(2016) 12 KL CK 0080

In the High Court Of Kerala

Case No : O.P.(CAT) No. 293 of 2016, (Against the Order In Oa 180/2015 of Kerala Administrative Tribunal, Thiruvananthapuram Dated 04.08.2016)

S. Purushothaman APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:
Central Civil Services (Commutation of Pension) Rules, 1981 — Rule 9(6)

Citation : (2017) 1 KerLJ 694

Hon'ble Judges : P.R. Ramachandra Menon & P. Somarajan, JJ.

Bench : Division Bench

Advocate : Sri. M. Sreekumar, Advocate, for the Petitioner; Sri. N. Nagaresh, Assistant Solicitor General By Adv. Sri. M.L. Suresh Kumar, CGC, for the Respondent No. 1 to 3; Sri. T. Sanjay, SC, Bsnl By Sri. Mathews K. Philip, SC, BSNL, for the Respondent Nos. 4 to 6

Final Decision : Dismissed

Judgement

Ramachandra Menon, J.—Interference declined by the Central Administrative Tribunal vide Ext. P6 order in O.A. No.180 of 2015, whereby it was held that the relief claimed for disbursement of commuted value of Pension and DCRG cannot be granted to the petitioner during pendency of judicial proceedings by virtue of the bar under the relevant Rule, is under challenge in this Original Petition.

2. The petitioner was working as Junior Telecom Officer in the BSNL and while so, he attained the age of superannuation and retired from service on 31.01.2008. His pensionery benefits were not sanctioned and disbursed, but for releasing the provisional pension, on account of the pendency of the judicial proceedings by way of C.C No. 532 of 2004 on the files of the Judicial First Class Magistrate''s Court, Neyyattinkara. It was alleged that the petitioner, while working as Junior Telecom Officer (Technical) in the Office of the Deputy General manager, Pattom,

Thiruvananthapuram, was instrumental in giving ISD connection to the accused persons through the Junior Telecom Officer ? Parassala, without following the prescribed procedure, by virtue of which huge loss was caused to the Department under different heads. Crime was registered in the year 1997 and the offences alleged are under Sections 120 B, 568, 471 and 420 of IPC r/w Sections 20 and 25 of the Indian Telegraphs Act and Rule 425 of the Indian Telegraph Rules.

3. Alleging that there was inordinate delay in finalizing the judicial proceedings [which was pending for more than 19 years] and further that there was no provision to withhold the pension or commuted value of pension, the petitioner approached the Tribunal by filing O.A. with the following prayers :

"(i) Direct the 4th respondent to sanction and disburse pension, DCRG, Commuted Value of Pension, Leave surrender and such other terminal benefits to the applicant untrammeled by the criminal proceedings pending against the applicant pursuant to Annexure A2 Final Report;

(ii)Direct the 4th respondent to issue Pension Payment Order to the applicant forthwith to enable him to avail Central Government Health Scheme facilities;

(iii) Declare that the applicant is entitled to draw Pension, DCRG, Commuted Value of Pension, Leave Surrender and such other benefits untrammeled by criminal proceedings and further declare that CCS Pension Rules does not provide for withholding of Pension, DCRG, Commuted Value of Pension, Leave surrender and such other terminal benefits etc. during the pendency of criminal proceedings.

(iv) Such other reliefs that the Hon''ble Tribunal deem fit in the facts and circumstances of the case.

4. The respondents 1 to 3 filed Ext. P2 reply statement, admitting the extent of service of the applicant [having 38 years 6 months and 11 days], also adding that as per the relevant proceedings, provisional pension was already ordered in terms of the relevant Rules. A reply statement was filed by the respondents 4 to 6 as well, as borne by Ext. P3. It was further pointed out that, by virtue of the Statutory Bar under the relevant Rules, the commuted value of pension or Gratuity could not be paid, if the Department/Judicial proceedings were pending. During the pendency of the Proceedings, the O.A. was got amended contending that the applicant being paid only provisional pension, it can not be a Bar for the CGHS authorities to consider his request for availing CGHS facility as a pensioner. After hearing both the sides, the Tribunal held that, by virtue of the relevant Rule position, the claimant was not entitled to get disbursement of pension, commuted value of pension or DCRG; so long as the judicial proceedings were pending, however, making it clear that the amount due to the applicant on account of ''leave surrender'' could be considered and disbursed in accordance with law. It was also held that, since there was a prescribed format for applying for CGHS facility and the same had to be sent through the respondent

Department, the respondent/BSNL was directed to do the needful. The application in the prescribed form with necessary certificates, if submitted by the applicant before the second respondent, was directed to be forwarded to the CGHS authorities, Thiruvananthapuram, for enabling the applicant to avail the CGHS facility, notwithstanding the fact that he is not being paid full pension.

5. Mr. M. Sreekumar - the learned counsel appearing for the petitioner submits that Ext. P6 verdict passed by the Tribunal is not correct or proper and that the same is contrary to the law declared by the Apex Court in State of Jharkhand v. Jithendrakumar Sreevasthav [2013 (3) KLT 782 (SC)]. According to the learned counsel, the Rule position considered by the Supreme Court in the said case [Rule 43 of the Bihar Pension Rules (as applicable to the State of Jharkhand)] was exactly similar to Rule 9 of Central Civil Service (Pension) Rules 1972 and as such, since there was no Rule prohibiting disbursement of the pension or Commuted value of pension, Ext.P6 order passed by the Tribunal requires interference. It is also stated that the position in relation to the Central Government service is something different from the position prevailing in the State. In the case of the State Government Service, by virtue of Rule 3A of Part III KSR, no such amout can be disbursed, if Departmental or Judicial Proceeding is pending. In the case of DCRG, the learned counsel concedes that there is of course a Bar by virtue of Rule 69 (c) of the Central Civil Services (Pension) Rules, 1972. In so far as no such Rule in relation to Pension or Commuted Value of Pension is there, the Department cannot justify their action in not disbursing the due amount. The learned counsel also places reliance on the decision rendered by the Apex Court reported in 1990 KHC 897 = (1990) 4 SCC 314 [D.V. Kapoor v. Union of India and Others].

6. Sri. M.L. Suresh Kumar - the learned Central Government Counsel appearing for the respondents 1 to 3 and Sri. T. Sanjay - the learned Standing counsel for the respondents 4 to 6/ BSNL submit that the idea and understanding of the petitioner is thoroughly wrong and misconceived. According to them, the amount which could be paid for the time being is only the ''provisional pension'', as given in Sub Rule (4) of Rule 9 of CCS Pension Rules. There is a specific Bar on payment of Commuted Value of Pension in view of the Rule 4 Appendix 1 of the CCS [Commutation of Pension] Rules 1981 and disbursement of Gratuity, by virtue of Rule 69 (c) of the CCS (Pension) Rules. For convenience of reference, all the above Rules are extracted below :

Rule 9 (4) of the CCS [Pension] Rules : -

"9. Right of President to withhold or withdraw pension.

....

....

(4) In the case of 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 69 shall be sanctioned.

....

Rule 4 Appendix 1 of the CCS [Commutation of Pension Rules]:-

4. Restriction on commutation of pension : No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pension against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a [Percentage] of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.

Rule 69 (c)of the CCS (Pension) Rules :

69. Provisional Pension where departmental or judicial proceedings may be pending

....

....

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules 1965, for imposing any of the penalties specified in Clauses (i) (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant.

7. The first question to be considered is, whether any Departmental or Judicial Proceeding is initiated or pending. Admittedly, crime leading to CC No. 532 of 2004 before Judicial First Class Magistrate''s Court, Neyyattinkara was registered against the petitioner in the year 1997 and the trial is yet to be completed. As such, there cannot be any doubt that the judicial proceeding is pending. Under such a situation, what are the benefits which can be released is the next question.

8. During the course of hearing, the learned counsel for the petitioner concedes that, by virtue of the mandate under Rule 69 (c) of the CCS (Pension) Rules, the DCRG cannot be released at this stage. The assertion made is that, unlike Rule 3A Part III KSR, there is no similar provision under CCS Pension Rules except the power under Rule 9 (2) (1) [which will be having effect only on arriving at a finding on the guilt of the delinquent/accused] to withhold pension. Since the trial is still to be completed, no finding on guilt has been arrived at and hence no amount could have been withheld towards pension or commuted value of pension, submits the learned counsel. In this context, a specific reference is to be made to Rule 9 (4) of the CCS (Pension) Rules, which clearly stipulates that

during the pendency of such proceedings, provisional pension can be given to the pensioner. Reference is also to be made to Rule 9 (6) which reads as follows :

"(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 cognizance, is made, and

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

On reading the provision as a whole, it is never difficult to understand the scope of the Rule that the only amount which can be disbursed during the pendency of the judicial/disciplinary proceeding is nothing other than the ''provisional pension''. As such, there is implied denial/prohibition of other amounts, i.e. Pension or Commuted Value of Pension.

9. With regard to the contention raised by the petitioner that the petitioner is entitled to get the benefit of the Ruling rendered by the Supreme Court 2013 (3) KLT 782 [cited supra] and that the Rule considered by the Supreme Court is exactly similar Rule to 9 of the CCS (Pension) Rules, this Court finds it difficult to agree. The Rule has been quoted in paragraph 9 of the verdict, and the proviso to Rule 43 (b) is extracted in paragraph 10. The above paragraphs are extracted below for convenience of reference. :

"9. Having explained the legal position, let us first discuss the rules relating to release of Pension. The present case is admittedly governed by Bihar Pension Rules, as applicable to the State of Jharkhand. R.43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This R.43(b) reads as under:

"43(b). The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty to grave misconduct, or to have caused pecuniary loss to Government misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement".

From the reading of the aforesaid R.43(b), following position emerges:-

(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.

(iv)This power can be invoked only when the proceedings are concluded finding guilty and not before.

10. There is also a Proviso to R.43(b), which provides that:-

"A. Such departmental proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment.

i. Shall not be instituted save with the sanction of the State Government.

ii Shall be in respect of an event which took place not more than four years before the institution of such proceedings.

iii Shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made:-

B. Judicial proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment shall have been instituted in accordance with sub clause (ii) of clause (a) and

C. The Bihar Public Service Commission, shall be consulted before final orders are passed.

It is apparent that the proviso speaks about the institution of proceedings. For initiating proceedings, R.43(b) puts some conditions, i.e., Department proceeding as indicated in R.43(b), if not instituted while the Government Servant was on duty, then it shall not be instituted except:-

(a) With the sanction of the Government, -(b) It shall be in respect of an event which took place not more than four years before the institution of the proceedings.

(c) Such proceedings shall be conducted by the enquiry officer in accordance with the proceedings by which dismissal of the services can be made. Thus, in so far as the proviso is concerned that deals with condition for initiation of proceedings and the period of limitation within which such proceedings can be initiated.

10. It was by virtue of the specific wordings in the above Rule that the Apex Court held in paragraph 11 of the verdict cited supra, that there was no provision in the Rule to withhold the pension/gratuity when Departmental proceedings/

judicial proceedings are pending. Placing reliance on the decision rendered by the Constitution Bench of the Supreme Court in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330] holding that right to receive pension amounted to a right to property recognised by the Constitution as envisaged under Article 300 A of the Constitution of India, it was held that any attempt to take away a part of the Pension or Gratuity or Leave encashment without any statutory provision and under the umbrage of administrative instructions cannot be countenanced. On making a comparative analysis between the Rule 43(b) of the Bihar Pension Rules as applicable to the State of Jharkhand and Rule 9 of the CCS [Pension] Rules, black and white difference is clearly discernible. Rule 9 of the CCS (Pension) Rules says much more than Rule 43(b) of the Former Rules and it specifically stipulates under Rule 9 (4), that the eligible benefit which could be disbursed is only the Provisional pension. Similarly, by virtue of the mandate under Rule 4 Appendix 1 of the CCS [Commutation of Pension] Rules 1981, there is a specific bar and as such, commutation of pension is also not possible to be disbursed during pendency of the judicial proceedings. With regard to the DCRG, the learned counsel for the petitioner has conceded that Rule 69 CCA [Pension] Rules clearly places a Bar. In so far as the verdict passed by the Supreme Court in 2013 (3) KLT 782 [cited supra] was rendered only with reference Rule 43 (b) of the Bihar Pension Rules [as applicable to the State of Jharkhand] and not with reference to the Rule 9 and 69 of CCS [Pension] Rules or Rule 4 ? Appendix 1 of the CCS [Commutation of Pension] Rules 1981 and further since the ''Central Rules'' are not similarly worded as the ''Bihar Rules'', no reliance can be placed on the decision reported in 2013 (3) KLT 782 [cited supra] and it does not come to the rescue of the petitioner.

11. Coming to 1990 KHC 897 [cited supra], the employee therein was proceeded against, for unauthroised absence, which was allegedly amounting to wilful contravention of Rules 3 (i) (ii) and 3 (i) (iii) of the Civil Services Conduct Rules 1964. The version of the delinquent was that, he had sought for leave of 6 days initially as his wife was ailing in London and thereafter for 30 days, which was granted. But since the wife did not recover from the ailment, the employee could not undertake travel and hence he sought for more leave, which came to be rejected, whereupon he was constrained to opt for voluntary retirement. The application for voluntary retirement was accepted, however, alerting that the disciplinary proceedings will continue under Rule 9 of the Central Civil Services [Pension] Rules 1 1972. The Enquiry officer found the employee guilty of unathorised absence, however adding that it was difficult to say whether absence of the employee from duty was entirely wilful. Though the charge was stated as established, it was stated as requiring sympathetic consideration. The President, on consideration of the report agreed with the finding and after consultation with the UPSC, decided to withhold the entire gratuity and pension otherwise admissible to the appellant, on permanent basis, as a measure of punishment. The challenge raised against the said proceeding by way of writ petition filed before the High Court was dismissed ''in limini'', the correctness of which came

to be considered by the Apex Court. It was with reference to the sequence of events, that the Bench held in paragraph 7 of the verdict, that, though the President was having power to withhold or withdraw pension in whole or in part, permanently or for a specific period or to order recovery of pecuniary loss caused to the State in whole or in part, right to pension is a statutory right and deprivation of pension is to be correlative to or commensurate with the gravity of the misconduct or irregularity. It was observing that there was no finding that the applicant did commit any grave mistake, the exercise of the power by the President withholding the Gratuity and Pension was held as unsustainable and hence interdicted. It was further held by the Bench that, no provision of law was brought to the notice of the Court, under which the President was empowered to withhold Gratuity after retirement, as a measure of punishment; thus holding that the order to withhold Pension as a measure of penalty was absolutely illegal and devoid of jurisdiction. But it cannot be forgotten that the position which was considered by the Apex Court has undergone a substantial change and withholding of Gratuity is now specifically provided under the CCS (Pension) Rules, particularly under Rule 69 (c), as conceded by the learned counsel for the petitioner.

12. We are of the view of that the above decision does not support the petitioner in any manner; when the Rules are specific, clearly stipulating the extent of benefits which are liable to be disbursed when it comes to Pension [Rule 9 (4)], Commuted value pension as per Rule 4 ? Appendix 1 of the CCS [Commutation of Pension] Rules 1981 and in relation to DCRG as per Rule 69 (c) of the CCS (Pension) Rules. We hold that the analogy sought to be drawn with reference Rule 43 (b) of the ''Bihar Rules'' [as applicable to the State of Jharkhand] is quite out of context as the said Rule is not similar to the Rule position applicable to the petitioner as discussed above.

13. In view of the above discussion, we find that Ext. P6 verdict passed by the Tribunal declining interference does not warrant any interference at the hands of this Court. Eligible benefits have already been granted by the Tribunal as per the very same order. The O.P is devoid of any merit and it is dismissed accordingly.