
(2022) 12 TEL CK 0060
In the Telangana High Court
Case No : Writ Petition (TR) No. 5240 Of 2017

P. Madan Mohan Reddy

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 9, 9(2)(b)(i), 9(2)(b)(ii), 9(6)(a), 9(7)

A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20

Citation : (2022) 12 TEL CK 0060

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : M V Raja Raam

Final Decision : Allowed

Judgement

1. In this Writ Petition, the petitioner is seeking calling of the records pertaining to the impugned proceedings Rc.No.Ser.I-1/519/2005 dt.11.08.2015 enclosing copy of impugned G.O.Rt.No.168 dt.31.07.2015 directing the Regional Joint Director, Warangal to take necessary action in another proceedings of the same number, i.e., Rc.No.Ser.I-1/519/2005 dt.11.08.2015 by forwarding the pension proposals of the petitioner duly following the procedure under force as competent authority as well as the other proceedings, if any, and to set aside the same with all consequential proceedings as illegal, arbitrary and contrary to law and consequently to direct the respondents to pay pension, pensionary benefits by virtue of revised pay scales with interest @ 24% per annum from the date of the retirement of the petitioner till the date of actual payment and to pass such other order or orders.

2. Brief facts leading to the filing of the present Writ Petition are that the petitioner retired as a Principal of Government Junior College (Boys), Nalgonda on 30.04.2005 on attaining the age of superannuation. As per the proceedings dt.21.02.2005 issued by the 1st respondent notifying the retirement of the

Principals of Government Junior Colleges in the entire State of Andhra Pradesh on attaining the age of superannuation, the persons whose names are reflected as pending enquiry subject to the rights of the Government to conduct disciplinary action before or after their retirement and whose names are figured at Col.No.5 of the remarks column, were allowed to retire. The petitioner's name at Sl.No.30 was shown as the person due to retire and that no charges are pending against him as on the due date of retirement and accordingly he retired on 30.04.2008. After retirement, the petitioner was paid only provisional pension.

3. It is submitted that G.O.Ms.No.54 dt.08.07.2009 was issued stating that sanction was accorded under the A.P. Revised Pension Rules, 1980 to conduct an enquiry under Rule 20 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 by invoking sub-clause (i) clause (b) of sub-rule (2) of Rule 9 of the A.P. Revised Pension Rules, 1980 to initiate departmental proceedings against the petitioner. Thereafter, the Government issued G.O.Rt.No.492 dt.08.07.2009 framing as many as four charges against the petitioner. It is submitted that as per the A.P. Revised Pension Rules, 1980, there is a limitation period of 4 years for initiating any departmental proceedings after retirement and therefore, the charges issued on 08.07.2009 are beyond the prescribed period of 4 years and accordingly are not in accordance with the Rules and are liable to be set aside in limine. It is submitted that the petitioner submitted a defence statement on 29.03.2010 narrating the above facts and the same was pending consideration. The learned counsel for the petitioner submitted that the petitioner was receiving only provisional pension since the date of retirement on 30.04.2005 though there were no charges pending against him at the time of retirement.

4. It is submitted that the petitioner filed O.A.No.741 of 2011 challenging the G.O.Ms.No.54 dt.08.07.2009 as well as G.O.Rt.No.492 dt.08.07.2009 and the consequential proceedings dt.29.10.2009 as illegal and arbitrary and the said O.A. was disposed of by the Tribunal vide orders dt.30.06.2014 setting aside the said G.Os. When the consequential benefit was not given to the petitioner, the petitioner filed a contempt case in C.C.No.392 of 2015 on the file of the Administrative Tribunal and the same was disposed of directing the petitioner to take appropriate remedies. It is submitted that in the meantime, the petitioner has received proceedings dt.11.08.2015 enclosing copy of the impugned proceedings G.O.Rt.No.168 dt.31.07.2015 directing the Regional Joint Director, Warangal to take necessary action in another proceedings of the same number dt.11.08.2015 by forwarding the pension proposals of the petitioner duly following the procedure under force as competent authority. It is submitted that respondent No.1 has given wrong interpretation to the order of the Tribunal in O.A.No.741 of 2011 dt.30.06.2014 and the order of recovery of an amount of Rs.3,22,309/-from death-cum-gratuity benefits, encashment of leave and also dearness relief of the pension of the petitioner in terms of Rule 9(7) of the A.P. Revised Pension Rules, 1980 and pensionary benefits due to the petitioner were directed to be settled. Challenging the initiation of the disciplinary proceedings

after the lapse of prescribed period of 4 years and also the order of recovery without there being any charge with regard to any misappropriation of funds, the present Writ Petition is filed. Initially, the petitioner had filed O.A.No.6682 of 2015 before the A.P. Administrative Tribunal and after bifurcation of the State, the matter has been transferred to this Court and renumbered as W.P. (TR) No.5240 of 2017.

5. Learned counsel for the petitioner, Sri M.V. Raja Ram, while reiterating the above submissions made in the writ affidavit, submitted that as on the date of retirement, admittedly there were no charges or departmental enquiry pending against the petitioner and as per the Government orders, pension has to be settled and paid within a period of 6 months from the date of retirement and any delay in doing so shall be liable to be compensated by payment of interest. It is submitted that the petitioner has been receiving only provisional pension since the date of his retirement on 30.04.2005. He has drawn the attention of this Court to Rule 9 of the Telangana Revised Pension Rules, 1980 which provides for the right of Government to withhold or withdraw pension and particularly sub-rule (2) (b) (i) (ii) thereof which provides that 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. Thus, according to him, the disciplinary proceedings cannot be instituted against the Government servant after 4 years of his retirement in relation to any event which took place during the course of his employment in terms of sub-clauses (i) and (ii) of clause (b) of sub-rule (2) of Rule 9. It is submitted that since the petitioner retired from service on 30.04.2005, the Government could have instituted the departmental proceedings on or before 30.04.2009, but G.O.Ms.No.54 sanctioning permission to conduct enquiry and initiate departmental proceedings against the petitioner was given on 08.07.2009. Therefore, according to him, the initiation of the departmental proceedings against the petitioner is illegal and arbitrary and he seeks setting aside of G.O.Ms.No.54 dt.08.07.2009 and G.O.Rt.No.168 dt.31.07.2015 and payment of pension to the petitioner as per the Revised Pension Rules with interest from the date of his entitlement till the date of payment.

6. Learned Government Pleader for Services-I, on the other hand, supported the impugned order by relying upon the averments made in the counter affidavit. It is submitted that the petitioner committed irregularities during his service and certain complaints were received from various persons bringing the irregularities committed by the petitioner to the notice of the Government and therefore, an enquiry was conducted and Presenting Officer was appointed who has submitted his report on 01.11.2006 confirming the irregularities committed by the petitioner and has determined the misappropriated amount of Rs.3,22,309/-. It is submitted that in view of the said report, the respondents have addressed a letter to the Government vide letter dt.13.02.2007 for initiation of disciplinary

action against the petitioner and the Government has accorded permission vide G.O.Ms.No.54 dt.08.07.2009 framing articles of charges and the same were communicated to the petitioner. Therefore, according to the learned Government Pleader, the action to initiate disciplinary proceedings was taken immediately after the retirement of the petitioner, i.e., in the year 2006 and therefore, it cannot be said that the disciplinary proceedings were not initiated within the prescribed period. He therefore sought for dismissal of the Writ Petition.

7. Having regard to the rival contentions and the material on record, it is apposite to extract Rule 9 of the A.P. Revised Pension Rules, 1980 (presently known as the Telangana Revised Pension Rules, 1980) which reads as follows:

"9. Right of Government to withhold or withdraw pension :-

(1) The Government reserves to themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specific period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, 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 re-employment after retirement :

Provided that the Telangana State Public Service Commission shall be consulted before any final orders are passed. However, consultation with the Telangana State Public Service Commission is not necessary, when the pensioner is found guilty in any judicial proceedings.

Provided further that a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45.

Provided also that the penalty of withholding of entire pension or gratuity or both may be imposed against the retired Government Servant upon being found guilty or upon conviction in a Court of Law for the offences of grave charges namely—proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery, outraging the modesty of women and misconduct.

(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 re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings 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 State Government, that authority shall submit a report recording its findings to the State Government.

Note :- The function of the disciplinary authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under this rule. In case Government decide to take action under this rule in the light of the findings of the disciplinary authority, the Government will serve the person concerned with a show-cause notice specifying the action proposed to be taken under this rule and the person concerned will be required to submit his reply to the show-cause notice within such time as may be specified by the Government. The Government will consider the reply and consult the Telangana State Public Service Commission. If as a result of such consideration proceedings will be issued in the name of the Government.

(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; and

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

(3) [x x x] [Omitted by G.O.Ms.No.302, Fin., Dt.30-8-1994]

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 52 shall be sanctioned.

(5) Where the State Government decides not to withhold or withdraw pension but orders 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 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

(b) Judicial proceedings shall be deemed to be instituted-

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

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

7. Even though a Government servant has retired from service and was not before his retirement charge sheeted or called upon to explain why a pecuniary loss caused to the Government (or a local authority) due to his negligence, while he was in service, should not be recovered from him, the Government if they are satisfied that the loss is due to him, shall recoup the pecuniary loss besides all Government dues (or local authority dues) from the Retirement Gratuity. For this purpose, it shall not be necessary to get the consent of the Government servant or the consent of the members of his family in the case of a deceased Government servant, as the case may be. In such cases, it shall be indicated in the sanction clearly the amount of Retirement Gratuity admissible, a stated amount which shall be deducted from the Retirement Gratuity on account of Government dues or local authority dues or loss sustained by the Government servant due to negligence and the net amount of Retirement Gratuity payable to the retired Government servant.

(8) When a Government servant dies before conclusion of the disciplinary proceedings, the family pension beneficiary or legal heir is entitled to receive the balance of 25% or remaining part of the full pension, as the case may be, and the further proceedings shall abate.”

8. On a literal reading of the above Rule, this Court finds that Rule 9 of the Telangana Revised Pension Rules, 1980 deals with right of the Government to withhold or withdraw the pension and sub-rule (2)(b)(ii) refers to departmental proceedings instituted after the Government servant has retired. It provides that the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be instituted after his retirement in respect of any event which took place more than four years before such institution. Admittedly, an action can be taken by the Government only in relation to any event which took place during the course of employment and since the petitioner retired on 30.04.2005, the departmental proceedings can be instituted only before the expiry of four years from 30.04.2005, i.e., on or before 30.04.2009 in this case. Clause (a) of Sub-rule (6) of Rule 9 provides that departmental proceedings shall be deemed to be instituted on the date on which 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. Admittedly, in this case, the departmental proceedings can be deemed to have been instituted only from the date of issuance of the charge sheet which is dated 08.07.2009. Therefore, even though the action was contemplated on the basis of the complaint received about the irregularities committed by the petitioner during his service, the Government had not accorded sanction and the charge sheet was issued only after the lapse of the prescribed period of four years from the date of the event, if any.

9. In view of the same, this Court finds that the action of the respondents in

issuing G.O.Ms.No.54 dt.08.07.2009 is clearly outside the purview of Rule 9 and is liable to be set aside and consequently G.O.Rt.No.492 dt.08.07.2009 and G.O.Rt.No.168 dt.31.07.2015 are liable to be set aside.

10. Accordingly, the Writ Petition is allowed and the respondents are directed to make payment of eligible pension to the petitioner from the date of his retirement as per the revised pay scales from time to time and also grant consequential benefits with interest at the rate of 6% per annum to the petitioner within a period of four (4) months from the date of receipt of a copy of this order.

11. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.