

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.5728 of 2013

P.Gopalakrishnan

... Petitioner

Vs.

1. Union of India,
Rep. by Secretary to Government,
Ministry of Communication,
Department of Post,
New Delhi - 110 001
2. Director of Postal Services,
O/o Postmaster General,
Southern Region,
Madurai - 625 002.
3. Senior Superintendent of Post Offices,
RMS 'MA' Division,
Madurai - 625 001.
4. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

... Respondents

Writ Petition filed under Section 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the 4th respondent pertaining to his order made in O.A.No.288 of 2010 dated 27.04.2011 insofar as the order relating to withholding DCRG land Pension till the completion of trial in the criminal cases and quash the same consequently to direct the respondents 1 to 3 to pay the terminal benefits including regular pension to the petitioner with interest at the rate of 12% per annum.

For petitioner : Mr.R.Malaichamy

For respondents : Mr.V.T.Balaji for R1 to R3

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH, J.)

The petitioner has filed the Writ Petition challenging the order passed by the Tribunal made in O.A.No.288/2010 dated 27.4.2011 and to further direct the respondents 1 to 3 to pay him the terminal benefits including regular pension with interest at the rate of 12% per annum.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents 1 to 3.

3. It appears that the petitioner is involved in three criminal cases viz., C.C.No.31/2004, C.C.No.36/2005, and C.C.No.6/2007 and thus, the retiral benefits of the petitioner were withheld. The Tribunal, found that the respondents are right in withholding the DCRG and pension till the completion of the trial in the criminal cases. However, the Tribunal, found that there is no impediment to release the retiral benefits such as GPF, CGEGIS and leave encashment benefits which are due to the petitioner as per the Rules and any other benefits like pay arrears arising out of implementation of the 6th Pay Commission recommendation, except the pension and DCRG due to the applicant.

4. Learned counsel for the petitioner submitted that the petitioner had entered into sale agreement on 18.05.2004 with one Smt.A.M.Tharcilamma to purchase a house site. Subsequently, the petitioner came to know that one Smt.Silviya, impersonated Smt.A.M.Tharcilamma and had signed the sale Agreement. Therefore, the petitioner cancelled the said agreement on 10.11.2004. However, the real owner had made a complaint to the police authority and the police have initiated action against the petitioner. The petitioner was kept in police custody for more than 48 hours. In view of the same, as per the Tamil Nadu Government Servants Conduct Rules, the petitioner was placed under suspension with effect from 17.09.2008 vide memo dated 29.09.2008. Learned counsel further submitted that the petitioner did not commit any misconduct or cause loss to the department. There was a dispute in respect of purchase of property. It is further submitted that since the charge sheet filed by the police as against the petitioner in the year 2007 itself did not reach conclusion, an order of withholding of the retirement benefits was passed. By the impugned order, the Tribunal, while granting relief directing release of most of the benefits, however, did not grant the relief of release of DCRG and pension.

5. It is not in dispute that the agreement entered into between the parties, viz., the petitioner and one Smt.A.M.Tharcilammal was subsequently, cancelled. Insofar as cancelling the agreement entered into, the question of seeking permission under Rule 18(2) of the Tamil Nadu Government servants Conduct Rules does not arise. Therefore, it cannot be pleaded that is violation of the Conduct Rules. It is also evident that the Department has also not taken any action by initiating departmental proceedings against the petitioner as it is purely a matter of private contract between the petitioner and a third person. In such view of the matter, the question of withholding of DCRG & pensionary benefits does not stand attracted.

6. It is trite law that gratuity and pension are not bounties and they are benefits earned by an employee by dint of his long, continuous, faithful and unblemished service. In this context, it is useful to refer to the decision of the Apex Court in State of Jharkhand v. Jitendra Kumar Srivastava 2013 (12) SCC 210, wherein the Apex Court has outlined the circumstances under which the State can withhold the pension and gratuity. For better clarity, the relevant portion of the order is extracted hereunder:

It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. it is thus a hard earned benefit which accrues to an employee and is in the nature of of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

A person cannot be deprived of this pension without the authority of law which is the constitutional mandate enshrined in article 300-A of the constitution. it follows that attempt of the appellant State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

From a reading of the aforesaid Rule 43 (b) of the Bihar Pension Rules, 1950, following position emerges:

(i) The State Government has the power to withhold or withdraw pension or any part

of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this Rule to State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

As per the proviso to Rule 43(b) of the Bihar Pension Rules, 1950, for initiating proceedings, it puts some conditions i.e. department proceeding as indicated in rule 43 (b), if not instituted while the government servant was on duty, then it shall not be instituted except:

- (a) With the sanction of the Government,
- (b) It shall be in respect of an event which took place not more than four years before the institution of the proceedings.
- (c) Such proceedings shall be conducted by the enquiry officer in accordance with the proceedings by which dismissal of the services can be made.

Thus, insofar as the proviso is concerned that deals with condition for initiation of proceedings and the period of limitation within which such proceedings can be initiated.

Reading of rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Bihar Pension Rules, 1950 for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.

(Emphasis Supplied)

7. In the case on hand, it is evident from the record that the transaction between the petitioner and a third party is a private transaction. Further, no departmental proceedings has been initiated against the petitioner till date. Though the charge sheet has been filed as far back as in the year 2007, it has not reached its conclusion. In the above backdrop, there can be no legal justification for the respondents to withhold the pension and gratuity muchless when there is no provision for the same in the Tamil Nadu Government Servants Conduct Rules.

8. For the reasons stated above and in view of the decision of the Apex Court in Jitendra Kumar Srivastara Case (supra), the order passed by the Tribunal withholding pensionary benefits & DCRG cannot be sustained.

9. Accordingly, this writ petition is allowed with a direction to the respondents to release the DCRG and pensionary benefits to the petitioner within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

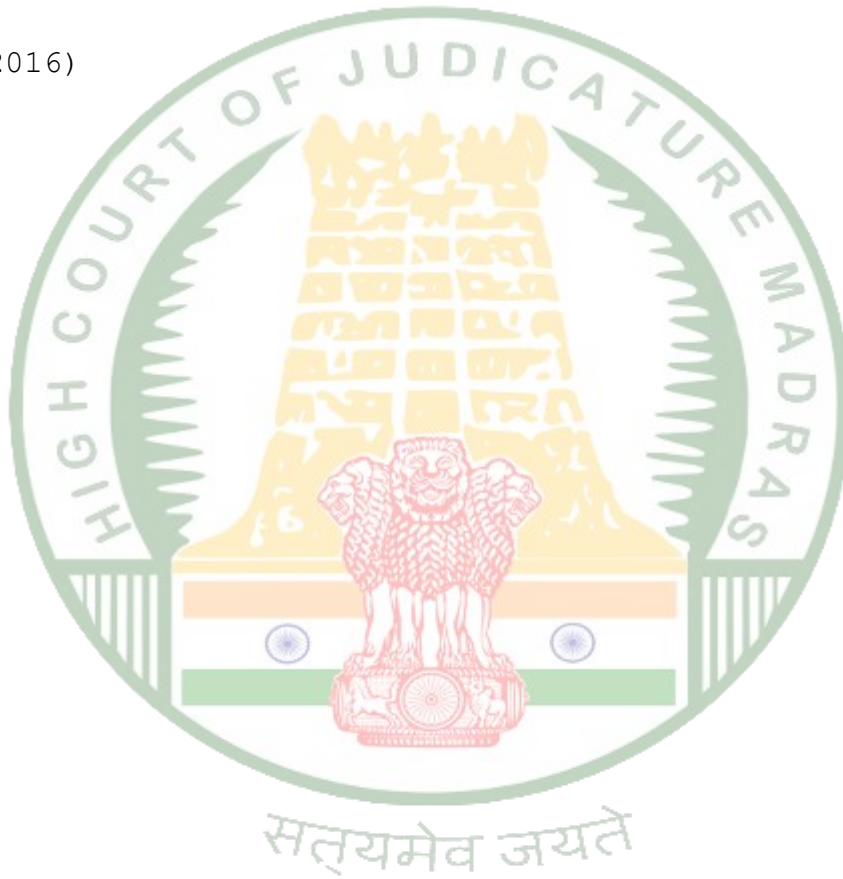
1. The Secretary to Government,
Union of India,
Ministry of Communication,
Department of Post,
New Delhi - 110 001
2. The Director of Postal Services,
O/o Postmaster General,
Southern Region,
Madurai - 625 002.
3. The Senior Superintendent of Post Offices,
RMS 'MA' Division,
Madurai - 625 001.

4. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

+1cc to Mr.R.Malaichamy, Advocate, S.R.No.24521
+1cc to Mr.V.T.Balaji, Advocate, S.R.No.24727

Writ Petition No.5728 of 2013

NR(CO)
CA(13/05/2016)



WEB COPY