(2014) 07 CAL CK 0046

In the Calcutta High Court

Case No : W.P. No. 834 of 2013

Surajit Roy — APPELLANT

Vs

Registrar General — RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Constitution of India, 1950 — Article 366
Penal Code, 1860 (IPC) — Section 403, 406

Citation : (2014) 3 CALLT 491 : (2014) 4 CHN 702

Hon'ble Judges : D. Datta, J

Bench : Single Bench

Advocate : Durga Prasad Dutta and Kaustav Chandra Das, Advocate for the Appellant; Sandip Bhattacharya, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dipankar Datta, J.—The petitioner was an employee of this Court. He entered service in September, 1969 as a Lower Division Assistant and ultimately, after rendering more than 4 decades of service, retired on attaining the age of superannuation on September 30, 2010 while he was the Deputy Registrar (Judicial), Appellate Side.

2. In this writ petition dated August 13, 2013, the petitioner has voiced his grievance arising out of inaction and/or refusal of the respondents, which includes his pension sanctioning authority i.e. the Registrar General of this Court, to release his retiral benefits and, accordingly, prayed for orders on the respondents to work out his retiral benefits in terms of the provisions contained in the West Bengal Services (Death cum Retirement Benefit) Rules, 1971 (hereafter the DCRB Rules) and to release the same at an early date.

3. It is not in dispute that the petitioner is an accused in connection with a criminal proceeding, the FIR whereof was registered under Sections 403 and 406, Indian Penal Code. The said criminal proceeding is the subject matter of challenge before this Court in its criminal revisional jurisdiction and further

proceedings thereof have been stayed.

4. In course of hearing, by an order dated September 13, 2013 I had called for an affidavit from the Principal Accountant General (A & E), being the third respondent, to place on record the submission made on his behalf by Mr. Bhattacharya, learned advocate that the right of the Governor to withhold pension conferred by Rule 10 of the DCRB Rules as well as pension referred to in Rule 14 thereof would include gratuity. An affidavit dated September 19, 2013 was filed. The relevant portions thereof read as follows:

"7. I say that provisional pension is ordinarily in the domain of the employer, the Head of Department of the retired employee, who to his satisfaction can sanction the payment of provisional pension to the retired employee without any authority for such act from my office under Rule 137 but expectedly taking into consideration Rule 14 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

8. I thus submit that gratuity being inclusive of the definition of the terms of pension and as such without finalisation of pension, there is no finalisation of the gratuity amount unless the certification under Rules 11 and 14 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 are made available from the Head of Department of the retired employee and the gratuity would have the same meaning under

Rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971."

5. In terms of further orders passed by the Court, the amount of provisional pension that the petitioner was entitled to was worked out and he is in receipt thereof. Obviously, whether or not the petitioner would be entitled to full pension is dependent on the outcome of the criminal proceeding.

6. However, at this stage, the question that survives for decision is, whether the petitioner is entitled to gratuity in full or any part thereof or whether payment of gratuity would stand deferred until he secures an acquittal in connection with the criminal proceeding.

7. Mr. Dutta, learned advocate for the petitioner while arguing that the word ''pension'' used in Rule 14 cannot include gratuity relied on several decisions, viz.

(i) D.V. Kapoor Vs. Union of India and others,

(ii) All India Reserve Bank Retired Officers Association and others Vs. Union of India and others,

(iii) State of Uttar Pradesh Vs. Uttar Pradesh University Colleges Pensioners'' Association,

(iv) State of A.P. and Another Vs. A.P. Pensioners Association and Others,

(v) AIR 2013 SC 3383: State of Jharkhand and ors. vs. Jitendra Kumar

Srivastava and anr.;

(vi) unreported decision of the Division Bench of this Court dated February 14, 2013 in WPCT 49 of 2011 (Comptroller and Auditor General of India and ors. vs. Ram Debabrata Ghosh and anr.);

(vii) unreported decision of the Division Bench of this Court dated February 21, 2013 in WPST 29 of 2013 (Sukhomoy Natta vs. State of West Bengal and ors.);

(viii) unreported decision of a learned single Judge of this Court dated July 23, 2013 in W.P. 14668(W) of 2012 (Anadi Prasad Mahato v. State of West Bengal and ors.); and

ix) unreported decision of a learned single Judge of the Allahabad High Court dated September 10, 2007 (Bhagwati Prasad Verma v. Stata of U.P.).

8. Per contra, Mr. Bhattacharya referred to clause (17) of Article 366 of the Constitution and Rule 7(f) of the DCRB Rules, and contended that the word ''pension'', wherever used singularly in the DCRB Rules is of wide amplitude, and it is only in exceptional cases where the words ''pension'' and ''gratuity'' appear together in a particular rule or the word ''gratuity'' appears independent of the word ''pension'' or the word ''pension'' has been used in contra-distinction to ''gratuity'' that the word ''gratuity'' could be understood as not covered by the word ''pension''. He cited the decisions reported in Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and others, ; Union of India and another Vs. G. Ganayutham (Dead) by LRs., and Shankar Dass Vs. Union of India (UOI) and Another, in support of his submission that the petitioner is not entitled to release of gratuity unless he is acquitted in the criminal proceeding wherein he has been charged with moral turpitude.

9. I have heard Mr. Dutta and Mr. Bhattacharya at length.

10. The first, fourth and fifth respondents, being the concerned Registrars/ Section Officer of this Court have not appeared to place their version.

11. The claim of the petitioner for releasing gratuity in his favour, notwithstanding the fact that a criminal proceeding is pending against him, would hinge on whether the words "any pension" used twice and the words "the pension" used once in between in Rule 14 would include ''gratuity'' or not.

12. In none of the decisions cited before me, Rule 14 of the Rules or provisions of other rules which are pari materia with Rule 14 came up for consideration. Although the said decisions may provide invaluable guidance as persuasive authority, it would be my endeavour to ascertain having regard to the scheme of the DCRB Rules and the provisions of Chapter III read with the other chapters thereof as to whether the petitioner is justified in his claim or not.

13. Before proceeding further, it would be useful to understand what pension and gratuity, as concepts, generally are. In olden days, pension in its widest sense was understood by some to include every kind and description of payment to a

retiring employee. Over the years, however, the understanding seems to have changed and this I shall refer to at a later part of this judgment. Reverting to the concepts of pension and gratuity, both are retirement benefits. Retirement of an employee from service is an ''efficiency device'', which is considered necessary for orderly elimination of old employees who, but for benefits like pension, gratuity, provident fund, etc., would continue in employment. It is not simply because one has grown old that he incurs a disqualification to continue in service, but weeding out old employees on the assurance that they would receive retirement benefits serves a dual purpose. First, it is like replacing old and worn out machinery; secondly, it provides avenues for promoting other employees who might be waiting in the wings for years to higher posts bringing about a sense of contentment amongst the employees. Additionally, it opens up the scope of recruiting fresh and energetic hands. This is not only beneficial for the growth and development of an organisation but also boosts the morale of its employees. Pension is ordinarily a stated sum, which is paid periodically so long the pensioner is alive. It is a retirement benefit partaking of the character of regular payment to an ex-employee in consideration of the past services rendered by him but having a nexus with the salary drawn by him on the date of retirement. Although pension is not a bounty, an employee claiming pension must establish his entitlement to such pension in law. On the other hand, gratuity-not too long ago-was regarded in labour jurisprudence as that payment which the employer releases in favour of its employee in token of the gratitude owed by the former to the latter for his long, continuous and meritorious service. The statutory recognition of the concept was brought about by the introduction of the Payment of Gratuity Act, 1972, a welfare oriented legislation intended to confer certain benefits upon employees working in various establishments in the country, and thereafter by rules/regulations that have been framed for employees/officers who are not governed by the Act. A cut in gratuity or withholding of gratuity is permissible only within the four corners of the concerned statute that imposes duty and confers right relating to release/receipt of gratuity.

14. Since clause (17) of Article 366 of the Constitution has been relied on by Mr. Bhattacharya, it would be necessary to note how such definition has been understood by the Supreme Court. However, the provision defining ''pension'' must be read first. It reads as follows:

(17) ''pension'' means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable; a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

Part XIX of the Constitution is titled "MISCELLANEOUS" and Article 366 is part of. It specifically ordains that the expressions wherever found in the Constitution, unless the context otherwise requires, would have the meanings as assigned to them thereunder. The present case does not require any reference to the expression ''pension'' as used in the Constitution and hence the definition in clause (17) is of little help.

15. It is noted that in A.P. Pensioners Association (supra) and U.P. University College Pensioners'' Association (supra), it has been held by the Supreme Court that ''pension'' and ''gratuity'' are not conceptually same. The former decision lays down that gratuity in the absence of an express provision in a statute cannot be treated to be a part of pension, while in the latter decision as well as the decision reported in Kerala State Road Transport Corpn. Vs. K.O. Varghese and Others, the Court proceeded to hold that merely because what has been stated in clause (17) it cannot be held that gratuity has to be taken always and for all purposes as part of pension, and the definition of pension therein is not all pervasive, respectively.

16. Be that as it may, Chapter II of the DCRB Rules provides the definitions of various terms used therein. As is customary with definition clauses, the same begins with the caution "In these rules, unless there is anything repugnant in the subject or context, ...". The word pension is defined as:

R. 7. ****

(f) ''Pension'' except when the term ''pension'' is used in contradistinction to gratuity, ''pension'' includes gratuity.

17. To adjudicate the question that has arisen, it would be necessary to take a look into the relevant provisions of the DCRB Rules governing release of gratuity in favour of an employee and/or withholding/withdrawing a part thereof. Chapter III of the Rules is titled "Ordinary Pension". Rules 8 to 14 are covered by this chapter. My understanding of the same as well as the various rules in the other chapters for the purpose of a decision on this writ petition is this. The word pensioner though used in the DCRB Rules has not been defined. The Supreme Court in its decision reported in D.S. Nakara and Others Vs. Union of India (UOI), observed that the expression ''pensioner'' is generally understood in contradistinction to the one in service, and those who retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended within such expression. In view thereof, there is no room to look for any other definition of the term. Turning to the DCRB Rules, it would be of some worth to consider Rules 8 and 10. To the extent relevant, the same read:

R. 8. Withholding of pension in cases of conviction and misconduct.-

(1) Future good conduct shall be an implied condition of every grant of pension. The pension sanctioning authority may, by order in writing, withhold or withdraw, either in full or in part, a pension or gratuity or both either permanently or for a specified period, if the pensioner is convicted of a serious crime, or is found guilty of grave misconduct. Where a part of the pension is withheld or withdrawn, the amount of such pension shall not be reduced below rupees four hundred per mensem.

Provided that no order shall be passed under this clause by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before this retirement from service.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction. ******

R.10. Right of the Governor to withhold pension in certain cases.-(1) The Governor reserves to himself 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 a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that-*******

(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 paid 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 proceeding and the issue of final orders thereon.

18. The other relevant provisions of the DCRB Rules are these. The Government has the right to recover from the pension or gratuity or both of an officer to meet any sum due under a liability incurred by such officer, but not later than 4 years after the date of retirement [see Rule 9]. Pension need not be admitted if any of the six situations referred to in Rule 11 occurs. Pension may not be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but an officer so dismissed or removed may be granted compassionate allowance when he is deserving of special consideration, and that such allowance, if granted, shall not exceed two third of the pension which would have been admissible to him if he had retired on a medical certificate [see Rule 12]. The extent of pension admissible to an officer who is compulsorily retired from service as penalty is provided in Rule 13. Rule 14, being the most important statutory provision requiring attention for deciding this writ petition, is quoted below:

R.14. Criminal proceedings.-A Government servant who retires from service but against whom criminal proceedings involving moral turpitude are pending in a court of law, shall not be sanctioned any pension until the termination of the criminal proceedings. An interim allowance not exceeding two-thirds of the pension that would have been admissible but for the criminal proceedings may be granted during the pendency of such proceedings in cases of hardship. If he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension; compassionate allowance may be granted subject to the same terms and conditions as laid down in rule 12.

19. The plain and simple meaning that can be attributed is that a retired government servant who is accused of moral turpitude and against whom a criminal proceeding is pending shall not be sanctioned any pension until the termination of the criminal proceeding but an interim allowance not exceeding two-thirds of the pension that is admissible would be granted to enable him overcome hardship. A conviction on a criminal charge involving moral turpitude shall result in a forfeiture of any pension but compassionate allowance could be granted as in Rule 12.

20. It would now be profitable to take a look at the other provisions of the DCRB Rules regarding classes of pension. Rule 37 classifies pension, reading as under:

R. 37. Classification of pension. - Pensions are divided into the following four classes, namely :-

(a) compensation pension;

(b) invalid pension;

(c) superannuation pension;

(d) retiring pension.

There are two other classes of pension i.e. pro-rata pension (Rule 189A) and family pension (Rule 15), which are payable on the occurrence of specific events and are not relevant here.

21. The word "any" wherever used before a noun in a statute is supposed to be a word of very wide meaning and, prima facie, the use of it excludes limitation. However, what is actually meant by "shall not be sanctioned any pension until the termination of the criminal proceedings" in Rule 14 of the DCRB Rules having regard to the other provisions thereof? Again, does one construe "not exceeding two-thirds of the pension that would have been admissible but for the criminal proceedings" oblivious of the words "any pension"? In the context in which the word "any" has been used, I am inclined to take the view that the word "any" as employed before the word "pension" is intended to mean any class of pension and would extend from one to all classes of pension conceived of in Rule 37 of the DCRB Rules and the words "the pension" would necessarily relate to any of those four classes of pension, but would not take within its coverage gratuity since gratuity is not a class of pension. The logical conclusion is that the term ''pension'' in Rule 14 has to be understood in contradistinction to ''gratuity''.

22. There is one other reason why I feel inclined to hold that wherever the word pension is used in Rule 14, it excludes gratuity.

23. My reading of the DCRB Rules is that the provisions of Rules 8, 10 and 14 thereof are intended to operate in different fields.

23.1. Rule 8 requires future good conduct to be an implied condition of every grant of pension and enables the pension sanctioning authority to withhold/ withdraw pension or gratuity or both, either in full or in part permanently or for a specified period, should a pensioner be convicted of a serious crime or is found guilty of grave misconduct. It is clear that the rule is applicable to a pensioner, meaning thereby an ex-employee who may have started receiving pension, and at that time commits a "serious crime" or indulges in "grave misconduct". Conviction of the pensioner of a "serious crime" or a finding that he is guilty of "grave misconduct" would necessarily relate to acts post retirement. This is clear from the opening sentence of Rule 8. The effect of this rule, insofar as gratuity is concerned, is that the Government in an appropriate case may be justified in calling back the decision to reward the pensioner with gratuity and withdraw the gratuity, either in whole or in part, permanently by taking further action either in terms of sub-rule (2) or sub-rule (3) of Rule 8, as the case may be.

23.2. Rule 10 would also apply in the case of a pensioner who, after his retirement, is found either in a departmental proceeding or a judicial proceeding (such proceeding having been instituted, inter alia, with the sanction of the Governor in respect of an event not earlier than four years of such institution) to have been guilty of grave misconduct or negligence during the period of his service resulting in the Government suffering a pecuniary loss. Should the pensioner subsequent to his retirement from service be found to have acted in the course of his employment in a manner detrimental to the interest of his employer and thereby exposed the employer to financial losses, and if there are materials for initiating disciplinary proceeding for the purpose of assessment of the precise quantum of loss suffered by the employer, which could be recovered from a pension, the right reserved in this regard may be exercised by the Governor and definitely that would be a ground for the employer not to provide such employee with deferred payment of salary i.e. pension, and even if he has been paid pension due to him immediately after his retirement, there is no statutory bar in recovering the loss from the pension. However, if in case the gratuity has not been paid, the employee is not to be rewarded with payment of gratuity and that is the specific reason for the mandate in sub-rule (2) of Rule 10 that no gratuity or death-cum- retirement gratuity shall be paid until the proceeding is concluded by passing a final order.

23.3. However, Rule 14 is not applicable to a pensioner. It would govern an employee who on the date of his retirement from service is involved in a pending criminal proceeding for moral turpitude in a court of law. By operation of Rule 14, such a retired Government servant shall not be sanctioned any pension until the termination of the criminal proceeding. If it were the intent that payment of gratuity is not to be effected in favour of the retired Government servant until he is acquitted in the criminal proceeding, I suppose the same would have been clearly indicated in Rule 14, as in Rules 8 or 10, without leaving it to the interpretation of the departmental head. In the absence of a clear restriction in Rule 14 in regard to release of gratuity in favour of a retired Government servant against whom a charge of moral turpitude is pending consideration before a court of law, it would not be proper to read the word ''pension'', wherever used in Rule 14, as inclusive of ''gratuity'' keeping in mind the definition of ''pension'' in Rule 7(f). The context in which the word ''pension'' has been used in Rule 14 does not warrant attribution of such definition to understand its meaning.

24. An act which could be viewed as a "serious crime" may take within its comprehension an act of moral turpitude, but all acts of "moral turpitude" are not "serious crimes". Similarly, all acts of "moral turpitude" do not constitute "grave misconduct". The very nature of offence or misconduct that is committed by a government servant for which the proceeding has been initiated and is pending on the date of his retirement, thus, becomes relevant. The words any pension (Rule 14) have to be given a different meaning from the words a part of the pension (Rule 8) or a pension or any part of it (Rule 10). Having regard to the object and spirit of the DCRB Rules, and bearing in mind that gratuity is a reward for an employee who has rendered continuous unblameworthy service for his employer and it is intrinsically connected with the nature of service that an employee provides to his employer and is not dependent on how the employee conducts himself in his personal life, Rule 14 has to be stretched beyond reasonable limits for it to be construed as including gratuity within its field of play.

25. It is not the case of the Accountant General that the petitioner is guilty of a serious crime; all that can be said against him as on date is that he is accused of offences under Sections 403 and 406 I.P.C., committed not in the course of his employment. The charges are yet to be established; and as and when established, the petitioner may at best be condemned for having indulged himself in moral turpitude. For a conviction in regard to a charge of moral turpitude, the condemnation would not be as high as a condemnation for conviction in relation to a serious crime resulting in withholding of both pension and gratuity or withdrawing a part of it, but it could only be a forfeiture of pension that would entail if the pensioner is convicted of moral turpitude.

26. For the reasons aforesaid, I hold the petitioner''s grievance to be justified and his claim is liable to succeed. The writ petition stands disposed of with a direction upon the respondents to take immediate steps for releasing the gratuity in favour of the petitioner so that he receives the payment within four weeks from date of receipt of a copy of this judgment and order. The petitioner shall be entitled to interest @ 9% p.a. thereon till actual payment. Needless to observe, payment of full pension (excluding gratuity) shall obviously depend on the outcome of the proceeding pending against the petitioner. I hope and trust that if the petitioner is acquitted or discharged, the respondents shall not delay release

of financial benefits in his favour.

27. Since interpretation of Rule 14 was involved, I do not propose to saddle the respondents with costs.

Urgent certified copy of this judgment and order, if applied for, may be furnished to the applicant at an early date.

Later:

Learned advocate for the respondent no. 3 has prayed for stay of operation of the judgment and order. The prayer is considered and refused.