(2019) 08 MAN CK 0006

In the Manipur High Court

Case No : Writ Petition (Criminal) No. 513 Of 2016

Thiyam Ranjit Singh APPELLANT

Vs

State Of Manipur And Others RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Citation : (2019) 08 MAN CK 0006

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : L. Sillori, Momota Devi Oinam, K. Rabei

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

[1] The writ petition has been filed by the petitioner seeking to quash the impugned letter/instruction No.25/Estt/TED/09-10/316, dated 25.03.2014 issued by respondent No.2 and to direct respondent No.3 to allow withdrawal of the pension amount of the petitioner as per his choice and further to release immediately the total pension amount, which has been put on hold, to the petitioner.

[2] The case of the petitioner is as follows: The petitioner was serving as SO Grade-I(R) in the Department of Electricity and the retired on attaining the age of superannuation, while serving in the said post under Executive Engineer, Tamenglong Division on 28.02.2010. The Senior Deputy Accountant General (A&E), Manipur issued pension payment order in favour of the petitioner with effect from 01.03.2010 and, accordingly, the petitioner was drawing an amount of Rs.17,862/- per month as on March, 2014.

[2.1] While that being so, without any intimation from any quarter, the State Bank of India, Manipur University Branch from where the petitioner was drawing pension amount refused to withdraw the pension amount with effect from the month of April, 2014 and despite the request of the petitioner, the Bank had refused to divulge any reason for such denial to withdraw. However, the petitioner came to know that the withdrawal of pension was blocked on instruction by respondent No.2. In this regard, the petitioner submitted RTI application to the Assistant General Manager, RBO, State Bank of India, Babupara, Imphal on 04.02.2016 asking reasons for blockage of the withdrawal of the pension amount, but it was again denied on the ground that no fee as per RTI rules was paid.

[2.2] Again on 22.02.2016, the petitioner submitted RTI application to the Assistant General Manager, RBO, State Bank of India, Babupara, for which the Bank authority informed vide letter dated 21.03.2016 that respondent No.2 has written to respondent No.3 to stop payment of pension till dues are cleared vide impugned letter dated 25.03.2014. Further, they have supplied letter dated 13.01.2016 written by the Chief Manager of State Bank of India confirming that the bank has put on hold a sum of Rs.5,00,000/- on instruction by respondent No.2, which was communicated to respondent No.3 vide impugned letter. According to the petitioner, there is no reason whatsoever for respondent No.2 to give such instruction to stop payment of the pension till dues are cleared and there are no dues to be cleared by the petitioner to respondent No.2 and thus, prayed for setting aside the impugned letter and direct to pay pension to the petitioner.

[3] Respondent No.1 filed affidavit-in-opposition stating that the Executive Engineer (Tamenglong), Electricity Department, Manipur, wrote the impugned letter to respondent No.3 for stoppage of payment of the petitioner's pension till dues are cleared as the petitioner has misappropriated a sum of Rs.4,59,052/- from the Revenue collected during his tenure as Assistant Engineer (Electricity), Tamenglong Division. It was communicated to the petitioner time and again to clear the dues, but the petitioner has failed to do so. It is stated in the affidavit-in-opposition that at the time of retirement, the petitioner signed a consent certificate for recovery of any Government outstanding dues which happened due to him on account of pay, arrears and allowances etc. if so the excess amount may be adjusted/recovered from his retirement benefit like pension/gratuity/ fraction of commutation to the pension etc. Stating so, respondent No.1 prayed for dismissal of the writ petition.

[4] The petitioner filed rejoinder to the affidavit-in-opposition stating that the Executive Engineer has written the impugned letter without any authority and the petitioner never misappropriated a sum of Rs.4,59,052/- as alleged by respondent No.1. It is stated that the petitioner was allowed to retire after having found that there was no due of any kind and only after getting no due certificate from the concerned authority, including the aforesaid Executive Engineer. Hence, the allegation of misappropriation is baseless and does not have any foundation.

[5] Assailing the impugned order, the learned counsel for the petitioner

submitted that quite abruptly, without any intimation from any quarter, respondent No.3 from whom the petitioner was drawing pension, refused the petitioner to draw the pension amount with effect from April, 2014 and the petitioner came to know that withdrawal of pension was blocked on instruction by respondent No.2. He would submit that when the petitioner submitted RTI application, the State Bank authority informed vide letter dated 21.03.2016 that respondent No.2 has written to respondent No.3 to stop payment of pension till dues are cleared. According to the learned counsel, there is no reason whatsoever for respondent No.2 to give such instruction to stop payment of pension till dues are cleared and in fact, there is no due to be cleared by the petitioner to respondent No.2 and that the petitioner never committed any misappropriation as alleged by respondent No.1.

[6] The learned counsel further submitted that the petitioner was allowed to retire after having found that there was no due of any kind and only after getting no due certificate from the concerned authority, including the Executive Engineer, the petitioner was allowed to retire from service. Further, the learned counsel submitted that the consent form alleged by respondent No.1 is general form signed by all the retiring employees and that the said consent does not have anything to do with any due on account of misappropriation of revenue collection.

[7] Per contra, the learned counsel for the respondents submitted that when the investigation/checking of TR-5 book and revenue collection, it was found that during the service period of the petitioner as Assistant Engineer (Electricity) Tamenglong Division, a sum of Rs.4,59,052/- was misappropriated from the revenue collected and respondent No.1 has already communicated to the petitioner to clear the dues i.e., Rs.4,59,052/- which was misappropriated from the revenue collected. Despite receipt of information, the petitioner did not clear the dues and in order to recover the misappropriated amount, the Executive Engineer directed the Branch Manager, State Bank of India, Canchipur for stoppage of payment of the petitioner's pension and therefore, there is no reason to interfere with the impugned order.

[8] I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[9] The petitioner was serving as SO Grade-I(R) in the Department of Electricity and he retired on superannuation in the said post on 28.02.2010 and he was drawing an amount of Rs.17,862/- per month as pension as on March, 2014. However, respondent No.3 from where the petitioner was drawing pension refused to withdraw the pension amount with effect from April, 2014. According to the petitioner, later, he came to know that respondent No.2 has given instruction to respondent No.3 to block the pension amount.

[10] The grievance of the petitioner is that without any notice and/or intimation, the pension was stopped and presently,, he was living with his family consisting of his wife and other five members who are their children and two daughter-in-

law and none of his children are employed profitably except one son who is working in a private micro-finance institution and was drawing a salary of Rs.10,000/- per month. According to the petitioner, the family being a joint family, the pension was a great source of livelihood of the family.

[11] The case of the first respondent is that when checking of TR-5 book and revenue collection, it was found that during the service period of the petitioner as Assistant Engineer, Tamenglong Division, a sum of Rs. 4,59,052/- was misappropriated from the revenue collected. Further case of the first respondent is that despite communication to the petitioner time and again to clear the dues, he has failed to do so. The said statement of the first respondent has been vehemently denied by the petitioner.

[12] When the first respondent alleged that the petitioner misappropriated a sum of Rs. 4,59,052/- during the service period, it is the bounden duty of the first respondent to prove the same. In the present case, the first respondent has failed to prove the allegation of misappropriation leveled against the petitioner. Mere writing a letter to respondent No.3 from where the petitioner is drawing pension is not enough that the petitioner had misappropriated the revenue collected. There must a concrete proof to show that the petitioner had misappropriated the revenue collected.

[13] It appears that the petitioner was allowed to retire on superannuation while serving as SO Grade-I(R) under the Executive Engineer, Tamenglong Division on 28.02.2010. Thereafter, the office of the Senior Deputy Account General (A&E), Manipur issued pension payment order in favour of the petitioner with instruction that the payment of pension in favour of the petitioner should commence from 01.03.2010 and accordingly, a sum of Rs. 17,862/- per month was drawing as on March, 2014. While that being the so, all of a sudden, without any notice to the petitioner, respondent No.2 wrote a letter to respondent No.3 to block withdrawal of the pension by the petitioner.

[14] It is to be mentioned that when the petitioner was allowed to retire after having found that there was no due of any kind and only after getting no due certificate from the concerned authority including respondent No.2, it is unfair on the part of respondent No.2 giving instruction to respondent No.3 to block withdrawal of the pension by the petitioner. Had there been due and/or misappropriation of any kind, the petitioner would not have been allowed to retire before clearing the dues and due, if any, would have been recovered as per the rule. Thus, the allegation of misappropriation leveled by respondent No.1 is baseless and without proof. Along with affidavit-in-opposition, the first respondent enclosed a copy of the statement of amount to be recovered from the petitioner. On a perusal of the same, it is seen that the same is self-serving statement of respondent No.2, which is dated 29.03.2014, after four years of the retirement of the petitioner. In the said statement, at the top, it has been stated as under:

"Statement of Amount to be recovered from Shri Th. Ranjit Singh, Retd. Assistant Engineer (Elect) as submitted by Shri Y. Suresh, AE (Elect) Tamenglong Sub-division on audit by Divisional team."

No such audit report has been produced by the first respondent in support of their contention. Further, no such copy of the statement was furnished to the petitioner. Therefore, this Court is of the view that the said statement is self-serving document of the first respondent and the same cannot be relied upon by the first respondent. The alleged misappropriation was said to be done in the years 2005, 2006, 2007 and 2008 and the petitioner was allowed to retire on 28.02.2010. From 2005 to 2014, nearly 9 years, the respondent authorities have not taken any steps to bring on notice the alleged misappropriation either to the petitioner or to his superiors.

[15] According to the first respondent, at the time of retirement, the petitioner signed a consent certificate for recovery of any Government outstanding dues, which is happened to him on account of pay, arrears and allowances etc., if so the excess amount may be adjusted/recovered from his retirement benefit like pension/gratuity/fraction of communication to the pension etc. As rightly argued by the learned counsel for the petitioner, the said consent form is a general form signed by all the retiring employees. Therefore, this Court is of the view that the consent form signed by the petitioner does not have anything to do with any due on account of the alleged misappropriation of revenue collection pleaded by the first respondent.

[16] Before issuing stop pension instruction to respondent No.3, the second respondent has not issued any notice to the petitioner and that no enquiry was conducted. Even no demand was made. According to the first respondent time and again, it was communicated to the petitioner to clear the dues, but the petitioner has failed to do so. As stated supra, the said plea was not substantiated by cogent materials.

[17] As per Pension Payment Order issued by the Senior Deputy Accountant General (A&E), Manipur, no pension shall be liable to seizure, attachment or sequestration by process of any Court in India at the instance of a creditor for any demand against the pensioner.

[18] It is settled law that pension is a matter of right and it can be claimed as such and such right cannot be denied arbitrarily and that too without following due process of law.

[19] The act on the part of the second respondent in giving instruction to respondent No.3 for stoppage of payment of pension of the petitioner on his own sweep will without following the procedure and without any rhymes and reasons and also stoppage of payment of pension by respondent No.3 on the basis of such instruction are serious and inexcusable violation of the fundamental right and livelihood of the petitioner and his family and also right to property of the petitioner. Therefore, this Court is of the view that the impugned letter dated

25.03.2014 and stoppage of payment of pension by respondent No.3 are liable to be set aside.

[20] In the result,

(a) The writ petition is allowed.

(b) The impugned letter dated 25.03.2014 of the second respondent is set aside.

(c) The third respondent is directed to release pension amounts which were stopped as per the instruction of the second respondent and kept in their hand expeditiously to the petitioner, preferably within a period of two weeks from the date of receipt of a copy of this order.

(d) The second respondent is also directed to ensure that the monthly pension of the petitioner is credited every month without fail.

