Rule 9 of the Pension Rules quoted above. Where therefore a Government servant has retired from service and it has been established in a departmental proceeding or judicial proceeding that he was guilty of grave misconduct or negligence during the period of his service as a result of which pecuniary loss was caused to the Government, such pecuniary loss can be recovered from the pension of the Government servant if the Governor passes an order for such recovery from his pension. Sub-rule (2) of Rule 9 quoted above would further showed that if a departmental proceeding was instituted while the Government servant was in service, such proceeding would be deemed to be a departmental proceeding under Rule 9 and would be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

6. In the instant case, it appears that a departmental proceeding against the Petitioner was initiated for certain wrongful omission on his part and an inquiry was conducted on the said charges and in the said inquiry the charges against Petitioner were established, and yet by order dated 16.10.96, the Governor was pleased to consider the case of the Petitioner sympathetically and closed the said departmental proceeding after considering all aspects and keeping in view the fact that the Petitioner had already retired from service. No order therefore was passed by the Governor under Rule 9(1) of the Pension Rules for recovery of any pecuniary loss from the pension of the Petitioner due to any misconduct or negligence of the Petitioner during his service period.

7. In the absence of any such order of the Governor for recovery of pecuniary loss caused to the Government, no recovery of pecuniary loss said to have been caused by the Petitioner to the Government can be effected from the pension of the Petitioner. But dues of the Government which are ascertainable other than pecuniary loss caused to the Government can be recovered from the Petitioner by way of cash deposit or from his gratuity in accordance with Rule 75 of the Pension Rules discussed above. The Court has therefore to find out as to which amounts out of the amount of Rs. 71,937.80 claimed by the Respondents from the Petitioner are pecuniary losses caused to the Government and which amounts are ascertainable Government dues. The breakup of the said amount of Rs. 71,937.80 claimed by the Respondents from the Petitioner is given in pages 12 and 13 of the Affidavit-in-opposition and is as follows:

The aforesaid break-up would show that except the amount of Rs. 6,778/- over-drawn by the Petitioner from the G.P.F., the rest of the amounts are pecuniary loss caused to the Government due to the acts of omission or commission of the Petitioner. Thus, only the amount of Rs. 6,778/- is ascertainable Government due which can be recovered from the Petitioner under Rule 75 of the Pension Rules and the rest of the amounts out of the amount of Rs. 71,937.80 cannot be recovered from the pension of the Petitioner under the Pension Rules, 1972 in the absence of a specific order of the Governor under Rule 9(1) of the said Pension Rules.

8. Regarding interest and cost as claimed by the Petitioner, on a reading of the notification dated 8th April, 1997, I find that only where it is clearly established

that the delay in payment of gratuity is attributable to administrative lapses, interest is to be paid at such rate as may be prescribed. In the present case, I find that the payment of gratuity to the Petitioner and finalization of his retirement benefits was held up by the authorities because they had taken a bonafide view that the sum of Rs. 71,937.80 was to be deducted from the retirement benefits of the Petitioner towards various heads as indicated above. This is therefore not a case of simple administrative lapse on the part of the authorities in delaying payment of gratuity or other pensionary benefits. This is instead a case where the authorities had taken a view, rightly or wrongly, that the pensionary benefits could not be granted to the Petitioner unless the aforesaid amount of Rs. 71,937.80 was first recovered from the Petitioner. In these peculiar facts and circumstances, I am not inclined to grant interest and cost as claimed by the Petitioner.

9. In the result, I direct the Respondents to refund the sum of Rs. 32,255/- (i.e. Rs. 39,043/- minus Rs. 6,788/-) to the Petitioner towards 3/4th of the DCRG and to finalize and pay the Petitioner all his retirement benefits including Pension within a period of two months from the date of receipt of the certified copies of this judgment and order which shall be filed by the Petitioner before the Secretary to the Government of Tripura, Forest Department and the Accountant General, Tripura, Agartala.

10. The writ petition is allowed to the extent indicated above, however, considering the entire facts and circumstances of the case, the parties shall bear their own costs.

