

(2024) 04 KL CK 0183

In the High Court Of Kerala

Case No : Original Petition (CAT) No. 335 Of 2017

State Of Kerala

APPELLANT

Vs

S. Pulikeshy IPS

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

All India Services (Death Cum Retirement Benefit) Rules, 1958 — Rule 6, 6(2)

Citation : (2024) 04 KL CK 0183

Hon'ble Judges : A.Muhammed Mustaque, J;M.A Abdul Hakhim, J

Bench : Division Bench

Advocate : Antony Mukkath, N.Nandakumara Menon, Alice Thomas, P.K.Manojkumar, Smitha S.Pillai, M.C.Siny, T.V.Vinu

Final Decision : Disposed Of

Judgement

M.A Abdul Hakhim, J

1. The State of Kerala/the Respondent No.2 in O.A.No.569/2016 of the Central Administrative Tribunal Ernakulam Bench has filed this Original Petition challenging Ext-P4 Order dated 02.08.2017 in the said O.A. The said Original Application was filed by the Respondent No.1, who is a retired Director General of Police seeking reliefs including direction to pass final orders in the disciplinary proceedings and direction to grant the DCRG amount and the Commutation of Pension.

2. When the O.A was taken up for consideration the Respondent No.1 limited his prayer to Direction to respondent No.2 to grant DCRG amount and Commutation of Pension and accordingly, by the impugned Ext.P4 order, the Tribunal directed the petitioner to disburse the Commutation of Pension and DCRG as prayed for in the O.A within two months from the date of the said order, after entering a finding that the rules relating to payment of pension and other retirement benefits to the members of All India Service do not contain any provision for withholding the pension and gratuity.

3. The above Original Petition is filed challenging ExtP4 order of the Tribunal on the specific grounds in view of Rule 6(2) of the All India Services (Death cum Retirement Benefit) Rules 1958, where a departmental or judicial proceeding is instituted or the where a departmental proceeding is continued after retirement, only provisional pension is permissible after retirement till final order is passed in the departmental proceedings; that payment of DCRG and Commutation of Pension is impermissible during the pendency of the departmental proceedings; and that in view of the said specific provision the Respondent No.1 was sanctioned provisional pension to the tune of 100% of the pension.

4. We heard Sri.Antony Mukkath, Learned Government Pleader for the Petitioner and Senior Counsel Sri.Nandakumara Menon.N for the Respondent No.1.

5. It is revealed from the O.A records that as on the date of retirement of the Respondent No.1 on 13.04.2012, departmental proceedings and also criminal case as C.C.No.10/2009 before the Special Judge II, CBI Court, Ernakulam, were pending against him.

6.We find that the Tribunal passed the impugned Ext.P4 order without noticing the specific provision in Rule 6(2) of the All India Services (Death Cum Retirement Benefit) Rules, 1958. The rule reads thus:

"6. Recovery from pension:- (1) The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered or reemployment after retirement.

Provided that no such order shall be passed without consulting the Union Public Service commission:

Provided further that-

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his reemployment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service:

((b) and (c) (Omitted as unnecessary)

Explanation :- For the purpose of this rule:

(a) a departmental proceeding shall be deemed to be instituted which the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge sheet is submitted, to the criminal Court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a Civil Court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule

(1) , or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement, 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; but no gratuity or death cum retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement service under R.10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in Clauses(i), (ii) and (iv) of sub-rule (1) of R.6 of the said rules and continuing such proceeding under sub- rule (1) of this rule after his retirement from service, the payment of gratuity or Death cum Retirement gratuity shall not be withheld.

(3) (Omitted as unnecessary).

7. In view of the above Rule, particularly Rule 6(2), when a departmental proceeding or a judicial proceeding is pending at the time of retirement of an employee, it is permissible to sanction only provisional pension not exceeding the maximum pension admissible to him during the pendency of such proceedings. Rule 6(2) deals with orders to be made with respect to Pension and DCRG during the pendency of departmental or judicial proceedings. The last limb of Rule 6(2) would disclose that no DCRG shall be paid to the employee until conclusion of departmental or judicial proceedings and issuance of final orders thereon. When Rule 6(2) says only Provisional Pension is permissible until conclusion of departmental or judicial proceedings, by necessary implication, it prevents sanctioning of Full Pension. Though Rule 6(2) does not specifically refer to Commutation of Pension, the Commutation of Pension is also a part of Pension which could be sanctioned when Full Pension is sanctioned.

8. The Hon'ble Supreme Court had occasion to consider Rule 6 in the decision *State of Orissa and Others v. Kalicharan Mohapatra and others* [1995(6) SCC 105]. In that case, the Tribunal had that State of Orissa is justified in withholding

the gratuity amount and in not sanctioning the final pension only if the charge against the employee is with respect to one causing pecuniary loss to the Government by misconduct or negligence within the meaning of Rule 6 (1). The Hon'ble Supreme Court held that the reading of the Rule by the Tribunal is unsustainable and incorrect and held that where proceedings are pending against the petitioner for grave misconduct, the Government is entitled to withhold DCRG and is also entitled to sanction provisional pension for the period of pendency of such proceedings. It is also held that departmental proceeding or judicial proceeding should relate to charge of causing pecuniary loss to the Government by misconduct or negligence during his service.

9. In view of the above, we hold that Rule 6(2) of the All India Services (Death Cum Retirement Benefit) Rules, 1958 squarely applies to the case of the Respondent No.1. He is not entitled get Commutation of Pension and DCRG before culmination of Departmental and Judicial Proceedings. Accordingly, Ext.P4 Order of the Tribunal is set aside.

10. Since there occurred inordinate delay in completing the departmental proceedings on account of the delay in disposal of the criminal case, this Court passed an Order dated 29.2.2024 directing the Registry to get instructions as to the present status of the said criminal case and also to ascertain the time required for the disposal of the said case. Pursuant to the said Order, the Special Judge II, CBI Court, Ernakulam furnished his Written Remarks dated 27.03.2024 addressed to the Registrar of this Court stating that the criminal case is posted for scheduling on 11.4.2024 and for the reasons stated therein, a period of 12 months is required to dispose of the said criminal case.

11. Taking into account of the fact that the Criminal case is of the year 2009 and the Written Remarks furnished by the Special Judge II, CBI Court, Ernakulam, we direct the Special Judge II, CBI Court, Ernakulam to expedite the trial of C.C.No.10/2009 pending before it and dispose of the same within a period of Nine months from the date of receipt of copy this judgment.

12. We further direct the petitioner to complete the departmental proceedings initiated against the Respondent No.1, thereafter without further delay taking note of the judgment that would be passed by the Special Judge II, CBI Court, Ernakulam in C.C. No.10/2009.

The Original Petition is disposed of as above.