
(2010) 09 KL CK 0005

In the High Court Of Kerala

Case No : Cont. Case (C) No. 151 of 2010 (S)

S. Purushothaman Nair

APPELLANT

Vs

P.J. Thomas

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 69, 69(1), 69(2), 9, 9(4)

Citation : (2010) 09 KL CK 0005

Hon'ble Judges : Jasti Chelameswar, C.J;P.N.Ravindran, J

Bench : Division Bench

Advocate : V.N. Achutha Kurup, for the Appellant; T.P.M. Ibrahim Khan, Asst. S.G. of India, for the Respondent

Judgement

P.N. Ravindran, J.—The petitioner retired from service on 31.1.2008 as Junior Telecom Officer. While the petitioner was in service in the Department of Telecommunications, the Bharat Sanchar Nigam Limited ("BSNL" for short) was incorporated on 1.10.2000. Thereupon, options were invited from employees of the Department of Telecommunications either to join BSNL or to continue in the Department of Telecommunications. The petitioner opted to join the BSNL. However, in view of the pendency of a vigilance case against him, that option was not accepted. Overlooking the said fact, the petitioner was granted the scale of pay applicable to BSNL employees. Later, the said mistake was found out and steps were taken to recover the excess salary and allowances paid to him. The petitioner thereupon filed O.A. No. 370 of 2005 in the Central Administrative Tribunal, Ernakulam Bench. By Annexure-A order passed on 28.4.2006, the Central Administrative Tribunal allowed the application and set aside the recovery proceedings initiated against the petitioner. Challenging the said order, respondents in O.A. No. 370 of 2005 filed W.P.(C) No. 19412 of 2006 in this Court. When the said writ petition was taken up for hearing, the learned Counsel for the petitioner herein (he was the respondent in the said writ petition) submitted that CDA pay scale is more beneficial to the petitioner, and therefore, he is not opposing the writ petition. In the light of the said submission, a Division

Bench of this Court set aside Annexure-A order passed by the Central Administrative Tribunal, Ernakulam Bench, in O.A. No. 370 of 2005 and declared that the petitioner will be governed by CDA pay scale, viz., the scale of pay applicable to employees of the Department of Telecommunications.

2. This contempt of case is filed alleging that notwithstanding the directions issued by this Court in Annexure- B order, the pensionary benefits have not so far been disbursed to the petitioner. It is stated that only provisional pension is being disbursed to him, on the ground that a vigilance case against him is pending.

3. The respondents have filed a counter affidavit dated 16.2.2010. It is stated therein that a vigilance case is pending against the petitioner; that he was sanctioned only provisional pension and that other retirement benefits have not been granted. It is further contended that this Court had only observed in W.P. (C) No. 19412 of 2006 that if there is no legal bar in releasing the pensionary benefits because of the pendency of the vigilance case, the same shall be released within three months from the date of Annexure-B judgment, and as there is a legal bar, the pensionary benefits were withheld.

4. We heard the learned Counsel appearing on both sides. We have also gone through the pleadings and the materials on record. The petitioner does not dispute the fact that a vigilance case against him is still pending. It is also not in dispute that this Court had in Annexure-B judgment in W.P. (C) No. 19412 of 2006 directed payment of retirement benefits in full, only if there is no legal bar in releasing the pensionary benefits because of the pendency of the vigilance case. Rule 9(4) of the Central Civil Services (Pension) Rules, 1972, which governs the petitioner reads as follows:

9(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 9(4) of the Central Civil Services (Pension) Rules, 1972, makes it evident that in the case of Government Servant against whom judicial proceedings are pending, provisional pension alone can be sanctioned. Rule 69 of the Central Civil Services (Pension) Rules, 1972 also contemplates payment of provisional pension where judicial proceedings are pending against a Government servant who has retired from service. Rule 69(1)(c) of the said rules provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. It is thus evident from Rules 9 and 69 of the Central Civil Services (Pension) Rules, 1972 that there is a legal bar in the disbursement of full terminal benefits to a government servant against whom judicial proceedings are pending.

In such circumstances, we are of the opinion that the respondent is not liable to

be proceeded against the Contempt of Court Act, for the reason that terminal benefits have not been disbursed in full to the petitioner. We therefore hold that no further orders are called for in this Contempt Case. It is accordingly closed.