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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C.) No. 2935/2010

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Date of decision: 15.07.2010

V.P. SINGH

.... Petitioner

Through Petitioner in person

Versus

GOVT. OF NCT OF DELHI & ORS.

.... Respondents

Through Ms.Akanksha Sharma for Ms.Ruchi
Sindhvani, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J. (ORAL)

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1. Petitioner retired as Principal under the respondent on 28.02.2007. Some of his retiral benefits such as commutation of pension and gratuity were not released to him at the time of his retirement on the ground that a complaint had been filed by the son of Late Sh.V.K. Verma who committed suicide and was a UDC in the school where petitioner was the Principal.

2. On account of the death of Sh.V.K. Verma being an unnatural death a FIR was registered but it may be noted that nobody was named as an accused therein, much less the petitioner.

3. As on the date of his retirement, the petitioner was neither facing any departmental proceeding nor any judicial proceeding were pending against him. Investigation was still pending at the level of the local police. The challan was presented in Court much after the

petitioner retired and proceedings are pending before the Court concerned. Till date the charge has not been framed.

4. Since the petitioner retired from service at a point of time when no disciplinary action was initiated against him as per the service rule, it is conceded by learned counsel for the parties that the issue at hand has to be decided with reference to Rule 9 of the CCS (Pension) Rules, 1972.

5. The Tribunal has negated the plea urged by the appellant as prayed but has directed 2/3rd pension and gratuity to be paid. The Tribunal while disposing of the aforesaid OA passed the following directions:-

“9. In view of the total facts and circumstances of the case discussed within, I come to the considered conclusion that the Applicant is entitled to some relief. Accordingly, the Respondent No. 1 and 2 are directed to take action as per the following:-

1. To check the status of the Criminal Case in Fir No.735/2006 and find whether the Applicant is being charged in the case.
2. If the answer to point -1 above is in negative, the Applicant would be released remaining pensionary benefits fully (Gratuity, Commuted Value of Pension and Final Pension Payment).
3. If the Applicant is being charged in the said case, he would be released (i) 2/3rd of the Commuted value of Pension and (ii) 2/3rd the gratuity. Thus, the balance 1/3rd of both gratuity and commuted value of pension would be released or not would be decided by the Respondents after receipt of the decision in the said criminal case.
4. No interest would be applicable for the payments so made to the Applicant.
5. This exercise shall be completed within a period of 4 months from the date of receipt of the certified copy of this order.”

6. Rule 9 of the CCS (Pension) Rules, 1972 reads as under:-

“9. Right of President to withhold or withdraw pension

[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five (*Rupees One thousand two hundred and seventy-five from 1-1-1996-see GID below Rule 49*) per mensem.]

(2)(a)The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b)The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) ¹omitted

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in ²[[Rule 69](#)] shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

7. It is apparent that as per Rule 9(6)(b) judicial proceedings are deemed to be instituted when a report is presented by the police officer to a Magistrate. In the instant case no such report was filed and hence the question of the same being pending when the petitioner retired does not arise.

8. Admittedly, no departmental proceeding was pending against the petitioner as on the date of his retirement inasmuch as it is an admitted position that he was never charge sheeted.

9. It is important to note that in the FIR in question nobody has been named as an accused and the report under Section 173 Cr.P.C. filed by the Police was much after the petitioner retired from service and that even till today no charge has been framed against the petitioner.

10. Thus, no judicial proceedings being pending within the meaning of Rule 9(6)(b) and no charge sheet being issued when the petitioner superannuated, the petitioner would be entitled to relief.

11. The writ petition is allowed. Impugned order passed by the Tribunal is set aside and OA No.1069/2008 filed by the petitioner is allowed with the directions that the terminal benefits payable to the petitioner be released within 8 weeks from today.

12. No costs.

MOOL CHAND GARG, J.

JULY 15, 2010/dc

PRADEEP NANDRAJOG, J.