(2013) 04 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 10658 of 2008 (S-R)

Smt. C. Nalini APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16
Karnataka Homoeopathic Practitioners Act, 1961 — Section 36

Citation : (2013) 3 KarLJ 250 : (2013) 4 KCCR 3221

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.M. Babu, for the Appellant; Raghavendra G. Gayatri, Additional Government Advocate and Smt. Anasuya Devi for Nyayamitra Associates, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a former employee of the third respondent-Karnataka Board of Homeopathic Systems of Medicine (for short, ''the Board''), who had retired from service as a First Division Assistant in the year 2006 i.e., on 31-1-2006. Petitioner''s grievance is that after retirement, she has not been given retiral benefits including pension and that the Board in terms of resolution dated 26-4-1997 and on earlier occasions also had resolved to grant pension and other retiral benefits to its employees and had forwarded the same for approval of the State Government and in fact the State Government as per order dated 24-2-2006 (copy at Annexure-C) did approve the grant of pension and other retiral benefits to the employees of the Board including the petitioner, but had put a condition that the Government will not grant any aid to enable the Board to settle such retiral benefits and that the Board has to make its own arrangements to meet the financial implications of providing pension and other benefits to its employees etc.

2. The Board on realising that the Government was not coming to its rescue to meet the financial implications though the Board was inclined to grant pension to its employees if the Government was ready to reimburse 75% of the expenditure

and 25% to be met by the Board, it was not acceded to and realising that it will not be possible to provide pension and other benefits to its employees from out of limited funds, resolved to cancel the earlier resolution and instead decided to provide retiral benefits of thirty months basic salary to retiring employees and no pension was payable and therefore requested the Government to withdraw its earlier order of approval, but conditional one dated 24-2-2006. The Government having responded to this by issuing a further Government Order dated 28-3-2006 (copy at Annexure-D) withdrawing its earlier order of approval dated 24-2-2006 with immediate effect and that having the effect on the petitioner or other retired employees of the Board not getting pension and being aggrieved by such action on the part of the State as well as the Board, the petitioner has approached this Court seeking for following reliefs.--

(a) By the issue of a writ of certiorari or any other appropriate writ, order, or direction as the case may be, quash Annexure-J in No. Aa.Koo.Ka 259 PIM 208, dated 20-5-2008 passed by the 1st respondent;

(b) By the issue of a writ of mandamus, direct the respondents to implement the order at Annexure-C by paying all the terminal benefits including the DCRG and pension and pensionary benefits due to the petitioner from the date of her retirement and continue to pay the pension; and

(c) To grant 12% interest on the belated payment of DCRG and other pensionary benefits from the date of retirement till payment, including the cost of this writ petition, in the interest of justice.

3. On behalf of the petitioner, many contentions are urged. It is contended that many other statutory Boards are all paying pension and there is no reason as to why the third respondent alone should discriminate its employees by not providing pension; that the Government unilaterally could not have withdrawn its consent; that it affects the employees and therefore withdrawal of the earlier approval at Annexure-B is not tenable and is required to be quashed and consequential mandamus also is required to be issued to the Board to pay pension and other retiral benefits to its retiring employees in terms of its earlier resolution.

4. It is also urged that the petitioner had high expectations in view of the resolution of the Board itself; that she had put in 37 years of service and therefore richly deserved to get pension and the Board should not have acted contrary to the interest of its employees who had put in long years of service and are left high and dry at the end of their service period etc.

5. Notice had been issued to the respondents. Respondents 1 and 2 are represented by Sri Raghavendra G. Gayatri, learned Additional Government Advocate and statement of objections on behalf of these respondents are placed before the Court today. Respondent 3 is represented by M/s. Nyayamitra Associates, Advocates and Smt. Anasuya Devi, learned Counsel appears and submits that third respondent has already filed statement of objections.

6. Appearing on behalf of the petitioner, submission of Sri S.M. Babu, learned Counsel is that the act of withdrawal of pensionary benefits to the petitioner and other retiring employees, whether of the Government or of the Board, is an act of arbitrary and whimsical action; that relevant considerations have not been examined at all; that there was no reason as to why the State Government should have withdrawn its earlier resolution just because the Board indicated that it will not be possible to meet financial implication without aid of the Government; that when other similar Boards and Organisations are paying pension to retiring employees, there is no reason to deny such benefit to the employees of the third respondent-Board; that it is an act of discrimination to deprive them of such benefit etc.; that the Board being an independent statutory authority, it is not necessary that the State Government should approve all its actions; that the Board has resolved to grant pension and other retiring benefits and it is for them to implement and abide by it and not to look for other support and aid and therefore prayed for quashing of Annexure-C and mandamus to be issued to the Board to implement its earlier resolution.

7. On behalf of the respondents 1 and 2, it is indicated in their statement of objections that the State Government is unable to extend aid to the third respondent; that it is not compulsory on the part of the State Government to extend aid to all and sundry; that the Board being an autonomous Body, the State Government role is limited; that ultimate decision to pay or not to pay pension to the retiring employees is only that of the Board and not of the Government and therefore the Government has no liability that the Government did approve the payment of pension, but without financial implication on the Government earlier as per Annexure-C order; that the Board itself did not want this to happen and therefore sought for withdrawal of the same and therefore rescinded the same at their request and therefore no exception can be taken to Government''s action and prays for dismissal of the petition insofar as these respondents are concerned.

8. On behalf of the third respondent, statement of objections are filed, in which it is contended that payment of pension and other retiral benefits are matters of financial implication; that with the limited funds of the Board, particularly, source being one of enrollment fees remitted by the Medical Practitioner is very limited and from out of these expenses, the Board has to hold refresher courses and also registration and renewals and unless the State Government extends financial aid, the Board will not be able to maintain its sources and there will be financial repercussions recurring for the Board every year.

9. While it is not disputed that such resolutions had been passed by the Board earlier, but having realized that the Board will not be able to meet the financial implication, the Board again resolved to fix retiral benefits of the employees at one time payment of thirty months basic salary and the petitioner has been paid this amount and therefore petitioner cannot claim payment of pension as a matter of right, particularly, as service conditions did not stipulate the same. This

settlement of retirement benefit has been done uniformly in respect of three retired employees and no exception is made in respect of the petitioner is the submission of the Board; that the Board had only responded to the representation of the employees, but the State Government has not come to the aid of the Board; that the Board was forced to decide for alternative retiral benefits as indicated earlier which is being implemented as of now; that the petitioner has been paid Rs. 2,76,000/- as per cheque dated 29-5-2008 and nothing more can be paid to the petitioner; that the Board employees being not civil servants nor under the Government do not have any right and Articles 14 and 16 of the Constitution of India are not applicable to them.

10. On the other hand, Sri S.M. Babu, learned Counsel for petitioner has drawn my attention to Annexures-L, M and N giving details of the grants made by the State Government in the earlier years from the years 1970-71 upto 1987-88 and grant of Rs. 50,000/- in the year 1986 responding to the request of the Board; that if the Board should make request to the State Government, the State Government will definitely respond, but without doing so, the Board cannot deprive its employees penalising them by not paying pension.

11. I have examined the submissions made at the Bar on behalf of all the parties.

12. Granting pension and other retiral benefits is part of conditions of service. Insofar as service conditions are concerned, Section 36 of the Karnataka Homeopathic Practitioners Act, 1961 (for short, ''the Act''), enables to frame regulations, inter alia, for the purpose of fixation of salary, allowances and other conditions of service of Officers and Servants of the Board and that regulation can be framed with the previous sanction of the State Government. It is not in dispute that there are no service conditions and no regulations have been framed u/s 36 of the Act. Perhaps, it is for this reason that the Board had forwarded resolution for approval to the State Government. But, the resolution does not partake the character of a regulation. When payment of pension was neither term of condition of appointment nor condition or regulation, right does not accrue to the petitioner or other retiring employees of the Board.

13. While the Board on its own can either resolve or frame regulations to pay pension, this Court exercising writ jurisdiction cannot compel even an organisation having the status of a ''State'' within the meaning of Article 12 of the Constitution of India to compel the Organization to have service conditions in a particular manner, particularly, for payment of pension and other retiral benefits etc.

14. In a matter of this nature, I do not find Article 14 or 16 of the Constitution of India is attracted for the reason that the Board is an independent statutory organisation and cannot be compared with other statutory organisations and feel to be discriminated. They are all different statutory authorities and regulated under the respective legislations. An act of discrimination would arise only if the Board should discriminate between its own employees. Such is not the case.

While payment of pension is highly desirable to the retiring employees to provide them succor after long years of service, compulsion is not possible on the part of the Court for such purpose. Mandamus cannot be issued for the same purpose. It amounts to virtually framing regulation in terms of Section 36 of the Act which is not the domain of the Court.

15. It is open to the Board to frame such regulations and if the Board is keen on paying pension to its employees, it is for the Board to arrange for its funds. The Board being an independent statutory authority, it is for the Board to organise its affairs. Petitioner can either seek aid from the Government or other authorities or take steps to raise funds from other sources which it may deem fit or proper. The Board can also make efforts to improve its funds and examine as to whether available funds can meet financial repercussions and pay pension in respect of retiring employees.

16. It is noticed that the number of employees as of now working in the Board is not more and it may not be much financial repercussion on the Board and it is of course subject to employees going up. It is open to the Board to re-examine and if it is within its means and reach to frame regulations to enable its employees to get pension and other retirement benefits.

17. Except for this observation, no direction can be issued to the Board. Therefore, this writ petition is disposed of. It is expected and desired that the Board will take up action for ensuring that its employees'' interest are protected.

