

(2009) 12 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23879 of 2009

Sri. M. Tirupathi Rao

APPELLANT

Vs

The Principal District Judge

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 9
Andhra Pradesh Revised Pension Rules, 1980 — Rule 52, 52(1), 52(2), 8, 8(1)
Central Civil Services (Pension) Rules, 1972 — Rule 69
Constitution of India, 1950 — Article 226

Citation : (2010) 1 ALT 749

Hon'ble Judges : Noushad Ali, J; A. Gopal Reddy, J

Bench : Division Bench

Advocate : N.P. Anjana Devi and Satyanarayana, for the Appellant; M. Bhaskara Lakshmi, SC, for the Respondent

Final Decision : Allowed

Judgement

1. In this writ petition filed under Article 226 of Constitution of India, petitioner challenges the proceedings of the respondent, dated 25.9.2009 withholding the pension of the petitioner and deferring it subject to the result in the enquiries pending against him as arbitrary and illegal and for consequential direction to the respondent to settle the retirement benefits and pensionary benefits under Rule 52 of the A.P. Revised Pension Rules, 1980.

2. Petitioner joined in the Ministerial Service of Judiciary as Amin on 20.12.1977 and later he was promoted as Lower Division Clerk and on 23.9.1996 he was further promoted as Upper Division Clerk. While working as such in the Court of Senior Civil Judge, Peddapuram, the Presiding Officer addressed a letter to the respondent in November, 2002 with regard to the left over arrears in the branches of the petitioner and further reported that the petitioner had turned up to the office only on 3.12.2002 to take his salary and affixed revenue stamp in the acquittance register and signed on the same but he immediately detached the said stamp and went away without taking his salary which amounts to

tampering of records. Basing on that report and after following the due procedure, the disciplinary authority-respondent framed articles of charges against the petitioner vide Dis.No.11160, dated 16.10.2004. The petitioner on receipt of copy of charges submitted his written representation on 29.5.2006 for grant of one month time to recollect the past events to submit his explanation. The respondent rejected the said request and appointed the Principal Junior Civil Judge, Kakinada as enquiry officer to conduct necessary enquiry into the matter. The enquiry officer after conducting the enquiry submitted his report and on receipt of the report, the disciplinary authority-respondent issued a show-cause notice to the petitioner proposing the punishment of compulsory retirement for the proved charges. The petitioner submitted his written representation and considering the same, the disciplinary authority by the impugned order dated 25.9.2009 imposed the punishment of compulsory retirement from service against the petitioner under Rule 9(vii) of the Andhra Pradesh Civil Services (Control, Classification and Appeal) Rules with a condition that the said retirement is subject to the result in other pending enquiries and that he is entitled to pension subject to the results in the pending enquiries only. Questioning the withholding of the pensionary benefits on the ground that the other enquiries are pending, the present writ petition is filed contending that the provisional pension cannot be deferred even on the ground of pendency of any enquiry as per Rule 52 of the Andhra Pradesh Revised Pension Rules, 1980 (for short "Rules, 1980") and inasmuch as the petitioner has accepted the punishment of compulsory retirement imposed by the impugned proceedings, he is aggrieved only in not settling the retirement benefits for which, he is entitled under law and for grant of the reliefs as claimed in the writ petition.

3. First respondent filed a counter affidavit detailing the punishments imposed on the petitioner as per the entries in his service register. It is stated that in view of proved misconduct of the petitioner, the disciplinary authority withheld the pension subject to the results in the various other enquiries pending against the petitioner. A show-cause notice was issued to the petitioner for his dismissal in two different enquiries following the establishment of charges, which read thus:

1. In Enquiry file No. 14/06 show cause notice was issued proposing for his dismissal after finding him guilty by the Enquiry officer-cum-I Additional Senior Civil Judge, Kakinada for abuse of power demanding money, provide liquor bottles, Biriyani, meals and insisting police to provide room and prostitute at Bhavani Lodge, Yeleswaram to quench his sexual thrust which is pending for final orders.

2. In Enquiry file No. 105/06 show cause notice was issued proposing for dismissal after finding him guilty by the Enquiry officer-cum-Senior Civil Judge, Razole for his defiance, dereliction and negligence and proved misconduct in discharging his duties etc., non-remittance of court fee into bank and non furnishing of charge list as required by the officer, non furnishing of cheque book and bank pass book which is pending for final orders and final orders are to be

passed therein.

4. It is stated in the counter that under Rule 8(b) of Rules, 1980, the pension sanctioning authority may, by order in writing, withhold or withdraw the whole pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Since the two charges were held proved in enquiry file Nos. 14 and 105 of 2006, which are serious in nature, according to the respondent, the impugned order withholding of pension of the petitioner till the disposal of those matters is justified and prayed for dismissal of the writ petition.

5. We have heard Sri P.Satyanarayana, learned counsel appearing for the petitioner and Smt. M.Bhaskara Lakshmi, learned standing counsel for the respondent.

6. Learned counsel for the petitioner would contend that under Sub-rule (4) of Rule 9 of the Rules, 1980, when a Government servant retired on attaining the age of superannuation or otherwise 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 52 of the Rules, 1980 shall be sanctioned, and therefore, withholding of the pension of the petitioner on the ground that the two enquiries initiated are prior to his retirement are still pending, is contrary to the Rule 52 of the Rules, 1980 and hence, the impugned order to the extent of withholding of the pension is liable to be set aside.

7. On the other hand, Smt. M. Bhaskara Lakshmi, learned standing counsel for the respondent pointing out the Rule 8(1)(b) of the Rules, 1980 which prescribes that the pension sanctioning authority may, by order in writing, withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct, would contend that the impugned order is passed in exercise of the power conferred under Rule 8(1)(b) of the Rules, 1980 which is an independent provision.

8. In view of the rival submissions, the only point that arises for consideration in this writ petition is "whether the petitioner is entitled for fixation and payment of provisional pension even pendency of the departmental enquiries".

9. The entire issue revolves around Rule 8(1)(b); Rule 9(iv) and Rule 52 of the Andhra Pradesh Revised Pension Rules, 1980. Rule 8(1)(b) of the Rules, 1980 reads thus:

8. Pension subject to future good conduct:

(1)(a) xxxxxxxx

(b) The pension sanctioning authority may, by order in writing, withhold or withdraw a pension or part thereof, whether permanently or for a specified

period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:

Provided....

Rule 9(1) and (2)(a) read thus:

9. Right of Government to withhold or withdraw pension:

[(1) The State Government reserves to themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specific period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided....

(2) (a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided....

Rule 9(4) reads thus:

9 (4) In the case of a 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 52 shall be sanctioned.

Rule 52(1)(a), (1)(b) and (2) Read thus:

52. Provisional pension where departmental or judicial proceeding may be pending:

(1) (a) In respect of a Government servant referred to in Sub-rule (4) of Rule 9, the Audit Officer/Head of Office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be paid by the Audit Officer/Head of Office during the period commencing from the date of retirement to the date on which,

upon the conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.

(c) xxxxxxxx

(2) Payment of provisional pension made under Sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

10. Time and again, it has been held by the Apex Court that the pension is not a charity or bounty nor is it a conditional payment solely dependant on the sweet will of the employer, and that it is earned for rendering a long service and is often described as deferred portion of payment for past services and it is, in fact, in the nature of social security plan provided for a superannuated Government servant. Justice Krishna Iyer while rendering a decision in *Gur Pratap Singh Bedi Vs. State of Punjab and Another*, held that "any Government compassionate and welfare-oriented will not leave its public servants on retirement in the wintry cold and that the State should examine without any delay the question of the payment of arrears of salary and the finalization and disbursement of pension to the Government servant". As already referred to above, Rule 8(1)(b) of the Rules, 1980 authorises the pension sanctioning authority to withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

11. Admittedly, as seen from the counter affidavit, a show-cause notice was served to the petitioner for dismissal from service in respect of two different enquiries following the establishment of the charges in Enquiry file Nos. 14/2006 and 105/2006 which were initiated prior to the retirement of the petitioner. Therefore, until the orders in writing are passed dismissing the petitioner from service and the same are confirmed, it cannot be held that the petitioner is guilty of grave misconduct. Since the final order is yet to be passed in those enquiry files, and in the meanwhile, as the petitioner submitted his application for allowing him to retire from service voluntarily, the same was kept pending in view of finalization of the enquiries initiated against the petitioner. But, by proceedings in Dis.No.11160, dated 16.10.2004 the petitioner was found guilty and he was compulsorily retired from service by the impugned proceedings. Once the petitioner was allowed to retire compulsorily from service, the provisional pension shall be sanctioned in favour of the petitioner as provided under Rule 52 of the Rules, 1980. It is only on passing the punishment order under Rule 9(1) of the Rules, 1980 for proved misconduct, the pension of the petitioner can be withdrawn in full or in part whether permanently or for a specified period depending upon the punishment imposed into the proved misconduct of the said two pending charges. When no such order is passed in the pending two charges and when the petitioner is ordered to be retired compulsorily, he is entitled to the release of the provisional pension under Rule 52 of the Rules, 1980. The Central

Government also took a decision under Rule 69 of the CCS (Pension) Rules, 1972 that grant of provisional pension under Rule 69 is mandatory even if departmental or judicial proceedings are continued, and thereby requested the Ministry of Home Affairs to bring to the notice of administrative authorities under them the correct position under the rules so that the provisional pension under Rule 69 is not denied to the retired Government servants.

12. Under those circumstances and inasmuch as the petitioner was compulsorily retired from service, he is entitled to a provisional pension as provided under Rule 52 of the Rules, 1980 in view of Rule 9(iv) of the Rules.

13. We accordingly allow the writ petition directing the respondent/pension sanctioning authority to fix and pay the provisional pension to the petitioner forthwith as per Rule 52 of the A.P. Revised Pension Rules, 1980. No order as to costs.