

(2015) 08 KL CK 0145
In the High Court Of Kerala
Case No : WP(C) No. 17539 of 2014 (N)

Ramachandran K.

APPELLANT

Vs

Kasargod Printing and Publishing Co-op. Society Ltd. and
Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 4 KLJ 117 : (2015) 3 KLT 961

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : Suresh Kumar Kodoth and K.P. Antony Binu, for the Appellant; I.V. Pramod and G. Gopakumar, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J—The petitioner, a compositor, having joined the service of the first respondent Bank on 01.08.1979, retired on 28.02.2014, on his attaining the age of superannuation, after putting in 24 years of service. As the petitioner is entitled to his terminal benefits, the first respondent in October, 2013 forwarded the pension proposal of the petitioner to the second respondent, the Pension Board. In addition, the petitioner has also submitted Ext. P2 representation before the second respondent. When nothing concrete has emerged, the petitioner has approached this Court.

2. On 06.02.2015, this Court issued an interim direction to the second respondent to disburse the proportionate pension to the petitioner. In compliance with the said direction, the second respondent has started paying the proportionate monthly pension to the petitioner beginning from 09.06.2015.

3. The principal objection of the second respondent to pay the full pension to the petitioner is that the first respondent, the employer, has not paid the full contribution. In that context, the learned counsel for the petitioner has submitted

that for the first respondent Society's default, the petitioner, the retired employee, cannot be made to suffer by way of denial of pensionary benefit. Further, the pension, according to the learned counsel, has been declared to be not a charity, but a right of a retired employee.

4. The learned counsel for the second respondent Pension Board has submitted that though the total pension fund contribution due from the first respondent Bank is Rs. 6,67,557/-, it has so far remitted only Rs. 1,64,414. In terms of G.O. (P) No. 185/2010/Co-Op., Dt. 08.11.2010, the second respondent is required to pay the proportionate pension to the retired employees based on the contribution made by the employer. According to him, the second respondent has already communicated to the first respondent about the contribution due from it. The second respondent is ready and willing, submits the learned counsel, to pay the full monthly pension to the petitioner, as and when the first respondent Bank deposits the balance of its contribution.

5. The learned counsel for the first respondent society, on his part, has submitted that the society has been virtually on its deathbed, so to speak, as to its financial condition. According to him, any precipitous or coercive action to realise the balance contribution from the respondent society would not only endanger the career prospects of the present employees, but also threaten the very existence of the respondent Society.

6. The learned counsel has further submitted that the petitioner has claimed DA at 150%, whereas the DA all along had been only 87%. In the words of the learned counsel for the first respondent, unless this disputed question of fact is resolved and the pension contribution from the first respondent has accordingly been determined, it is not possible for the respondent society to pay its contribution.

7. On technical front, the learned counsel for the first respondent Society has also urged that the petitioner has an efficacious alternative remedy under various statutory provisions, such as Kerala Co-Operative Societies Act and Kerala Shops and Commercial Establishments Act.

8. Heard the learned counsel for the petitioner, the learned Government Pleader, the learned counsel for the respondent Society and the learned Standing Counsel for the Pension Board, apart from perusing the record.

9. The defence on the part of the respondent society can be summarized thus: (1) That the petitioner has an efficacious alternative remedy; (2) that there are disputed questions of fact to be resolved and (3) that the respondent society is perilously perched on the verge of financial destruction.

Alternative Remedy:

10. Firstly, the principal justification on the part of the first respondent society for not contributing its part of the amount to the Pension Board is that it is financially in a precarious position. Before adverting to the said defence, it is

apposite for this Court to address the specific plea raised by the learned counsel for the first respondent as regards the maintainability of the writ petition. According to the learned counsel for the first respondent Society, the petitioner could have taken recourse to redressal mechanisms under either Kerala Co-Operative Societies Act or Kerala Shops and Commercial Establishments Act.

11. On the issue of alternative remedy, it is pertinent to observe that the Hon'ble Supreme Court in *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, (2004) 118 CompCas 213 : (2004) 1 CTLJ 1 : (2003) 10 JT 300 : (2003) 10 SCALE 81 : (2004) 3 SCC 553 has tellingly remarked, after quoting with approval the dictum laid down in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176 , that while entertaining an objection as regards the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court, it is opined, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power, indisputably.

12. The Apex Court in *ABL International Ltd. (supra)* has, however, served a caveat to the effect that the said plenary power of the High Court to issue a prerogative writ will not normally be exercised by it to the exclusion of other available remedies, unless such action of the State or its instrumentality is arbitrary or unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons.

13. Since the matter has been pending for the last more than one year and has already been admitted, I do not, at this juncture, deem it appropriate to non-suit the petitioner on the ground of alternative remedy, if it were to be available.

Disputed Questions of Fact:

14. True, the learned counsel for the petitioner has already taken an objection concerning the rate of DA applicable to the petitioner. The learned counsel has further submitted that the petitioner has claimed DA at 150%, whereas the DA all along had been only 87%. In the words of the learned counsel for the first respondent, unless this disputed question of fact is resolved and the pension contribution from the first respondent is accordingly determined, it is not possible for the respondent society to pay its contribution.

15. Apart from making a mention in the counter affidavit concerning the said dispute in passant, the respondent society has, in fact, not supplied any further information in justification of its defence. In my view, it is a defence in passing.

16. Firstly, there is no invariable principle of law that this Court under Article 226

of the Constitution of India cannot adjudicate upon any disputed question of fact. As the justice demands, this Court can as well look into a disputed question of fact, provided that can be resolved without further evidence, but based on the record available.

17. In the present instance, though the respondent Bank has raised after a fashion an objection concerning the alleged variation in DA, I am afraid it has not specified what the actual DA is and in what manner the quantum will be affected thereby. Even otherwise, to examine the bona fides of the first respondent Society, it is essential to observe that it ought to have paid, at least, the admitted amount of its contribution towards the pension share before taking the said plea, but it has not done.

18. In *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, AIR 1970 SC 802 : (1969) 3 SCC 769 , the Hon'ble Supreme Court has held that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 of the Constitution of India merely because, in considering the petitioner's right to relief, questions of fact may fall to be determined; in a petition under Article 226 of the Constitution of India, the High Court has jurisdiction to try issues both of fact and law. It has further held that exercise of the jurisdiction is discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous, that the nature of the claim made or the dispute sought to be agitated does not merit attention, or that the claim is not maintainable, or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

19. In *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, AIR 1971 SC 1021 : (1970) 1 SCC 582 : (1970) 3 SCR 854 , too, the Supreme Court has reiterated the same principle of law, by observing that merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body.

20. With reference to the above-cited decisions, the Supreme Court, again, in *ABL International Ltd.(supra)* has observed that merely because the respondent wants to dispute a fact, it does not become a disputed fact. If such objection as to disputed questions or interpretations is raised in a writ petition, the Courts, it is opined, can very well go into the same and decide that objection, if facts permit it.

21. Finally, it suffices to quote the observations of the Apex Court in a recent

judgment, *M/s. Real Estate Agencies Vs. Govt. of Goa and Others*, AIR 2013 SC 3948 : (2012) 5 CTC 561 : (2012) 9 JT 277 : (2012) 4 RCR(Civil) 496 : (2012) 8 SCALE 581 , wherein the precedential position has been summarised to the effect that there is no universal rule or principle of law which debars the writ court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution normally would not entertain a dispute which would require it to adjudicate upon the contested questions and conflicting claims of the parties to determine the due application of the law.

Pension:

22. There can be no quarrel about the plea taken by the second respondent Board that in terms of the extant statutory position and also the administrative instructions issued in the form of circulars by the Government from time to time, it has already begun paying the proportionate pension to the petitioner, the retired employee. Further, it seems to have already intimated the first respondent society concerning its obligation to pay the balance contribution.

23. The substantive defence taken by the first respondent society, as can be seen from his counter affidavit, is that it has been financially crippled and is not in a position to pay the balance pension contribution. It is profitable to extract a portion of the counter affidavit, which reads as follows:

"4. There is 12 permanent staff working in the society and some temporary workers. Sometimes, if there is workload, society employs 12 temporary workers. If the society is compelled to disburse the total amount at present, it will negatively affect the future of the society.

5. The society is not intending to withhold any eligible amount due to the petitioner but as there is no money with the society at present, even for meeting the running expenses, the terminal benefits could not be disbursed. ON 22.05.2015, when the writ petition came up for consideration this Honourable Court was pleased to direct this respondent to file counter affidavit within three weeks."

24. In *Deokinandan Prasad Vs. The State of Bihar and Others*, AIR 1971 SC 1409 : (1971) 1 LLJ 557 : (1971) 2 SCC 330 : (1971) SCR 634 Supp the Apex Court has held that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

25. In *Poonamal and Others Vs. Union of India and Others*, AIR 1985 SC 1196 : (1985) LabIC 950 : (1985) 1 SCALE 938 : (1985) 3 SCC 345 : (1985) 3 SCR 1042 : (1985) 2 SLJ 128 : (1985) 17 UJ 1012 , as quoted in *PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others*, AIR 2011 SC 1974 :

(2011) 129 FLR 1101 : (2011) 3 LLJ 308 : (2011) 6 SCALE 53 : (2011) 11 SCC 702 : (2011) 2 SCC(L&S) 322 : (2011) 4 UJ 2516 : (2011) AIRSCW 3197 : (2011) 4 Supreme 1 , the Hon"ble Supreme Court has observed thus:

"7. [P]ension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right... Where the government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to the family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate."

(emphasis as made in PEPSU RTC)

26. To be cryptic, it can be seen that in PEPSU RTC., (supra) the Apex Court, having summed up the statutory and precedential position on the issue, has held that the concept of pension has been considered by the Court time and again, and in a catena of cases it has been observed that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. It is a right attached to the office and cannot be arbitrarily denied.

27. In the light of the above definitive declaration of law, I am of the opinion that financial stringency cannot be a ground to deny the terminal benefits of the petitioner, for the terminal benefits are not a matter of charity, but of right to be demanded by the petitioner.

28. It is further pertinent to observe that there is an elaborate mechanism to enforce the realisation of arrears from the first respondent society. The counter affidavit filed by the second respondent has revealed the steps that could be taken in that regard. I do not see any impediment coming in the way of the second respondent in initiating those proceedings either towards the society or its employee or any of its office bearers, including the Secretary, if necessary.

In the facts and circumstances, for the reasons mentioned above, this Court allows the writ petition as prayed for. It is, however, made clear that if an issue of payment of interest, penal or otherwise, arises, it shall be decided by the authority concerned. No order as to costs.