
(2013) 06 CHH CK 0035
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6334 of 2011

Punnulal Jaiswal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) 2 CG.L.R.W. 302 : (2013) LabIC 3841

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Single Bench

Advocate : Meenu Banerjee, for the Appellant; Yashwant Singh Thakur, D.A.G. and Gary Mukhopadhyay, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J.—By this petition under Article 226 of the Constitution of India, the petitioner, who is a retired Government employee, is aggrieved by the decision dated 8.9.2009 (Annexure P/6) of the Retiral Dues Committee, whereby the action of the concerned Department, withholding claim of the petitioner for full pension, gratuity and leave encashment etc., on account of pendency of a criminal case, has been upheld. Learned counsel for the petitioner submits that the petitioner retired from the service upon attaining the age of superannuation w.e.f. 31st May, 2005. The petitioner has been subjected to criminal trial in an old case, which was instituted in the year 1999 and since then the trial is pending. The petitioner having retired long back, his retiral benefits cannot be withheld for indefinite time only because of pendency of the criminal case. Though, the petitioner is being paid 90% of the pension on the provisional basis, his pension case is not finalized. The benefits of leave encashment and gratuity have not been extended. Earlier, the petitioner had filed W.P. (S) No. 5712/2007, which was disposed of vide order dated 28.7.2009 (Annexure (P/5) referring the matter to the Committee. In accordance with the direction of this Court, the matter was examined by the Retiral Dues Committee and action of the Department, withholding retiral dues on account of pendency of

criminal case is upheld. In these circumstances, the petitioner has again approached this Court with a prayer for a direction to the respondents to release the aforesaid benefits without awaiting the decision of the criminal case.

2. On the other hand, learned counsel for the State submits that the claim of the petitioner is devoid of merits at this stage. It was found that the criminal case is registered against the petitioner for the offence under Sections 408, 420, 467, 468, 471 and 120(B), 34 of the Indian Penal Code and the trial is pending before the J.M.F.C. Pendra Road. Therefore, on this ground the petitioner is not entitled to any benefits other than those which have already been paid to him viz. G.I.S. G.P.F. and Family Welfare Fund. He further submits that as and when the criminal case is decided, the concerned authority will take decision in accordance with the provisions contained in Rule 9 of the C.G. Civil Services (Pension) Rules, 1976.

3. Insofar as pension, which also include gratuity is concerned, the Governor is empowered under Rule 9 to withhold the pension. Rule 9(4) speaks of withholding of pension, where a departmental or a judicial proceeding is pending against a government servant, who is retired on attaining the age of superannuation. In such a case, where departmental or judicial proceedings are instituted and pending, a provisional pension and death-cum-retiral gratuity, as provided in Rule 64, as the case may be, shall be sanctioned and paid. A perusal of the provisions contained in Rule 64 shows that in such an eventuality the Head of the office shall authorize the payment of provisional pension, not exceeding the maximum pension and 50% of the gratuity, taking into consideration the gravity of the charges levelled against such government servant, which would have been payable on the basis of the qualifying service up to the date of retirement.

4. In view of the aforesaid legal position, the respondent's authority is competent to grant provisional pension up to maximum and gratuity up to 50%, taking into consideration the gravity of the charges levelled.

5. It is informed and the fact, not in dispute, is that the petitioner is already getting 90% of the pension on provisional basis, therefore, in that regard no further orders are required to be passed. Finalization of the pension of the petitioner after conclusion of the criminal trial shall be done by the respondents and till then provisional pension, which is being paid to the petitioner shall continue to be paid.

6. As far as gratuity is concerned, I find that this aspect has not been examined either by the Committee or by the Head of the office. Therefore, this aspect shall be considered. Therefore, the Head of the office of the petitioner shall consider grant of gratuity subject to upper limit of 50% of the total amount, which should have been paid to the petitioner, taking into consideration the gravity of the charges against the petitioner. The decision in I this regard shall be taken within two months from the date of receipt of a copy of this order.

7. So far as the petitioner's claim for payment of leave encashment benefit is

concerned, no specific provision is there under the relevant rules, more particularly, no rule governing grant of leave encashment is brought to the notice of this Court either of the parties, though learned counsel for the petitioner has placed before this Court circulars dated 16.9.1980 and 5.8.1989.

8. Learned State counsel could not point out any impediment in grant of leave encashment benefit on the ground of pendency of criminal case. Therefore, the respondents shall release the leave encashment benefits, as are available to the petitioner under the government policy. In that regard, the benefit, which may be made available to the petitioner shall be released within an outer limit of three months.

9. Subject to the observations and directions, above, this petition is allowed, to the extent indicated above. No cost.