

(2018) 10 CAL CK 0012

In the Calcutta High Court

Case No : Writ Petition No.No. 1137 (W) Of 2018

Sri Pradeep Kumar Misra @APPELLANT@Hash Union of India & Others

Date of Decision : 01-10-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19(1)(c)
Indian Penal Code, 1860 — Section 120B, 420, 465
Yule Agency Superannuation Fund, 1947 — Rule 14, 15
Company's Executive Staff Pension Scheme, 1986 — Rule 10
Central Civil Service (Pension) Rules, 1972 — Rule 37, 40
Constitution of India, 1950 — Article 300A

Citation : (2018) 10 CAL CK 0012

Hon'ble Judges : D.r. Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Satrajit Sinha Roy, Pratima R. Shastri, Satudra Shastri

Final Decision : Dismissed

Judgement

ambuddha Chakrabarti, J.

The petitioner is a retired employee of Andrew Yule and Company Limited, a Government of India Enterprise, i.e., the respondent no. 3 herein. In the

year 2006 a disciplinary proceeding was initiated against the petitioner by the respondent company. At the enquiry the petitioner was found guilty and

the disciplinary authority imposed the penalty of compulsory retirement.

The respondent company released the provident fund accumulation in favour of the petitioner but did not release the benefits of gratuity and pension.

The petitioner filed a case before the appropriate authority for release of gratuity. By an order, dated April 30, 2008, the controlling authority under the

Payment of Gratuity Act found the claim of the petitioner to be genuine and directed the company to pay a sum of Rs. 3,49,925/- along with simple

interest at the rate of 10% to the petitioner within a period of 30 days.

Thereafter the petitioner requested the company to release the pension since the year 2006 which was denied by the company by its letter, dated

February 18, 2009. The petitioner filed a civil suit in the City Civil Court at Kolkata. However, on an application filed by the company the plaint was

rejected by an order, dated February 13, 2012. Thereafter, the petitioner made several representations to the company for releasing the pension and

the company continued to deny the same.

Â Subsequently, the petitioner approached the Ministry of Heavy Industries and Public Enterprises ventilating his grievance for non-payment of

pension. The Ministry directed the company to look into the matter. At this stage the company gave an answer to one of his applications under the

Right to Information Act. The petitioner again made a representation on July 5, 2016, seeking information regarding the release of his pension and

again the company replied that he was not eligible for the same.

The petitioner states that he had worked continuously in the respondent no. 3 company for 24 years at a stretch and has earned for himself the benefit

for gratuity and pension. But the respondent authorities have withheld pension of the petitioner. The reason mentioned by the respondents is the

pendency of a CBI case against him. Gratuity has been released only after the statutory authority passed an order to that effect.

The petitioner has variously assailed the decision of the company to hold back his pensionary benefits and alleges that his pension has been withheld

even after he was held innocent at the CBI enquiry while his contemporaries who were held for the same offence are paid regular pensions. The

petitioner, therefore, has inter alia prayed for a writ in the nature of mandamus commanding the respondent no. 3 to release pensionary benefits of the

petitioner immediately along with the arrears accumulated since the day of his retirement.

The Managing Director of the company i.e., the respondent no. 4 herein, filed a report in the form of an affidavit. It has been stated in the said report

that the petitioner was working as the Senior Manager (Commercial) in the unit of Electrical System Group (ESG, for short). The main job of the said

unit was to execute turn key projects pertaining to establishment of transmission lines, power distribution, etc. Pursuant to an order from the Power

Grid Corporation of Orissa Ltd. for installation and erection of high voltage

transmission lines in the State of Orissa the ESG unit of the company invited tenders. The tender committee included the petitioner and others who examined the tender documents submitted by the parties and failed to select the incumbent. The respondent no. 4 has specifically mentioned that prior approval of the Chief Executive of concerned division of the company was not obtained before issuing the limited tender enquiry recommended by the tender committee. There are other subsequent acts also conducted by the petitioner in collusion with the officers of the company which were against the interest of the company as a result of which the company sustained financial loss.

It has been further alleged in the report that an enquiry was initiated by the Central Vigilance Commission against the petitioner and an Inquiring Authority was appointed following the provisions of the rules of the company to enquire into the charges framed against the petitioner. There were ten charges against him which were proved at the enquiry. The Central Vigilance Commission advised the company to impose a major penalty against the petitioner and the CBI also registered a case against him.

On February 24, 2006, the petitioner was compulsorily retired from service of the company. As per Rules 14 and 15 of the Yule Agency

Superannuation Fund, 1947 and Rule 10 of the Company's Executive Staff Pension Scheme, 1986, the petitioner is not entitled to any pension

because his service was terminated for misconduct by the company by virtue of imposing the punishment of compulsory retirement. The other retiral benefits have been released in favour of the petitioner.

The Chief Vigilance Officer advised the company not to disburse any pension because of the punishment of compulsory retirement in accordance with

the relevant Rules. The company also started a criminal case against the petitioner and the other accused officers under Section 19(1) (c) of

Prevention of Corruption Act, 1988. A criminal case was stated before the CBI court (Special), Alipore, South 24 Parganas, for offences under

Section 120B/420/465 of the Indian Penal Code along with Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. The said case is

still pending before the CBI Court. The respondent no. 4 submitted that for the reasons mentioned in the report the writ petition is not maintainable. It

may be mentioned that on June 13, 2018, Mr. Sastri, the learned Advocate for

the petitioner took accommodation to go through the report.

Subsequently, on July 2, 2018, he submitted that the petitioner did not wish to file any rejoinder to the same.

Mr. Sastri relied on the case of *State of Jharkhand and Others Vs. Jitendra Kumar Shrivastava and Others*, reported in (2013) 12 SCC 210, for a

proposition that executive instructions do not have statutory character and, therefore, cannot be termed as law within the meaning of Article 300-A of

the Constitution of India. On the basis of a circular which does not have the force of law the State Government cannot withhold a part of pension or

gratuity. So far as the statutory rules are concerned there was no provision for withholding pension or gratuity in the given situation. Had there been

any such provisions in these rules the position would have been different. The Supreme Court further observed that pension is not a bounty. A person

cannot be deprived of his pension without the authority of law which is the constitutional mandate enshrined in Article 300-A of the Constitution of

India. Therefore, the attempt of the State Government to take away a part of pension or gratuity or even leave encashment without any statutory

provision and under the umbrage of administrative instruction cannot be countenanced.

Â The defence of the company in the present case as appearing in the report of the respondent no. 4 is that the petitioner is not entitled to pension as

per Rules 14 and 15 of Yule Agency Superannuation Fund, 1947 and Rule 10 of the Executive Staff Pension Scheme of the company. It is worth

mentioning that the said scheme came into force with effect from June 1, 1986 and applies to the executive of the company employed as on March 31,

1984. Rule 10 of the said Scheme, inter alia, says that an employee whose services are terminated for misconduct by the company shall not be entitled

to any pension under the Scheme.

There is no doubt that the Rules contained in the pension Scheme are not in the nature of administrative instructions. This is a very major distinguishing

feature of the case from the one relied on by the petitioner. In *State of Jharkhand and Others (Supra)*, there was no provision in Bihar Pension Rules,

1950, for withholding of pension or gratuity when such departmental proceeding or judicial proceeding was still pending. While the departmental

proceeding was still pending the respondent retired from service. Thus, there

was no scope for withholding the pension during the pendency of the criminal proceeding which was pending against him. The appellants wanted to justify their action on the ground of existence of administrative instruction which permitted withholding of a part of pension or gratuity.

This, however, is not the case here. The Scheme containing the Rules cannot be said to be an administrative instruction. These are the rules of the

company applying to the employees who were on employment on March 31, 1984. Even if the petitioner argues that these rules contained in the said

Scheme are non-statutory in character since the benefit of pension is payable under those Rules that can be withheld or forfeited as provided in those

Rules. In the case of Union of India Vs. Brig. P. K. Dutta, reported in 1995 Supp (1) SCC 29, the Supreme Court held that regulations which provided

for the grant of pension can also provide taking it away on justifiable grounds.

The claim of the petitioner to pension must be relatable to the provisions contained in the relevant pension Scheme. But for the Scheme he has no right

to ask for pension and the said Rules and Regulations of the Executive Staff Pension Scheme disentitle an employee whose services are terminated

for misconduct to get pension under the Scheme. It is worth mentioning that the petitioner has not challenged the said Scheme in the present writ

petition. Therefore, applying the principle of law contained in Union of India Vs. Brig. P. K. Dutta (Supra), it can definitely be said that the Rules and

Regulations of the relevant Scheme empower the company to decline pension to the petitioner after his services have been terminated. Compulsory

retirement is a major penalty which in terms of the Conduct, Discipline and Appeal Rules for Officers and Assistants of the company can be imposed

after holding an enquiry against him. The petitioner also did not challenge the disciplinary proceeding. On the contrary, he has accepted the punishment

of compulsory retirement.

Mr. Sastri relied on Rules 37 and 40 of the Central Civil Service (Pension Rules) and submitted that the company had adopted it. The respondent

company has denied the same and submitted that Andrew Yule is a government company and has not adopted these Rules. In case of any conflicting

factual claim, the onus is entirely on the petitioner to prove the existence of any adoption of those Rules. The petitioner could not produce any decision

on the part of the company adopting the said rules.

The same principle also applies to the allegation of discrimination leveled by the petitioner against the company. The petitioner says that three persons

who were similarly circumstanced as that with the petitioner have been awarded the same punishment, but they are getting their pension. Mr. Sinha

Roy, the learned Advocate for the company again denied the same stating that none of the employees whose services have been terminated is getting pension from the company.

Here again, the contention of the petitioner must be rejected for want of specific details. While alleging that other similarly circumstanced employees

are also getting pension the petitioner ought to have disclosed the names and designations of such ex-employees and to establish how they were

placed at par with the petitioner. It is only in such circumstances that the charge of discrimination can be sustained. The question of discrimination

arises only between the equals or those who are equally circumstanced. The petitioner has merely mentioned in Paragraph 22 of the writ petition that

his contemporaries who were held up for the said offence along with him are being paid regular pension. This statement without anything more is a

vague and indefinite one. Lack of specific particulars of the persons in whose favour the company is alleged to have favoured, did not permit the

company to specifically rebut the contention of the petitioner.

The onus, if the petitioner wanted to succeed on the ground of discrimination, lay on him to provide not only the particulars of the persons vis-à-vis

whom the petitioner claims himself to have been discriminated against, but also to give details of how regular pension has been granted in favour of such

persons. In the absence of any such exercise, the claim is unsubstantiated by sufficient proof and the denial of the respondents that not a single

employee whose services have been terminated have been granted pension goes uncontroverted.

Even otherwise when the rules say that an employee whose services have been terminated for misconduct shall not be entitled to the benefits of

pension even if there could be any case of the violation of the rules that would not have enured to the benefit of the petitioner. In that case it would

have been an act wrongly done in favour of some persons as alleged by the petitioner. He cannot take advantage of any such improper act. It is also a

settled proposition that the law relating to equality has no negative application. If

something is granted to somebody in violation or derogation of the rules that cannot constitute foundation for a claim by somebody else.

For the reasons stated above, I find nothing to interfere in this writ petition. The writ petition merits no consideration. The writ petition is dismissed.

There shall, however, be order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.