(2010) 01 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (C.) No. 383 of 2010

Union of India (UOI) and Another APPELLANT

Vs

Prabhu Lal RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0026

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.N. Singh and A.S. Singh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The present writ petition has been filed by the Union of India aggrieved from the order dated 24.11.2009 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), whereby the Tribunal while allowing OA No. 264/2009 and M.A. No. 1681/2009 directed the respondents to release the regular pension, commuted amount of pension and gratuity to the respondent with 8 per cent simple interest per annum from the date, the payment was due, within eight weeks from the receipt of a copy of the order.

2. It is the case of the petitioners that the petitioners withheld the part of the pension payable to the respondent as well as his gratuity, by exercising powers vested with the petitioners under Rule 69 r/w Rule 9(4) of the CCS (Pension) Rules. It is submitted that the respondent at the time of his retirement was facing "judicial proceedings" and therefore, such course of action was available with the petitioners. It is submitted that the order of the Tribunal has ignored the relevant rules and as such is liable to be set aside by this Court while exercising powers under Article 226 of the Constitution of India.

3.Some facts which need reference are reproduced hereunder:

(i) The respondent retired from the services of the Union with effect from 28.2.2007. At the time of his retirement he was only allowed provisional pension as per Rule 69 of the CCS (Pension) Rules, 1972. However, he was not granted gratuity, commutation of pension and regular pension. At that time he was neither facing any disciplinary proceedings nor was taking any ''judicial proceedings'' in relation to any misconduct committed by him while discharging his official duties.

(ii) The respondent filed OA No. 2563/2008 which was disposed of vide judgment dated 26.11.2008. By the said order, the Tribunal gave the following directions to the petitioners:

2. OA stands disposed of with a direction to the respondents to treat the present OA as a representation on behalf of applicant and decide the claim of the applicant for release of retiral benefits by passing a speaking and reasoned order within a period of one month from the date of receipt of a copy of this order.

(iv)Pursuant to the aforesaid directions, the petitioners passed the following order:

Office of the

Chief Commissioner of income tax, Delhi-I

Finance section, Room No. 366, C.R. Building

I.P. Estate, New Delhi 110002

Dated : 02/01/2009

Office Order

Subject : Order on retirement benefits in pursuance of Hon''ble Central Administrative Tribunal, New Delhi Order in OA No. 2563/2008 dated 26/11/2008 in respect of Shri Prabhu Lal, ITO(Retd.) regarding

Shri Prabhu Lal, ITO superannuated on 28/02/2007 on attaining the age of Superannuation. His retirement benefits i.e. leave encashment, insurance and GPF were given to Shri Prabhu Lal as per his dues. Since vigilance clearance has not been received, Shri Prabhu Lal has been allowed provisional pension as per Rule 69 of CCS (Pension) Rules, 1972. As Shri Prabhu Lal was not allowed commutation of pension/regular pension and gratuity, he moved the Hon''ble Central Administrative Tribunal for release of his retirement dues. The Hon''ble Tribunal vide its order contained in O.A. No. 2563/2008 dated 26/11/2008 has asked the incumbent to pass a speaking and reasoned order within a period of one months from the date of receipt of copy of the said order.

In pursuance of this order of Hon''ble Tribunal the office of CCIT, Delhi has sought clearance from the Dy.CVO i.e Director of Income Tax (Vig)/North Zone, Delhi who is the Competent Authority to issue vigilance clearance in respect of Group "B" officers. The Director of Income Tax (Vig)/North Zone has conveyed vide his letter dated 23/12/2008 that a criminal proceedings is pending against Shri Prabhu Lal before the Hon?ble Metropolitan Magistrate, Court No. 18, East District, Karkardooma Courts and the case is fixed for 14/04/2009. Since a judicial proceeding is pending against Shri Prabhu Lal, ITO and vigilance clearance has not been issued by the Competent Authority, retirement benefits i.e. gratuity and commutation of pension/regular pension cannot be release to him at this stage.

Keeping in view of the provision of Section 69 of the CCS (Pension) Rules, the retirement benefits such as Gratuity, Commutation of Pension/regular pension shall be released on conclusion of judicial proceedings pending before the Hon''ble Metropolitan Magistrate and receipt of vigilance clearance from the Competent Authority.

This order is being issued with the prior approval of Chief Commissioner of Income Tax, Delhi-I, New Delhi.

(Rajnish Yadav)

Asstt. Commissioner of Income tax (hqrs.-Finance), New Delhi

4. Aggrieved of this order, the petitioner filed OA No. 264/2009 before the Tribunal. The respondent had submitted that the order passed by the petitioners was not in accordance with Rule 69 of the CCS (Pension) Rules, 1972 read with Rule 9 ibid alleging that the pension related dues of the respondent could have been withheld only if the judicial proceedings referred to in the impugned order rejecting his representation related to matters in discharge of his official duties. It was contended that an FIR was lodged in police station Shakarpur on 22.02.2005 by one Shri Vijender Kumar against the Applicant, his wife and his son for beating the complainant. The FIR was registered under Sections 325/34 of the IPC. The Applicant had also lodged a cross FIR number 59/2008 against Shri Vijender Kumar u/s 3 of the SC/ST (Prevention of Atrocities) Act of 1989. Dispute is personal in nature and does not involve any gross misconduct or negligence. Reliance was placed on D.V. Kapoor Vs. Union of India and others, .

5. On the other hand, the petitioners on their part relied upon a judgment of the Apex Court delivered in the case of R. Veerabhadram Vs. Govt. of A.P., .

6. The Tribunal after taking into consideration both the judgments including the provisions contained under Rule 69 and Rules 8 and 9 of the Pension Rules made the following observations:

5. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period of he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The

condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition i.e. the scope is wide of mark dependent on the facts or circumstances in a given case.

6. The exercise of power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60.

7. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject of minimum. The employees right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity

7. Reference was also made to the provisions contained under the Payment of Gratuity Act, 1972 which contemplates that those provisions are not applicable to the case of the respondent as his case was not covered by Section 4(6) of the Act.

8. Taking note of the aforementioned findings, the Tribunal held that in the present case, there was no reason or ground for withholding the pension or gratuity fund as the respondent herein was neither facing any enquiry nor any allegation of pecuniary mis-conduct nor anything was proved against him. There was no occasion for withholding the gratuity of the respondent on account of any grave misconduct/irregularity committed by him during the course of his employment with the petitioners.

9. During the course of arguments, the learned Counsel for the petitioners has also relied upon the judgment of Apex Court in Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and others, . This judgment has also been discussed by the Tribunal in the impugned order. The said portion of the order is also reproduced for the sake of reference:

5.The learned Counsel for respondents heavily relied on the judgment of the Apex Court in Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and others, in support of his contention that gratuity can be withheld by the employer Respondents if any judicial proceedings are pending against the Petitioner relating to his misconduct or negligence during the period of his service. We are afraid the judgment of the Apex Court in Jarnail Singh (supra) has no application in the facts and circumstances of the case before us. The Apex Court in the case of Jarnail Singh (supra) was concerned with the provisions of Central Civil Services Pension Rules, 1972 and in the light of the specific Rules 3, 6, 69(1)(c), 71 and 73 held that there was nothing wrong in the order of the President in withholding the gratuity of the employee. In the present case, none of the Rules under consideration before the Apex Court or the similar Rules are applicable but the Petitioner is governed by the provisions of the Payments of Gratuity Act, 1972 and as per Section 4(1) petitioner has a statutory right to receive gratuity from his employer save and except in the circumstances provided under Sub-section (6) of Section 4. We have already indicated that none of the circumstances provided in Sub-section (6) is applicable in the present case and, therefore, we do not find any justifiable cause on the part of the Respondents in withholding the gratuity. Mere pendency of a criminal case lodged by CBI shall not disentitle the petitioner from receiving gratuity nor shall entitle the Respondents to not to release the gratuity to the Petitioners as Petitioner?s services came to an end on his attaining superannuation simpliciter. We may note here that Rule 45 of the RCF Employee (Conduct, Discipline & Appeal) Rules, 1993 does provide for departmental action against retired employees. Clause (iii) of Rule 45 provides that in case of an officer who has already retired on superannuation before instituting any departmental proceedings and who has received all retiral benefits, as far as possible only criminal prosecution can be recommended against him. Even under Clause (ii) of Rule 45, it appears that now no departmental action can be initiated against the present Petitioner as it provides that if departmental proceedings had not be instituted while the officer was in service, proceedings under Rule 38 for imposition of major penalties can be initiated only by or sanction of the Board of Directors and in respect of a cause of action which arose or in respect of any offence which took place not earlier than four years before the institution of the proceedings. The Petitioner was superannuated in the year 1994; the criminal case was registered against him in the year 1995 before his superannuation but till date i.e. more than seven years of his superannuation, no departmental action has been initiated and, therefore, such action has become beyond time provided in Clause (ii) of Rule 45 of the RCF Employees (Conduct, Discipline & Appeal) Rules, 1993.

6.For all these reasons, we are satisfied that the decisions taken by Respondents to not to release payment of gratuity to the Petitioner cannot be sustained.

10. It is thus apparent that in the present case the judicial proceedings which are pending against the respondent are not the judicial proceedings relating to any misconduct done by the respondent in the discharge of his official duties. He is not facing any departmental proceedings. Nor there is anything which requires withholding of pension or any part of pension or gratuity for the purpose of compensating the department.

11. It was in these circumstances, the Tribunal rightly drew the following conclusions:

(i)Action cannot be taken against the Applicant under Rule 9 of the CCS (Pension) Rules in view of the ratio laid down by the Honourable Supreme Court that the misconduct has to be in the discharge of public duty in office. In this matter, the criminal case against the Applicant has not been filed in the discharge of his duty in the office.

(ii)In view of decision 23 under Rule 3 of the CCS (Conduct) Rules, 1964, conviction by a criminal court would amount to misconduct. If the Applicant is convicted in the criminal case, which is pending against him, it would amount to misconduct.

(iii) The Applicant would be covered under Rule 8 of CCS (Pension) Rules, which has been quoted in full in the preceding paragraph. Under this rule, the appointing authority has been given the authority to withhold or withdraw pension or a part thereof, if the petitioner is convicted of a serious crime or is found guilty of grave misconduct. Sub-rule (2) of Rule 8 further elucidates that action will be taken against the petitioner in the light of the judgment of the Court relating to such conviction.

(iv) Gratuity cannot be withheld under Rule 8 of CCS (Pension) Rules, 1972 ulike the provision in Rule 9 ibid. Otherwise also as per the provision in Section 4 of the Payment of Gratuity Act, 1972, gratuity cannot be withheld.

(v) It is clear, therefore, that pension can be withheld or withdrawn only after conviction in a serious crime and that too on the basis of the judgment of the Court relating to such conviction.

12. The Tribunal was pleased to allow OA No. 264/2009 and MA No. 1681/2009 and gave the following directions:

...to release the regular pension, commuted amount of pension and gratuity to the Applicant with 8 per cent simple interest per annum from the date the payment was due, within eight weeks from the receipt of a copy of this order. The Respondents, however, would be free to take action against the Applicant subject to the provisions of Rule 8 of CCS (Pension) Rules, 1972, as discussed above. No costs....

13. We are satisfied that while exercising power under Rule 69/9 of the CCS Pension Rules, the President has to be satisfied, that the pensioner committed grave misconduct in discharge of his duties. In absence of any such finding, the President cannot hold the pension or withhold gratuity. In the present case also there is no finding against the respondent warranting withholding of any part of pension or gratuity by the President as the respondent was neither facing any departmental proceedings nor the judicial proceedings having anything to do with his official functions. There is nothing on record that any loss has been caused to the Government by any act/omission of the respondent.

14. Thus, we find no infirmity in the aforesaid order which requires this Court to intervene in the matter under Article 226 of the Constitution of India.

Accordingly, the writ petition filed by the petitioners is dismissed with costs of Rs. 10,000/- to be paid to the respondent with his dues within one month from today.