

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.24299 of 2015
M.P.No.1 of 2015

1. The General Manager,
BSNL, Seerangapalayam,
Salem.
2. The Assistant General Manager,
BSNL, Seerangapalayam,
Salem.
3. The Accounts Officer,
BSNL, Seerangapalayam,
Salem.

...Petitioners

Vs.

1. A.Arunachalm
2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the order, dated 12.03.2015 made in Original Application No.310/00263 of 2014, on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioners : Mr.S.Udayakumar, SCGC

For 1st Respondent: Mr.R.Venkatesh
R2-Tribunal

O R D E R

Being aggrieved by the order made in O.A.No.263 of 2014, dated 12.03.2015, by which, the Central Administrative Tribunal, Madras Bench, has directed the the General Manager, Assistant General Manager and Accounts Officer, BSNL (Bharat Sanchar Nigam Limited), Sreerangapalayam, Salem, respondents/writ petitioners, to disburse the monthly pension of the applicant/1st respondent, from 30.04.2011 and pay the entire retirement benefits, leave encashment, salary and arrears of salary to the applicant/1st respondent, within a period of one month, from the date of receipt of passing of the order, the present writ petition has been filed.

2. Facts leading to filing of the writ petition, from the materials on record and the impugned order are that the 1st respondent was working as a Telephone Operator, in BSNL, Kallakurichi, since 1972 and retired from service on 30.04.2011, after serving the department for more than 37 years of service. Wife of the 1st respondent has filed a petition for restitution of conjugal rights in F.C.O.P.No.154 of 2007 and claimed maintenance in I.A.No.61 of 2008, before the Family Court, Salem. Based on the endorsement made by the 1st respondent to the effect that he was ready to live with his wife, I.A.No.61 of 2008, has been allowed, vide order, dated 10.11.2011, directing the 1st respondent to pay interim maintenance of Rs.5,000/- per month. Thereafter, she has filed O.S.No.11 of 2010, to restrain the 1st respondent from receiving the retiral benefits, in the event of voluntary retirement or retirement on superannuation. In the suit, she has also filed I.A.No.15 of 2010, against the writ petitioners, not to disburse the salary and other benefits, till the disposal of F.C.O.P.No.154 of 2007, before the Family Court. In I.A.No.15 of 2010, ex-parte injunction order has been granted on 10.11.2010, against which, the 1st respondent has filed I.A.No.33 of 2012, to set aside the order passed in I.A.No.15 of 2010. The same has been allowed on 28.03.2012.

3. Contending inter alia that there is no interim order, against the writ petitioners/defendants in the suit, and no appeal has been filed against the order made in I.A.No.33 of 2012, dated 28.03.2012, representations have been made by the respondent to the writ petitioners, to disburse pension and other retiral benefits. Before the Tribunal, the writ petitioners have filed a reply, stating that wife of the 1st respondent has filed a suit in O.S.No.11 of 2010 and sought for an injunction, has to disburse the retiral benefits. Order passed in I.A.No.33 of 2012, dated 28.03.2012, has been admitted by the writ petitioners, but still, pendency of the suit, has been cited as the reason, for not disbursing the retirement benefits. The writ petitioners have further contended that

proposals along with the opinion of the panel counsel, was forwarded to the Principal Controller of Communication Accounts, DOTCELL, Chennai.

4. It is the case of the writ petitioners that there was no intention to withhold the retirement benefits, including pension. Since the suit is pending, settlement of the same, is delayed. According to the writ petitioners, no sooner, the Court cases are decided, a decision would be taken on the settlement of retiral benefits. After considering the contentions of the learned counsel for the parties and placing reliance on the decision of the Central Administrative Tribunal, Mumbai Bench, in O.A.No.858 of 1996, the Tribunal held that the proceedings initiated by the wife, against the writ petitioners, for an injunction in O.S.No.11 of 2010, cannot be stated to be a judicial proceedings, in terms of Rules 9 and 69 of the CCS (Pension) Rules and accordingly, issued directions to disburse the retirement and other benefits. Being aggrieved by the same, the present writ petition is filed.

5. Assailing the correctness of the order, Mr.S.Udayakumar, learned counsel for the writ petitioners submitted that the Central Administrative Tribunal, Madras Bench, ought to have awaited for the final outcome of the case, before the Family Court. Inviting the attention of this Court to Rule 9(4) of the CCS (Pension) Rules, he further submitted that when the judicial proceedings filed by the wife in F.C.O.P.No.154 of 2007 and the suit in O.S.No.11 of 2010, are pending, withholding of pension, till the disposal of the same, cannot be said to be contrary to the abovesaid Rules, and for the abovesaid grounds, sought for interference.

Heard the learned counsel for the parties and perused the materials available on record.

6. Before advertng to the submissions, let us have a cursory look at the provisions, dealing with the rights of the President to withhold or withdraw pension. Rule 9(1) deals with the right of withholding pension or gratuity or both, either in full or 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.

7. Rule 9(4) of the Rules, states that 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 Rule 69 shall be sanctioned.

8. As per Rule 9(6) of the abovesaid Rules, for exercising the powers, under rule 9(1), 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 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.

9. Reading of the provisions indicates that (1) pension or gratuity or both, either in full or part, can be withhold permanently or for a specified period, (2) Pension, in whole or in part, can be withdrawn, permanently or for a specified period and (3) Recovery from pension, either in whole or part, if any, pecuniary loss caused to the Government, can be made. For all the above, the primordial condition is that if in any departmental or judicial proceedings, the pensioner should have been found guilty of grave misconduct or negligence, during the period of service, including the services rendered upon re-employment, after retirement.

10. Insofar as departmental proceedings is concerned, it is 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. Insofar as judicial proceedings are concerned, it is deemed to be instituted 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.

11. Admittedly, in the case on hand, no departmental proceedings have been instituted against the respondent. In the proceedings in F.C.O.P.No.154 of 2007, the parties are the spouses. In the suit in O.S.No.11 of 2010, the plaintiff/wife, has sought for an injunction, restraining the 1st defendant/1st respondent from receiving the entire benefit of voluntary retirement/regular retirement benefit of, leave encashment salary, leave salary and arrears of salary in the event of voluntary retirement/regular retirement from service. She has also sought for a mandatory direction to the defendants 2 and 3/writ petitioners not to disburse the leave encashment salary,

leave salary and arrears of salary benefit, etc., in the event of the voluntary retirement/the regular retirement to the 1st defendant/1st respondent.

12. Though in I.A.No.15 of 2010 in O.S.No.11 of 2010, dated 10.11.2010, earlier the Family Court, Salem, had granted interim injunction, restraining the 1st respondent from receiving the entire benefit of voluntary retirement/regular retirement benefit, leave encashment salary and arrears of salary in the event of voluntary retirement/regular retirement from service and also, directed the defendants 2 and 3/writ petitioners, not to disburse the leave encashment, salary, leave salary and the arrears of salary benefit, etc., in the event of the voluntary retirement/regular retirement to the 1st defendant/1st respondent, till the disposal of the suit, subsequently on 28.03.2013, in I.A.No.33 of 2012, the Family Court, Salem, has set aside the order passed in I.A.No.15 of 2010, dated 10.11.2010. As per the material on record, before us, there is no injunction against the writ petitioners to withhold the retiral benefits and pension.

13. While holding that the 1st respondent is entitled to the retiral benefits, the Central Administrative Tribunal, Madras Bench, has considered a decision of the Central Administrative Tribunal, Mumbai Bench, in O.A.No.858 of 1996, which held that proceedings initiated on the basis of a private complaint, would not come within the ambit of Rules 9 and 69 of the CCS (Pension) Rules. The operative portion of the order of the Mumbai Central Administrative Tribunal, is reproduced hereunder:

"Held: However, in such a situation the complaint would have been filed by an investigating agency, like Central Bureau of Investigation/Anti-Corruption Bureau, etc. Therefore, judicial proceedings would not include proceedings initiated on the basis of private complaint. If such a meaning is not put on the term 'judicial proceedings', it would amount to giving a licence to any private person, including even a colleague of the Government employee, by filing a complaint against him and thus, depriving him of pensionary benefits. Such improbable instruction is required to be avoided. I am, therefore, of the view that the judicial proceedings which are pending against the applicant, are not judicial proceedings, within the meaning of rules 9 and 69 of the CCS (Pension) Rules and therefore, the respondents were wrong to have the gratuity and commutation of pension to the applicant-Directed to release dues."

14. At this juncture, we wish to consider the term, "judicial proceedings", as defined in Abbott L. Dictionary, as

follows:

"A general term for proceeding in Courts; for the course authorized to be taken in various cases to secure the determination of controversy; to obtain the enforcement of a right or the redress or prevention of a wrong."

15. A Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. The State of Punjab.*, reported in I.L.R. 1967 P & H 278, considered the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant.

16. In *Deokinandan Prasad vs. State of Bihar* reported in (1971) 2 SCC 330, the Hon'ble Supreme Court, at Paragraphs 31 and 32 held that,

"31.It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

32. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in *Bhagwant Singh v. Union of India* A.I.R. 1962 Pun 503. It was held that such a right constitutes "property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in *Union of India v. Bhagwant Singh* I.L.R. 1965 Pun 1 approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to

be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority."

17. In D.S. Nakara and Ors. Vs. Union of India reported in (1983) 1 SCC 305, the Hon'ble Supreme Court held as follows:

"The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? -

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) IILLJ 377SC".

18. In Dr.Uma Agarwal v. State of U.P., reported in (1999) 3 SCC 438, the Hon'ble Supreme Court held that,

"....grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of

this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case."

19. In *State of Jharkhand v. Jitendra Kumar Srivastava* reported in 2013 (12) SCC 210 = AIR 2013 SC 3383, Rule 43(b) of the Bihar Pension Rules, came up for consideration, before the Hon'ble Apex Court. Rule 9 of the CCS (Pension) Rules, confers powers on the President to withhold, withdraw or recover from pension, as stated supra. Whereas, Rule 43(b) of the Bihar Pension Rules, reserves right to the State Government. After considering the above judgments, the Hon'ble Supreme Court held that as per Rule 43(b), it is permissible for the Government to withhold pension etc., only when a finding is recorded, either in the departmental inquiry or judicial proceedings that the employee had committed a grave misconduct in the discharge of his duty while in his office. Such is not the case of the 1st respondent herein.

20. Proceedings instituted by the wife in F.C.O.P.No.154 of 2007, on the file of the Family Court, Salem and O.S.No.11 of 2010, on the file of the Family Court, Salem, are certainly judicial proceedings, but the question now to be considered, is whether the said proceedings would fall within the ambit of Sub-Rules 4 and 6 of Rule 9 of the CCS (Pension) Rules. The departmental proceedings or judicial proceedings, referred to in rule 9(1) of the CCS (Pension) Rules, are intended to arrive at a finding of guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. It could be either criminal proceedings or civil proceedings, as the case may be, as defined in sub-Rule (6) (b) of the abovesaid Rules.

21. A conjoint reading of Rules 9(1), 9(4) and 9(6) of the CCS (Pension) Rules, indicate that the departmental or judicial proceedings, instituted or to be instituted, within the time provided for therein, should be with reference to any grave misconduct or negligence, during the period of service, including the service rendered upon re-employment, after retirement. Rule 9(1) of the Rules is the genus and sub-rules 9(4) and 9(6) are the species. Explanation given to the words, "departmental proceeding" and "judicial proceeding", including a civil proceeding, should be in relation to what is mentioned in rule 9(1) of the Rules and the right of the President to (1)

withhold pension, (2) withdraw from pension, or (3) order of recovery, from pension, the whole or part, can be exercised, only when a finding of guilty of misconduct or negligence is arrived at, in such proceedings.

22. Even taking it for granted that the suit in O.S.No.11 of 2010, instituted by the wife of the 1st respondent, against the writ petitioners and her husband, 1st respondent herein, as one falling under the definition "judicial proceedings, in common parlance, when the said proceedings are considered, with reference to what is specifically stated in rule 9(1) of the CCS (Pension) Rules, in our considered view, they do not fall within the ambit of Rule 9(1) of the CCS (Pension) Rules, enabling the authorities to exercise their powers, under rule 9(1) or 9(4) of the Rules, as the case may be. However, there could be an order against a garnishee, if a third party invokes the jurisdiction under Section 9 of the Code of Civil Proceedings, subject to the other provisions of the case. But from the material on record, it could be deduced that there is no interim order, restraining the writ petitioners, from disbursing the retiral benefits to the 1st respondent. There is no order, restraining the 1st respondent from receiving the pension. It is not known, as to when, the civil proceedings would terminate. It is well known that an appeal is a continuation of the original proceedings. Already four years have lapsed, since retirement.

24. In the light of the discussion and decisions, stated supra, we are not inclined to interfere with the order, impugned in this writ petition and accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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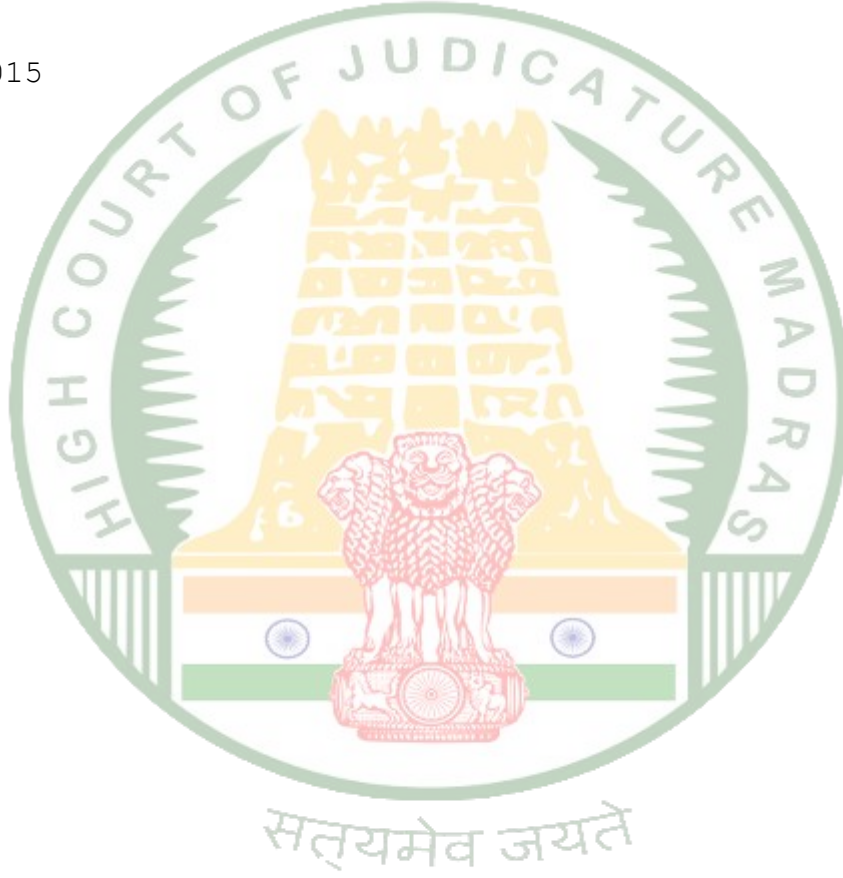
To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1 cc to Mr.R.Venkatesh Advocate sr.60161

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