

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2015

CORAM

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

W.P.No. 25554 of 2015
and
M.P. No. 1 of 2015

1. Union of India
Rep. by Principal Controller
of Communication Accounts
Ministry of Communication & IT
238 R.K.Nagar
Telephone Exchange Bldg.
R.K.Mutt Road Ch-28.
2. The Joint Controller of
Communication Accounts
O/o. Controller of
Communication Accounts
Tamil Nadu Circle
No.60 Ethiraj Salai
Chennai-8.
3. The Deputy Controller of
Communication Accounts
O/o. Controller of Communication Accounts
No.238 R.K.Nagar
Telephone Exchange Building
R.K. Mutt Road
Chennai-28.
4. The Chief General Manager
BSNL Anna Salai
Chennai-2.
5. The General Manager
(Admin & HR) BSNL
Erode-638001.

... Petitioners

Vs.

1. D.Sowbagiamani
Wife of Ramasamy
No.46/2 Vinayagarkoil Street
7th Cross Moolapalayam
Erode- 638002.
2. The Central Administrative Tribunal
Rep. by its Registrar
Madras Bench
Chennai-104.

... Respondents

PRAYER: Petitions filed under Article 226 of the Constitution of India for a Writ of Certiorari, calling for the records of the 2nd respondent and quash the order dated 30.10.2014 made in O.A. No.738/2013.

For Petitioners : Mr.V.P. Sengottuvel
For Respondents : Mr. R. Malaichamy,
for R1
R2- Tribunal

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.,)

Challenge in this Writ Petition is to the order of the Central Administrative Tribunal, Madras Bench in O.A. No. 738 of 2013 dated 30.10.2014 by which, the Central Administrative Tribunal, Madras Bench, has directed the writ petitioners to make payment of monthly pension including the arrears due, within three months from the date of receipt of the said order. The Central Administrative Tribunal, Madras Bench has made it clear that if the payment of arrears is not made within the said period, then, interest will be payable at 9% on the arrears, from the period due and payable, till the date of actual payment. It has also made clear that it would be open to the writ petitioners to take any action as per law, depending upon the outcome of the verification of the community certificate.

2. Facts leading to the writ petition are that Department of Telecommunications (DOT, in short) now BSNL, invited applications for the post of Telephone Operator, for vacancies, of the year 1977. The first respondent had applied for the said post under ST quota and

selected, subject to verification of community status. The Divisional Engineer (Phones), Erode has forwarded her certificate to the District Collector, Dharmapuri for verification. According to the first respondent, responding to the request, the District Collector, Dharmapuri has confirmed the issuance of Konda Reddy ST Community Certificate. After confirmation, she was permitted to join duty on 19.06.1979.

3. Before the Central Administrative Tribunal, Madras Bench, the first respondent has further contended that in 1981, her community certificate was once again forwarded to the District Revenue Officer, Dharmapuri. Without any intimation, the said Officer conducted an enquiry and vide his letter dated 22.12.1981, informed the Department of Telecommunication, that the first respondent does not belong to ST Community and that the Certificate produced by her was false.

4. On the basis of the report of the District Revenue Officer, Dharmapuri dated 22.12.1981, the Disciplinary Authority initiated departmental proceedings under Section 14 of CCS (CCA) Rules, 1965. After a detailed enquiry, the Inquiry Officer submitted his report dated 27.01.2000 holding that the charges levelled against the first respondent, was not proved. Accepting the same, the Disciplinary Authority, vide order dated 28.03.2001 exonerated the first respondent. There was no review.

5. When the matter stood thus, vide order dated 31.01.2012, of the General Manager (Admn & HR), BSNL, Erode, the 5th petitioner herein, the first respondent was permitted to retire, subject to the receipt of the Presidential orders for her absorption in BSNL, and pending verification of the community certificate by the District Collector, Dharmapuri. Subsequently, by order dated 14.02.2012, she was permanently absorbed in BSNL, from 01.10.2000 Forenoon.

6. Before the Central Administrative Tribunal, Madras Bench, the first respondent has further submitted that, after the order of absorption dated 14.02.2012, she made a representation dated 06.03.2012 to the General Manager (Admn & HR), BSNL, Erode, the 5th petitioner herein, seeking disbursement of her retiral benefits. The Deputy Controller of Communication Accounts, Office of the Controller of Communication Accounts, Tamilnadu Circle, the third petitioner herein, also authorised payment of retirement benefits, by an order dated 07.03.2012, whereby DCRG and commutation amount was ordered to be paid. However, on finalisation of pension, 40% of the commuted value of pension alone was sanctioned by the General Manager (Admn &

HR), BSNL, Erode, the 5th petitioner herein. Though, as per Rule 65 of the Pension Rules, 1972, on finalisation of pension, Pension Payment Order, ought to have been issued by the Principal Controller of Communication Accounts, Ministry of Communication & Information Technology, Chennai, the same was not issued.

7. It was the further case of the first respondent that the entire DCRG and other terminal benefits ought to have been paid to her. She has also stated that verification of Community Certificate had already reached its finality in 2001 itself, and that there was no need for re-verification.

8. She has also contended that though the Deputy Controller of Communication Accounts, Office of the Controller of Communication Accounts, Tamilnadu Circle, the third petitioner herein, by his letter dated 05.09.2012 directed the General Manager (Admn & HR), BSNL, Erode, the 5th petitioner herein, to send the proposal for provisional pension, and accordingly, when he had also communicated the same to her, through the Assistant General Manager (Admn & HR), BSNL, Erode, by order dated 02.11.2012, the first petitioner has not paid the pension, despite several reminders. Her Community Certificate dated 26.05.1978 was not cancelled. In the above said circumstances, the first respondent has filed O.A. No.738 of 2013 on the file of the Central Administrative Tribunal, Madras Bench, for a direction to the writ petitioners to pay monthly pension from 01.02.2012 and also to direct the petitioners to pay the arrears of pension, with interest, at the rate of 24% per annum, from 01.02.2012, till the payment of pension.

9. Opposing the prayer sought for, the writ petitioners in the reply affidavit have submitted that it is open to them to verify the genuineness of the community certificate at any time, through the District Collector, Dharmapuri, who is the authority to confirm its genuineness. They had also referred to the order in W.P. No.14852 of 2003 dated 27.07.2005 passed by this Court. According to the writ petitioners, the Inquiry Officer, is not the competent authority, empowered to decide the genuineness of the community certificate and that the same has to be done only by the revenue authorities and that verification of the community certificate was pending with the District Collector, Dharmapuri. It is the further case of the Writ Petitioners that, in as much as, verification of the community certificate was pending with the District Collector, Dharmapuri, withholding of her pension, was justified. They have also submitted that release of Pension Payment Order was kept in abeyance, in view of the letter dated 24.02.2012 of BSNL, Erode. For the abovesaid

reasons, they have prayed for dismissal of the Original Application.

10. Adverting to the above said submissions and contentions, and placing reliance on the following case laws rendered in Sri Krishna Gopal vs. UOI & Ors. in O.A. No.420 of 1995 decided by Lucknow Bench of CAT on 16.01.2003; M. Sivaramu vs. UOI & Anr., in O.A. No. 865/2008 decided by Madras Bench of CAT on ...02.2009; and State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr. In CA Nos. 6770 and 6771 of 2013 on 14.08.2013 and the parimateria Rule 43 (b) of the Bihar Pension Rules, which makes it clear that even after the conclusion of the departmental enquiry, it is still possible for the Government to withhold pension etc., only if a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed a grave misconduct in the discharge of his duty while in service, the Central Administrative Tribunal, Madras Bench, vide order in O.A. No.738/2013 dated 30.10.2014 held that the writ petitioners, cannot withhold the payment of pension to the first respondent, after her retirement. Accordingly, the writ petitioners have been directed to make payment of monthly pension including the arrears due to the first respondent, within a period of three months from the date of receipt of that order. The Central Administrative Tribunal, Madras Bench has further ordered that if the payment of arrears is not made within the period of three months, then, the interest liable to be paid by the writ petitioners would be at 9% on the arrears, from the date of passing of the order, till the date of actual payment.

11. Being aggrieved by the directions of the Central Administrative Tribunal, Madras Bench, the petitioners have filed this Writ Petition.

12. Though Mr. V.P. Sengottuvel, learned counsel for the petitioners assailed the correctness of the order of the Central Administrative Tribunal, Madras Bench, on the grounds, inter alia, that the first respondent is a BSNL retiree and thus covered by Rule 37 A of CCS (Pension) Rules, 1972 and as per Rule 69 of the said rules, pension can be withheld, if the government servant has been found guilty of a grave misconduct and further contended that as per Rule 69(1) of the CCS (Pension) Rules, where departmental or judicial proceedings are pending, no gratuity shall be paid until the conclusion of the departmental or judicial proceedings and issue of final orders thereon, this Court is not inclined to accept the above said contentions, for the reason that, on the facts and circumstances of this case, immediately, after the selection of the first respondent to the post of Telephone Operator, certificate

verification seemed to have been done and thereafter, she had joined duty on 19.06.1979. It is the case of the first respondent that notwithstanding the above, her community certificate was once again, forwarded to the Revenue Department for verification and this time, without her knowledge and intimation, the District Revenue Officer, Dharmapuri had sent a letter dated 22.12.1981, informing the department that the first respondent does not belong to the ST community and that the certificate produced by her was false. According to her, the community certificate issued by the Tahsildar dated 29.05.1978 was not, cancelled. However, based on the report of the District Revenue Officer, Dharmapuri dated 22.12.1981, charges have been framed under Rule 14 of the CCS (CCA) Rules. The Inquiry Officer and Divisional Engineer, Telecom (Rural), Coimbatore vide his report dated 27.01.2000 has held that the alleged misconduct was not proved. Accepting the same, the Disciplinary Authority and Divisional Engineer (Commercial) Office of the General Manager, Telecom, Erode -1, has exonerated the first respondent, of the charges. Thus, the above said disciplinary proceedings initiated in the year 2001, have reached a finality.

13. Material on record further discloses that the first respondent had been working continuously from 2001, till she reached the age of retirement, vide Memo No. E72/RET/Non-EXE/10-11/44 dated at Erode, the 31.01.2012 of the General Manager (Admn & HR), BSNL, Erode, the 5th petitioner, she has been permitted to retire provisionally from services, on the afternoon of 31.01.2012, pending receipt of the Presidential orders for absorption in BSNL and pending verification of the community certificate by the District Collector, Dharmapuri.

14. Though, the General Manager (Admn & HR), BSNL, Erode, the 5th petitioner, in his memo dated 31.01.2012, has stated that the first respondent was permitted to retire provisionally from services on 31.01.2012, subject to the verification of community certificate, by the District Collector, Dharmapuri, there is no reference to any proceedings or letter, requesting the District Collector, Dharmapuri to make verification of the community certificate. Even in the proceedings of the Senior Accounts Officer, (TA & Wks), Office of the General Manager, BSNL, Erode 638 001 dated 24.02.2012 addressed to the Deputy CCA, DOT Cell, Office of the Chief General Manager, BSNL, Chennai, there is no reference to any proceedings or letter, requesting the District Collector, Dharmapuri, to make verification of the community certificate. In both the proceedings dated 31.01.2012 i.e. memo of the General Manager (Admn & HR), BSNL, Erode, the 5th petitioner, permitting the first respondent to retire and the

proceedings of the Senior Accounts Officer, (TA & Wks), Office of the General Manager, BSNL, Erode 638 001 dated 24.02.2012, there is absolutely no reference or indication, as to when the District Collector, Dharmapuri was directed to verify the community certificate. As stated supra, disciplinary proceedings have reached finality in the year 2001 and that the disciplinary authority had also exonerated the first respondent of the charges. There is no review of the order dated 28.03.2001 of the disciplinary authority. While that be the case, it can be safely concluded that the disciplinary proceedings have reached finality in the year 2001.

15. Though Mr. V.P. Sengottuvel, learned Central Government Standing Counsel, contended that retiral benefits and pension can be withheld in terms of Rule 9 of the CCS (Pension) Rules, 1972, if the Government servant is found guilty, the said submission can be accepted only if the departmental or judicial proceedings, are instituted while the Government servant was in service or if the same was instituted in service, as per Rule 9 (2) (b) (ii), of the CCS (Pension) Rules, 1972. Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be in respect of any event, which took place, more than four years before such institution.

16. Admittedly, no disciplinary or judicial proceedings were pending on 31.01.2012, when the first respondent was permitted to retire. None of the Pension Rules quoted by the writ petitioners, can be made applicable against the first respondent, for withholding the retiral benefits. Disciplinary proceedings taken against the first respondent has reached finality in 2001. In the light of Rule 9(2)(b)(ii), no fresh disciplinary proceedings can be taken against the first respondent, for an event which occurred four years before such institution. Moreover, as stated supra, in the case on hand, such proceedings for the said alleged event, had already been initiated and that she has also been exonerated and therefore, withholding of retiral benefits is contrary to rules.

17. Neither in the counter affidavit filed before the Central Administrative Tribunal, Madras Bench, nor in the typeset of papers, the writ petitioners, have specifically mentioned the date on which they have requested the District Collector, Dharmapuri, for verification of the community certificate. There is no material to show that they have sent any communication to the District Collector, Dharmapuri, requesting him, to verify the community certificate. If there was any request, then it should have been

followed up by a reminder. There is no material, as to whether any reminder has been sent to the District Collector, Dharmapuri, but a bald statement has been made as if the matter is pending with the District Collector, Dharmapuri, for a long time. Even taking into granted, they had requested the District Collector, Dharmapuri to verify the community status at this length of time, it would not serve the purpose, for which it was sought for. For the reasons stated supra, the writ petitioners are not justified in denying retirement benefits to the first respondent.

18. The Central Administrative Tribunal, Madras Bench has awarded 9% interest on the arrears, from the period due and payable, till the date of actual payment. Interest awarded by the Central Administrative Tribunal, Madras Bench, can be justified, in terms of the judgments of the Hon'ble Supreme Court in the case of Dr.Uma Agarwal v. State of U.P., reported in (1999) 3 SCC 438 and S.K.Due v. State of Haryana reported in 2008 (3) SCC 44.

19. It is worth while to extract the decisions of the Hon'ble Apex Court in Dr.Uma Agarwal v. State of U.P., reported in (1999) 3 SCC 438, wherein it is held as follows :

"....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."

In the reported case, of the Hon'ble Supreme Court in S.K.Due v. State of Haryana reported in 2008 (3) SCC 44, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed

payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

A Hon'ble Division Bench of this Court following the above cases in Government of India vs. M. Deivasigamani, reported in 2009 (3) MLJ, held as follows :

"7. In view of the judgment of the Hon'ble Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution. "

20. In the light of the above decisions and discussion, the Writ Petitioners have not made out a case and hence the Writ Petition is dismissed and the order made in O.A. No. 738 of 2013 dated 30.10.2014 is sustained. Consequently, the writ petitioners are

directed to make payment of the monthly pension including the arrears due, with interest, within three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS II)

//True Copy//

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To

Sub Assistant Registrar

1. The Principal Controller
Union of India of Communication Accounts
Ministry of Communication & IT
238 R.K.Nagar, Telephone Exchange Bldg.
R.K.Mutt Road Ch-28.
2. The Joint Controller of Communication Accounts
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5. The General Manager
(Admin & HR) BSNL
Erode-638001.

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.50202
+1cc to Mr.R.Malaichamy, Advocate, S.R.No.50132

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W.P.No. 25554 of 2015
and
M.P. No. 1 of 2015

SK(CO)
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