(2014) 05 SHI CK 0111

In the High Court Of Himachal Pradesh

Case No : CWP No. 9506 of 2013

Vijay Kumar Sharma APPELLANT

Vs

State of Himachal Pradesh RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:
Constitution of India, 1950 — Article 41

Citation : (2014) 05 SHI CK 0111

Hon'ble Judges : Sanjay Karol, J;Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : S.R. Korada and Piyush Sharma, Advocate for the Appellant; Shrawan Dogra, Advocate General, M/s. Anup Rattan and B.S. Parmar, Additional Advocates General, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay Karol, J.—Issue raised in the present petition, in our considered view, is no longer res integra. Apex Court in Union of India and Others Vs. Shri B. Dev, , categorically has held as under:

11. ....This power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore, can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service. ....

(Emphasis supplied)

2. That the case of present petitioner is governed under the provisions of Rule 9 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the Pension Rules), is not in dispute.

3. Petitioner retired as a Principal (College Cadre) on 30.4.2012. On his retirement, respondent did not release his retiral benefits, including gratuity,

leave encashment, etc. As such, he made several representations, which did not find favour with the respondent and as such petitioner was forced to file the instant petition, inter alia, praying for the following relief:

This Hon''ble Court may further graciously be pleased to order the Respondent to pay all Retiral benefits payable to the Petitioner on account of Earned Leave Encashment, Half Pay Leave Encashment, Gratuity, Money payable under Group Insurance in a time bound manner along with interest @18% per annum from the date of retirement of the Petitioner to till the date of actual payment of the money alongwith Penal interest for the mental agony and hardships caused to the petitioner.

4. Though respondent has not passed any formal order, but however, now has justified non-release of retiral benefits, on the ground that petitioner had caused huge financial loss, amounting to Rs. 60,82,043/-, to the State exchequer. Allegedly, by misusing his power as a Drawing and Disbursing Officer, he disbursed certain amounts to contract Lecturers, who were otherwise not eligible and entitled to the same.

5. It is not in dispute that petitioner was served with the chargesheet only on 21.11.2013, much after the date of his superannuation. Disciplinary proceedings have not attained finality. Also, there are no judicial proceedings pending against him.

6. Rule 9 is unambiguously clear. The amount of pension could not have been withheld unless, in a departmental or judicial proceeding, pensioner is found guilty of grave misconduct or negligence during the period of his service. Sub-rule (4) of Pension Rule-9 stipulates that in case of a retired employee, against whom departmental or judicial proceedings are initiated, provisional pension, as provided in Pension Rule 69, shall be sanctioned. Thus, in the instant case, action, if any, had to be initiated against the petitioner for withholding his pension, only under the provisions of Pension Rule 69. No action in that regard has been taken.

7. The amount of gratuity cannot be paid to the petitioner, in view of Sub Rule (c) of Rule 69(c) of Pension Rules.

8. Insofar as other retiral benefits, i.e. earned leave encashment, half pay leave encashment, Group Insurance, are concerned, there is neither any legal bar nor any impediment in disbursement of the same.

9. Learned counsel for the petitioner has invited our attention to the decision rendered by the apex Court in Civil Appeal No. 6770 of 2013, titled as Sate of Jharkhand & others v. Jitendra Kumar Srivastava & another. The decision is based on the applicable rules, which did not prohibit disbursement of pension and gratuity.

10. That pension includes gratuity is also a settled principle of law. (See: Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and others,).

11. It is also a settled principle of law that employee''s right to pension is a statutory right and deprivation thereof must be in accordance with law, co-relative or commensurate with the gravity of the misconduct or irregularity, as it offends the right to assistance enshrined under Article 41 of Constitution of India. (See: D.V. Kapoor Vs. Union of India and others,).

12. As such, present petition is allowed, with a direction to the respondent-authorities to release all retiral benefits, as may be found due, admissible and legally permissible, in accordance with law, more specifically Rule 9 & 69 of the Pension Rules, within a period of four weeks from today. Petitioner shall be entitled to interest @9% per annum.

Petition stands disposed of, so also pending application(s), if any.