

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2015

CORAM

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

W.P.No.26811 of 2015
and
M.P.Nos.1 and 2 of 2015

Union of India rep.by
1.The Post Master General,
Western Region,
Coimbatore-641 002.

2.Senior Superintendent of Post Offices,
Salem East Division,
Salem-636 001.

...Petitioners

Vs

A.Gunasekaran

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records of the order dated 04.12.2014 in O.A/310/01176/2014 on the file of the Central Administrative Tribunal, Chennai, and to quash the same.

For Petitioners : Mr.V.Balasubramanian

सत्यमेव जयते
ORDER

S.MANIKUMAR, J.

Being aggrieved by the proceedings in Memo.No.F1-4/IV/ 2011-12, dated 27.06.2014, issued by the Superintendent of Post Offices, Salem East Division, Salem, the 2nd petitioner herein, the respondent has filed O.A.No.1176 of 2014 before the Central Administrative Tribunal, Madras Bench, to quash the same and to settle all the retirement service benefits including the pension with interest. He has also filed O.A.No.919 of 2014, challenging the order made in No.F1-

4/IV/2011-12, dated 23.06.2014, to quash the same and consequently, praying for a direction to the 2nd petitioner, to refund the amount of recovery, if any, to the petitioners with interest, @ 12% per annum. As both the Original Applications are interlinked the pleadings and submissions are common, the Central Administrative Tribunal, Madras Branch, has disposed of the above said Original Applications, by a Common Order dated 04.12.2014.

2. Being aggrieved by the order made in OA/310/01176/2014, the Post Master General, Western Region, Coimbatore, the 1st petitioner herein and the Senior Superintendent of Post Offices, Salem East Division, Salem, the 2nd petitioner herein, have filed the present WP No.26811 of 2015.

Facts deduced from the material on record of the common order are as follows:

3. The respondent, while was working as a Senior Supervisor, SBCO Section in Salem Head Post Office in an officiating capacity from 01.01.2011, vide order dated 23.04.2014, the Superintendent of Post Offices, Salem East Division, Salem, the 2nd petitioner, directed him to credit a sum of Rs.3,96,009/- into the post office account before 25.06.2014, for the reason that the respondent was identified as one of the subsidiary offenders for the multiple frauds committed by one T.M.Santhanam, who was working as a Sub-Post Master (SPM), Kootathupatti, failing which suitable disciplinary action would be initiated against him.

4. In response to the above, the respondent has submitted a detailed reply dated 27.06.2014 to the Senior Superintendent of Post Offices, Salem East Division, Salem, denying the allegations made. However, he was directed to credit the said amount of Rs.3,96,009/-, being the proportionate percentage of share of defrauded amount by T.M.Santhanam, as contributory negligence. The said order is challenged in O.A.No.919 of 2014. While so, the Senior Superintendent of Post Offices, Salem East Division, Salem, 2nd petitioner, has issued a Charge Memo dated 27.06.2014, to the respondent, under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, at the verge of his retirement on 30.06.2014. The said order is challenged in O.A.No.1176 of 2014.

5. Responding to the Charge Memo dated 23.06.2014, the respondent has submitted a representation dated 30.06.2014, to the Senior Superintendent of Post Offices, Salem East Division, Salem, requesting to retain his Gratuity amount to an extent of Rs.3,96,009/- as mentioned in the Charge Memo dated 23.06.2014, till

the disposal of the disciplinary cases initiated against him and sought for a direction to settle all other service benefits, such as, commutation of pension, encashment of leave, CGIES, GPF, etc., He has further submitted a representation dated 11.07.2014 to the Senior Superintendent of Post Offices, Salem East Division, Salem. A representation dated 02.08.2014 was also sent to the Post Master General, Western Region, Coimbatore, 1st petitioner, requesting to settle the retirement benefits, except the amount of Rs.3,96,009/-, subject to the outcome of the disciplinary proceedings. In the meantime, T.M.Santhanam, was placed under suspension by the Senior Superintendent of Post Offices, Salem East Division, Salem, 2nd petitioner, vide memo dated 26.05.2012. He was also issued with a Charge Memo dated 25.03.2013 under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

6.It is the further case of the respondent that during the preliminary investigation, the said T.M.Santhanam has admitted that he only has committed the said fraud and further, he had agreed to credit the entire defrauded amount into the post office account. Before the Central Administrative Tribunal, Madras Bench, the respondent has further submitted that instead of recovering the defrauded amount from T.M.Santhanam, the petitioners have erroneously issued an order dated 23.06.2014 to recover amount from the respondent. He has also contended that initiation of disciplinary proceedings by issuing a Charge Memo dated 23.06.2014 to the respondent, under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, is erroneous and violative of the principles of natural justice.

7.Material on record further discloses that the petitioners, by filing a counter affidavit, have contended that disciplinary proceedings initiated under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, vide SPOs Memo No.F1-4/IV/2011-2012, dated 27.06.2014, is pending. According to them, pension and other benefits would be automatically ceased, till finalizing the pending disciplinary proceedings. Reference has been made to FR and SR Leave Rules 39(3), wherein it is stated that the Authority to grant leave may withhold whole or part of cash equivalent to earned leave in the case of a Government servant, who retires from service on attaining the age of retirement, while under suspension or while disciplinary or criminal proceedings are pending against him.

8.Contention has also been made by the petitioners that the Earned Leave Encashment was not granted by the Authority since the

disciplinary proceedings was pending against the respondent. Petitioners have further contended that in respect of CGEGIS, a sum of Rs.48,699/- has been paid to the respondent on 22.09.2014 and final withdrawal of GPF of Rs.5,646/- was also paid to the respondent on 30.07.2014.

9.The petitioners have further contended that since the respondent had denied his contribution as subsidiary offender in the fraud alleged to have been committed by T.M.Santhanam, the respondent was permitted to retire from service under Rule 9 of the CCS Pension Rules, 1972, on 30.06.2014. The petitioners have also submitted that reasonable opportunity would be provided to the respondent during disciplinary proceedings. For the reasons stated supra, they have prayed for dismissal of the Original Applications.

10.Material on record discloses that by way of rejoinder, the respondent submitted that it would not be reasonable to retain or withhold the pensionary and retirement benefits, and that they have to be released, in the light of provisions under Rule 73 of the CCS (CCA) Pension Rules, 1972, and Rule 60 of Government of India Decisions (1) 2(a). It is also contended that Rule 39(3) of CCS (Leave) Rules, regarding encashment of leave, Rule 4 of CCS (CP) Rules regarding commutation of pension and Rule 69 (1)(c) regarding retirement gratuity, have no application to the facts of the case, for the reason that for the alleged misconduct of the respondent, a sum of Rs.3,96,009/-, alleged as the proportionate share of defrauded amount towards contributory negligence of the respondent, has already been withheld by the petitioners.

11.After hearing the rival contentions and the rules stated supra, the Central Administrative Tribunal, Madras Bench, at Paras 10 to 12, has passed the following orders.

"10.When the matter is taken up for hearing, counsel for the applicant submitted that since the applicant has retired on 30.06.2014, direction may be given to the respondents that except the disputed amount of Rs.3,96,009/-, to disburse all the retirement service benefits to the applicant, including pension and further to conclude the entire proceedings, within a time frame.

11.For the aforesaid reasons, we also feel it appropriate to issue direction to the respondents to disburse all the remaining retirement service benefits to the applicant, including pension, as per the provisions, except the disputed amount of Rs.3,96,009/- and further to conclude the entire proceedings within a stipulated time.

12. Accordingly, we direct the respondents to conclude the entire disciplinary proceedings and to pass final orders, within a period of six months, from the date of receipt of a copy of this order. The applicant is also directed to co-operate with the Inquiry proceedings for earlier finalization and disposal of the entire proceedings. Further, the respondents are directed to retain only the disputed amount of Rs.3,96,009/-, till the disposal of the abovesaid disciplinary proceedings and to disburse all the remaining retirement service benefits to the applicant, including pension, as per the provisions, within a period of one month, from the date of receipt of a copy of this order."

12. Though Mr.V.Balasubramanian, learned counsel for the petitioners, has assailed the correctness of the order made in O.A.No.1176 of 2014, dated 04.12.2014 on the grounds inter alia that Rule 69(b)(c) of the Central Civil Services (Pension) Rules, does not contemplate disbursement of the retirement benefits to the respondent, against whom a disciplinary case is pending, and further contended that when the Central Administrative Tribunal, Madras Bench, has directed the petitioners to proceed with the disciplinary proceedings initiated under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, the abovesaid directions ought not to have been given, this Court is not inclined to accept the said contentions, for the reasons that vide order dated 23.06.2014, of the Superintendent of Post Offices, Salem East Division, Salem, petitioner No.2, a direction has already been issued to withhold a sum of Rs.3,96,009/- and that the respondent has been directed to credit the said sum into the post office account before 25.06.2014.

13. Material on record further discloses that during the preliminary investigation, T.M.Santhanam has also admitted that he only has defrauded and agreed to credit the entire defrauded amount into the post office account.

14. At this juncture, it is also worthwhile to consider a decision of the Hon'ble Division Bench of this Court in Y.Raja V. Joint Registrar of Co-operative Societies, Madurai Region, Madurai in 2011 (1) CTC 18.

15. Admittedly, in the case on hand, the respondent, has been permitted to go on retirement on attaining the age of superannuation on 30.06.2014, under Rule 9 of the Central Civil Services (Pension)

Rules, 1972.

16.Thus, from the facts extracted supra, it could be seen that the petitioners have initiated disciplinary proceedings, against the respondent and Mr.T.M.Santhanam, vide Charge Memos dated 27.06.2014 and 25.03.2014, respectively, under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

17.Going through the material on record, it could be deduced that the respondent was not placed under suspension, during tenure of the preliminary investigation by the Senior Superintendent of Post Offices, Salem East Division, Salem, whereas T.M.Santhanam, has been placed under suspension on 25.06.2012, and subsequently, during the preliminary enquiry, the said T.M.Santhanam has also admitted that he had only committed the said fraud and agreed to credit the entire defrauded amount into the post office account. Insofar as the alleged amount of Rs.3,96,009/-, being the proportionate percentage of share of the defrauded amount towards the alleged contributory negligence, by the respondent is concerned, the respondent has been directed to credit the said sum of Rs.3,96,009/- into the post office account on or before 25.06.2014. The allegation of the Writ Petitioners is that the respondent was also identified as one of the subsidiary offenders for the multiple frauds committed by T.M.Santhanam, who was working as a Sub-Post Master (SPM), Kootathupatti and when the petitioners have been given liberty to proceed with the disciplinary proceedings, and to pass final orders within a period of six months from the date of receipt of a copy of the Common Order made in OA/310/01176/2014 and O.A./310/00919/2014, there is no reason as to why the other retirement benefits, due and payable to the respondent should be withheld. Thus, accordingly, the Central Administrative Tribunal, Madras Branch, vide Common Order dated 04.12.2014, has directed the Writ Petitioners to retain only the disputed amount of Rs.3,96,009/- till the disposal of the disciplinary proceedings and directed to disburse all the other retirement benefits within one month from the date of receipt of a copy of the Common order.

18.As per the supporting affidavit of the Writ Petitioners, details of the retirement benefits due and payable to the respondent, as set out in the Writ Petition, are as follows:

"10.The present status of the case is as follows:

It is submitted with respect in due obedience to the order of the CAT the respondent was paid the following.

Decision taken by the Government in favour of the applicant Shri.A.Gunasekaran regarding the disposal of

retirement benefits, as ordered by the Hon'ble CAT are as follows:

Name of the retirement benefit	Disposal/Present Status
CGEGIS and GPF	In respect of CGEGIS a sum of Rs.48,699/- was paid to the applicant, Shri.A.Gunasekaran on 22.09.2014 and final withdrawal of GPF for Rs.5,646/- was paid on 30.07.2014.
EL Encashment on leave salary	Regarding the disposal of this benefit to the applicant Shri.A.Gunasekaran, a sum of Rs.4,20,800/- was paid to him on 08.05.2015.

The details of retirement benefits that could not be disbursed to ShriA.Gunasekaran, as a disciplinary case is pending against him:

Name of the retirement benefit	Disposal/Present Status
Retirement Gratuity-Rs.6,94,320 Commutation-Rs.4,13,765/-	The disbursement of retirement gratuity and commutation to Shri.A.Gunasekaran could not be possible at this stage as there is no provision in rules (Rule 69 of CCS (Pension) Rules, 1972) to do as such. Whenever a disciplinary case is pending against any of the official the authority of pension/gratuity, commutation will not be released by the General Manager, Postal Accounts & Finance, Chennai, as per the provisions in rules, till the finalization of the disciplinary proceeding. With regards to this case the disciplinary case against the applicant is at the stage of perusal of documents only and not yet concluded.

19.Going through the material on record with reference to the provisions stated supra, we do not find that the Central Administrative Tribunal, Madras Bench, has committed any gross error in directing the Writ Petitioners, to disburse all other retirement benefits to the respondent and to continue the disciplinary proceedings initiated against the respondent, under Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, 1965, and to retain the disputed amount of Rs.3,96,009/- till the disposal of the same.

For the reasons stated supra, we are not inclined to interfere with the impugned order. The Writ Petition is dismissed. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mps/ars

To

The Central Administrative Tribunal,
Chennai.

2 CCs to Mr.V.Balasubramanian, Advocate SR.No. 45954

सत्यमेव जयते

W.P.No.26811 of 2015
and M.P.Nos.1 and 2 of 2015

KM (CO)
PSI (25.09.2015)

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