(2022) 11 TEL CK 0118

In the Telangana High Court

Case No : Writ Petition No. 1034 Of 2021

N.R Indira APPELLANT

Vs

State Of Telangana And 3 Others RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
Code Of Civil Procedure, 1908 — Section 60, 60(1)(g)
Pensions Act, 1871 — Section 11
Payment of Gratuity Act, 1972 — Section 13

Citation : (2022) 11 TEL CK 0118

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : Mirza Nisar Ahmed Baig

Final Decision : Partly Allowed

Judgement

1. This writ petition has been filed by the petitioner seeking a writ of mandamus declaring the action of the respondents herein in not releasing the pension, gratuity, surrenders, GIS and other pensionary benefits of the petitioner inspite of her representation dated 28.12.2020, as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and consequently to direct the respondents to release the pension, gratuity, surrenders, GIS and other pensionary benefits and to pass such other order or orders.

2. Brief facts leading to the filing of the present writ petition are that the petitioner was working as a Record Assistant in the office of respondent No.2 and retired from service on 31.07.2020 on attaining the age of superannuation. It is submitted that at the time of retirement, there was no departmental enquiry or remarks pending against the petitioner. The petitioner made an application for payment of her retirement benefits including gratuity, surrender, GIS and pension to the office of respondent No.2, but the same were not released even after five months of her retirement. Thereafter, the petitioner came to know that

one M/s.Sreenilaya Chit Fund Private Limited and M/s.Margadarsi Chit Fund Private Limited, have filed recovery suits respectively against the respective defaulters therein and the petitioner herein as she stood as a guarantor/surety to the said loan transactions and further, that the Civil Court had issued directions to respondent No.2 to withhold the salary, leave encashment and other benefits of the petitioner which are not covered under Section 60 of CPC. Since the petitioner had planned to perform her daughter's marriage with pension benefits and the same was not released by the office of the respondent No.2, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner, while reiterating the submissions made in the writ affidavit, submitted that the petitioner never received any notice with regard to the suits or the Execution Petitions (E.P.) filed by the Chit Fund Companies. It is submitted that E.P.No.306 of 2019 was filed long back and other E.P.No.215 of 2020 was filed after the retirement of the petitioner and the respondent No.2 has failed to verify the same. He further submitted that the direction of the Civil Court was to withhold salary, leave encashment and other benefits, which are not covered by Section 60 of CPC, but the respondent No.2, by acting in a mechanical manner, has stopped and withhold the pension, gratuity, surrenders, GIS and other pensionary benefits, which is otherwise not permissible under law either as per Section 60 of CPC or under Section 11 of the Pensions Act, 1871 and Section 13 of the Payment of Gratuity Act, 1972.

4. Learned counsel for the petitioner placed reliance upon the Circular Memo No.15595-A/312/A2/HRM.V/2016, dated 24.12.2016, by which the Government of Telangana has assured that all the pensionary benefits of the employees should be paid on the day of retirement and therefore, the respondents ought to have paid the pensionary benefits on the date of retirement and they have failed to comply with the directives of the said circular. He also places reliance upon the decision of this Court in W.P.No.8675 of 2021 vide orders dated 27.12.2021, wherein it was held that under provision (g) to Section 60(1) of the CPC, pension and gratuity amounts cannot be attached for satisfaction of any decree of the Court.

5. Learned Government Pleader, on the other hand, places reliance upon the averments made in the counter affidavit. It is submitted that the petitioner has retired from service on 31.07.2020 on attaining the age of superannuation and has submitted papers for payment of retirement benefits. It is submitted that due to receipt of orders of Civil Court in E.P.No.215 of 2020, dated 4.08.2020 after retirement of the petitioner, the retirements benefits payable to the petitioner were withheld. It is submitted that after retirement of the petitioner only, the respondent No.2 came to know about the orders of the Civil Court in E.P.No.306 of 2019, dated 10.04.2019. It is submitted that the petitioner herself has admitted about these two orders of the Civil Court in the E.Ps., and in view of the said orders, the respondent No.2 could not pay the pensionary benefits to the petitioner. It is further submitted that the petitioner was also due to pay

House Building Advance (HBA) and House Building repairs advance to a sum of Rs.2,07,000/-, apart from sum of Rs.8,11,581/-, due under above E.Ps.

6. In view of the above payments due from her, for which the garnishee notice has been issued by the Civil Court, the office of respondent No.2 has not processed the pension proposals temporarily and the pensionary benefits were not paid to the petitioner.

7. Having regard to the above submissions and on perusal of the material on record and the proceedings before this Court, it is noticed that vide orders dated 25.03.2021, this Court has taken note of the above position and also the orders of the Civil Court and the House Building Advance and has observed that the respondent No.2 was required to withhold only a sum of Rs.10,20,000/- as the amount due from the petitioner and the balance amount was directed to be paid to the petitioner.

8. The learned counsel for the respondents has filed the details of the amounts due to the petitioner and also due from the petitioner and submitted that in view of the directions of this Court dated 18.01.2021, Accountant General (A&E), Telangana, Hyderabad, has withheld a sum of Rs.5,04,888/- i.e., a sum of gratuity from the individual and the remaining balance pensionary benefits has been released to the individual.

9. Having regard to the above position, this Court finds that in W.P.No.8675 of 2021 cited supra, the co-ordinate bench of this Court has considered the provisions of clause (g) to Section 60(1) of CPC and that under the said provision, the pension and gratuity amounts of a retired employee cannot be attached for satisfaction of a decree of any Court. To come to this conclusion, this Court has followed the decision of the Hon'ble Supreme Court in the case of Radhey Shyam Gupta Vs. Punjab National Bank (2009) 1 SCC 376, wherein it has held that the pension and gratuity of the petitioner cannot be attached and cannot be withheld for appropriation of a decree of any Civil Court.

10. The facts and circumstances in this case are also similar and therefore, the above decision is applicable to this case as well. In view of the same, this Court deems it fit and proper to direct the respondent No.2 to pay the entire amount of pension and gratuity as is eligible to the petitioner within a period of two months from the date of receipt of a copy of this order. Further, this Court makes it clear that the payment towards encashment of leave is not exempted from attachment and therefore, the petitioner is not entitled for the said payment.

11. Accordingly, this writ petition is partly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.