

(2011) 04 KAR CK 0028
In the Karnataka High Court
Case No : Writ Appeal No. 865 of 2006

Sri S. Viswanatha

APPELLANT

Vs

Karnataka Power Transmission Corporation Ltd.

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 5 KarLJ 144

Hon'ble Judges : Vegi Suri Appa Rao, J; V.G. Sabhahit, J

Bench : Division Bench

Advocate : Pramod N. Kathavi, for the Appellant; P.S. Dinesh Kumar, for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the Petitioner in W.P. No. 3187/2006 being aggrieved by the order dated 18-4-2006 wherein the learned Single Judge of this Court has declined to interfere with the grant of prayer to declare that the Respondents are entitled to adjust/make up the commuted amount of Rs. 2,92,838/- which was paid to the Petitioner at the end of 15 years or 180 months.

2. The Appellant herein filed W.P. No. 3187/2006 contending that he was in the services of the Respondent; on attaining the age of superannuation, he retired from the services on 29-4-2000; he opted for commutation of portion of his pension in terms of the Karnataka Electricity Board Employees' Service Regulation (hereinafter called the "Regulations") governing the employees of the Corporation and he has been paid in lumpsum the 1/3rd commuted value of the pension and balance of 2/3rd of the monthly pension is being paid ever since his retirement on or after 29-4-2000. The Petitioner found that the deduction made by way of commutation is Rs. 2,333/- per month (1/3rd of pension amount of Rs. 7,000/-) and the commuted amount given to the Petitioner is only 2,92,838/- and if the amount of Rs. 2,333/- per month is deducted from the pension amount for 15 years, the amount would come to Rs. 4,19,940/- and therefore he made a representation to the Respondents that recovery of the amount of Rs. 2,333/-

per month may be reduced to Rs. 1,188/- per month. The said representation was rejected with reference to the Regulations and being aggrieved by the same, writ petition was tiled reiterating averments made in the representation made to the Respondents that if Rs. 2,333/- per month being 1/3rd of the pension value is recovered for a period of 15 years, amount would come to Rs. 4,19,940/-, whereas commuted amount that is paid is only Rs. 2,92,838/- and therefore amount sought to be recovered should not be more than Rs. 2,92,738/- and therefore, amount to be recovered ought to have been reduced from Rs. 2,333/- per month to Rs. 1,188/-per month.

3. The petition was resisted by the Respondents contending that the Petitioner has accepted the scheme for commutation provided under the scheme, 1/3rd of pension can be commuted and commuted amount would be paid in advance in lumpsum. However, the original pension would be restored only after 15 years and in view of the fact that the writ Petitioner has advantage of receiving the lumpsum amount in advance, which would have been payable monthly on the date of payment of pension every month, the amount that is recovered would naturally be more than the commutation amount that is granted to the Petitioner.

4. The learned Single Judge after hearing the counsel appearing for the Petitioner, held that commutation is granted under the scheme which has been accepted by the Petitioner and having accepted the same, it is not open to the Petitioner to contend that the amount of commutation paid to the Petitioner is only Rs. 2,92,738/-, where as, deduction at the rate of Rs. 2,333/- per month being 1/3rd pension of Rs. 7,000/- for a period of 15 years, it would come to Rs. 4,19,940/- and in view of certain advantages which the Petitioner enjoys due to commutation as he would be receiving amount in lumpsum instead of receiving the said amount with the pension amount when it becomes due and accordingly rejected the said writ petition. Being aggrieved by the same, the writ appeal is filed.

5. We have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for Respondents.

6. The learned Counsel appearing for the Appellant submitted that the Appellant has no doubt accepted commutation scheme, however, Appellant was paid Rs. 2,92,738/- by commuting 1/3rd of the pension of Rs. 7,000/- per month, deduction that is being made in the pension at the rate of Rs. 2,333/- per month for 15 years would come to Rs. 4,19,940/- which cannot be permitted and therefore the Appellant had sought for reduction of recovery of the amount from Rs. 2,333/- to Rs. 1,188/- which is justified and the same has wrongly been rejected by the Respondents and the learned Single Judge ought to have set aside the rejection of the Respondents and allowed the writ petition.

7. The learned Counsel appearing for the Respondents argued in support of the order of the learned Single Judge. He has also relied upon the decision of the Hon"ble Supreme Court in Common Cause, A Registered Society and Others Vs.

Union of India (UOI), in support of his contention.

8. We have given careful consideration to the contentions of learned Counsel appearing for the parties and scrutinized the material on record.

9. The material on record would clearly show that the Appellant herein attained the age of superannuation and retired from service and he has accepted the commutation scheme and he was made known that Rs. 2,333/- being 1/3rd of the original pension of Rs. 7,000/- per month would be deducted for a period of 15 years as per the regulation. However, commutation amount that would be payable to him was only Rs. 2,92,738/- as per Annexure-A which is produced by the Appellant himself. The Appellant having accepted the commutation scheme under the Regulation and having accepted the amount of commutation of Rs. 2,92,738/-, cannot now contend that if Rs. 2,333/- per month is deducted for a period of 15 years, total amount of deduction would be Rs. 4,19,940/- as the deduction would be made in accordance with the scheme and the scheme provides for restoration of original pension only after 15 years. While considering similar question. Hon"ble Supreme Court in COMMON CAUSES case cited supra, has observed as follows:

5. The Petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation -(1) availability of a lumpsum amount, and (2) the risk factor. Again many of State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.

6. The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.

10. In view of the principle laid down by the Hon"ble Supreme Court in the above said case, it is clear that once the Appellant accepts the commutation scheme and receives the commutation amount which is paid in advance which would have been otherwise payable along with the original pension every month, the Appellant would be undoubtedly enjoying the additional advantage of commutation and therefore, he has accepted the provisions of the scheme. The scheme provides that original pension would be restored after 15 years i.e., after deducting 1/3rd pension for 15 yrs and the Appellant was aware of the said provision or the regulation while accepting the commutation. Even otherwise, the mere fact that recovery would be more than the commutation amount that is paid to the Appellant is attributable to the fact that the scheme provides for such

deduction for 15 years and the same is in view of the additional advantage which the pensioner enjoys by commuting pension as held by the Hon''ble Supreme Court as culled out above.

11. Therefore, the learned Single Judge has rightly held that the writ petition is devoid of merit and we do not see any error or illegality so as to call for interference in this intra Court appeal.

Accordingly, writ appeal is dismissed.