

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
&
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.18282 of 2009
& M.P.No.1 of 2009

1. Union of India,
Southern Railway,
represented by General Manager,
Headquarters Office,
Chennai - 600 003,
2. Union of India, Southern Railway,
represented by Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Chennai - 600 003. .. Petitioners

- Vs -

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
2. M.Sivaraju .. Respondent

PETITION under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorari to call for the
records of the 1st respondent in O.A.No.865 of 2008 including the
Order dated 16.2.2009 and quash the same.

For Petitioners : Mr.V.G.Suresh Kumar

For Respondents : R1- Tribunal
R2- No Appearance

O R D E R

(Order of the Court was made by R.SUDHAKAR, J.)

Challenging the order passed by the Central
Administrative Tribunal, Chennai Bench dated 16.02.2009 in
O.A.No.865 of 2008 filed by the 2nd respondent herein, wherein,
the Tribunal directed the petitioner authorities to release the

terminal benefits by granting liberty to them to pursue any action as per law based on the outcome of the verification of the community certificate by the competent authority, the petitioners have filed the present Writ Petition.

2. The brief facts of the case are as follows:

The second respondent/applicant was recommended by Railway Service Commission, Madras for appointment against one Scheduled Tribe shortfall to the post of Law Assistant on 21.10.1978 on the basis of Community Certificate issued by the Tahsildar, Mylapore-Triplicane of Madras District on 29.06.1978 and he was appointed in Railways on 24.1.1979. Subsequently he was promoted as Chief Law Assistant on 7.7.1980. Since the SSLC Front Page of the 2nd respondent did not contain any entry regarding his community and he belongs to Trichy District, the District Collector, Trichy District was requested to verify his community. As the District Collector had stated that the 'Konda Reddy' community is non-existing one in Trichy District, the 2nd respondent was reverted to the post of Law Assistant with effect from 8.8.1980. As against the order of his reversion, the 2nd respondent filed W.P.No.1836 of 1981, wherein injunction was granted on 3.4.1981 in W.M.P.No.2593 of 1981 restraining the Railway Administration from de-reserving or exchanging ST post with SC. The Government of Tamil Nadu by their proceedings No.62779/ADW-VI/80-1 dated 3.9.1981 informed that the Collector of Trichy after having enquired the matter has reported that the 2nd respondent does not belong to 'Konda Reddy' community. A Charge memorandum dated 12.08.1982 was issued to the 2nd respondent for giving false declaration of his community. Challenging the said charge memorandum, the 2nd respondent filed W.P.No.6915 of 1982, which was dismissed by this Court on 2.9.1982 as withdrawn. By Penalty Advice dated 24.11.1982 bearing No.P(D)227/A3/287 dated 24.11.1982, the 2nd respondent was removed from service with effect from 1.12.1982 as per Railway Servants (Discipline & Appeal) Rules. Challenging the said Order dated 24.11.1982, the 2nd respondent filed W.P.No.9659 of 1982, wherein, interim stay was granted in W.M.P.No.14539 of 1982. The said writ petition was allowed by this Court and the matter was remanded for fresh enquiry as no order cancelling the community certificate of the 2nd respondent has been produced in the enquiry, by granting liberty to the authorities to pass suitable orders on production of records by respondents therein cancelling the community certificate and also ordered that until orders are passed by the competent authority, the services of the 2nd respondent cannot be terminated. As per the said order, the District Collector, Trichy, based on the relevant records held that the 2nd respondent does not belong to 'Konda Reddy' community but belongs to Reddiar and the community certificate of the 2nd respondent issued by the Tahsildar, Thuraiyur dated 4.8.1977 was cancelled under Collector's proceedings, dated

19.08.1985 bearing No.RC.M2.185972/82. In the meanwhile, W.P.No.1836 of 1981 filed by the 2nd respondent against his reversion from Chief Law Assistant to Law Assistant was transferred to Central Administrative Tribunal, Madras and numbered as O.A.No.47 of 1987, which was dismissed as it has become infructuous. W.P.No.9754 of 1985 filed by the 2nd respondent to quash the Order dated 19.8.1985 of the District Collector, Trichy was allowed by this Court on 21.11.1995 by setting aside the Order of the District Collector and remanding the matter for fresh disposal according to law.

3. At the time of superannuation of the 2nd respondent on 30.6.2008, as the issue regarding the community status was not finalized, an administrative decision was taken by the petitioners to withhold his settlement benefits since in case if it is proved that he does not belong to Scheduled Tribe community, his appointment itself will become void and in view of the decision of this Court in W.P.No.3299 of 2002 in Sri K.Meganathan vs. Union of India rep. by General Manager, Southern Railway to the effect that payment of pension and gratuity would depend upon to the outcome of the Order to be passed by the Committee to be newly constituted as per G.O.(Ms) No.111, Adi Dravidar and Tribal Welfare (ADW-10) Department dated 6.7.2005. Challenging the withholding of settlement benefits pending verification of his community status, the 2nd respondent filed O.A.No.865 of 2008 before the Tribunal.

4. The Tribunal, after hearing both sides, by Order dated 16.2.2009, allowed the application holding as follows:

"4. The applicant is admittedly a railway employee, and therefore, the disbursement of pensionary benefits to the applicant will be statutorily governed by the provisions of the rule cited supra. In the present case, we do not find any of the ground which is enumerated in the rule cited supra which can be said to be existing to enable the respondents to withhold the pension. The respondents have also not quoted any other rule or order under which they can withhold the pension of a retired employee, who is governed by Railway Services (Pension) Rules, 1993. In the absence of any statutory rule, the respondents have taken action on administrative grounds. Such action on the part of the respondents, which is beyond the specific provisions of the Railway Services (Pension) Rules, 1993, will not be legally sustainable.

Coming to the fact, we find that the High Court order in W.P. No.9754/85 was passed on 21.11.1995, the relevant part of the order is extracted below:

"In the result, this writ petition is allowed and the order passed by the respondent is hereby set aside and the

matter is remanded to the lower authority for fresh disposal according to law, after giving an opportunity to the writ petitioner to place documentary evidence, if any, in support of his claim that he belongs to certain community but in the circumstances without cost.'

From the above it may be seen that the cancellation of the order passed by the District Collector was set aside because no opportunity was given to the applicant to present his case. The applicant has retired on 30.6.2008. More than 13 years have gone-by since the passing of the order by Hon'ble High Court remanding the case for fresh disposal, till the date of filing of this OA on 01.12.2008. The respondents have not been able to get the matter properly verified as ordered by Hon'ble High Court even after long lapse of so many years. In the meantime, the applicant has superannuated and the respondents have also allowed him to superannuate and on the date of retirement no charges or disciplinary case are pending against the applicant. In such view of the matter, it may not be possible to ascertain as to how long the respondents will take to get the matter verified by competent authority as ordered by Hon'ble High Court. Withholding of pension and other terminal benefits of a retired employee for indefinite period is not supported by any law or rule. A retired person is expected to get his terminal benefits as per law within a reasonable period from the date of his retirement. Even on the date of final hearing also the respondents have not been able to enlighten as to whether they will be able to finalise the case within a prescribed time. More than seven months have gone after the applicant retired from service. Taking into consideration the above fact that the respondents have not been able to settle the matter for a period 13 years, we are of the opinion that the respondents will not be justified to withhold the pension indefinitely. They have not been able to indicate any time frame within which they can settle the pensionary benefits of the applicant.

6. From the above discussions, it may be seen that neither the pension rule supports the action of the respondents nor they are in a position to settle verification of community certificate even after lapse of 13 years. Reference to Writ Appeal cited supra by the respondents are based on a different set of facts than the facts of the case before us.

7. From the above discussions, we find that the railways have not passed the order under relevant rule, which isj applicable to the railway employees, nor they are in a position to quote any rule to withhold the pension of the applicant indefinitely. For the aforesaid reasons, we find that the action of the respondents is not sustainable.

8. Accordingly we direct the respondents to settle the terminal benefits and disburse the same to the applicant, to which he is entitled as per rules, within a period of three months from the date of receipt of copy of this order. Liberty is also granted to the respondents to pursue any action as per law based on the outcome of the verification of the community certificate by the competent authority. No costs.''

5. Aggrieved by the above-said order, the Railways have filed the present Writ Petition on the ground that the verification of community certificate is still pending with the State Level Scrutiny Committee.

6. Mr.V.G.Suresh Kumar, learned Counsel appearing for the petitioners fairly submits that the factual scenario in the present case is covered by a decision of a Division Bench of this Court dated 07.07.2015 in W.P.No.19234 of 2014 in the case of Union of India and two others V. The Registrar, Central Administrative Tribunal and two others.

7. Heard the learned counsel appearing for the petitioners and perused the materials placed before this Court.

8. It is seen that this Court by order dated 07.07.2015 in W.P.No.19234 of 2014 negatived the plea of the Railways that the second respondent therein was not entitled to terminal benefits, since the verification of the community certificate is pending with the Scrutiny Committee. The facts of the said case are one N.Rengarajan - second respondent therein was an employee of the Railways, whose community certificate has been sent for verification before the State Level Scrutiny Committee. During the pendency of verification, the said Rengarajan attained the age of superannuation, but his terminal benefits had been withheld by the Railways. The said Rengarajan approached the Tribunal by filing an Original Application, which was allowed. Aggrieved by such an order, the Railways filed a Writ Petition before this Court. This Court, after analysing Rules, confirmed the order of the Tribunal, thereby dismissed the Writ Petition. While dismissing the Writ Petition, this Court observed as follows:

"13. From 4.5.2010, the date on which the Community Certificate of the 2nd respondent was referred by the Railway Administration to the State Level Scrutiny Committee, it appears that the matter is in a state of limbo. A period of five years by now have passed and nothing has moved.

14. In the mean time, the 2nd respondent reached superannuation on 31.7.2010. Since he was only sanctioned provisional pension and he was not granted the retirement benefits, the 2nd respondent approached the Central Administrative Tribunal in O.A.905/2010. During the pendency of the Application, the 2nd respondent moved a Miscellaneous Application in M.A.32/2011 for the disbursement of leave salary, medical benefits, privilege pass, etc. That Application was allowed by the Tribunal by an order dated 25.4.2011. However, this Court set aside the said order in W.P.2994/2012 and directed the Central Administrative Tribunal to take up the main O.A. for disposal.

15. Accordingly, the Tribunal took up the main Application in O.A.905/2010 for disposal and allowed the same by a final order dated 25.10.2013 directing the Railway Administration to settle all the terminal benefits and to sanction regular pension. It is against this order, that the Railway Administration has come up with the above Writ Petition.

16. Before considering the contentions of Mr.M.Vellaisamy, learned counsel for the petitioner-Railway Administration, it is necessary to have a look at the order against which the 2nd respondent moved the Central Administrative Tribunal. This order is dated 8.7.2010. The order dated 8.7.2010 by which the 2nd respondent was denied the terminal benefits and pensionary benefits, reads as follows:-

"It has been decided by the administration to withhold your settlement benefits, since your Community Certificate verification is pending before the State Level Scrutiny Committee. However, Provisional Pension has been sanctioned for payment of your retirement [sic] till the case is finalized. The Xerox copy of the CPO's letter in this regard is enclosed Please note."

17. It is relevant to note that the order dated 8.7.2010 does not refer to any provisions of the Railway Services [Pension] Rules, 1993. It may also be seen that by the said order, the benefits of the 2nd respondent were directed to be withheld and only provisional pension had been sanctioned on the basis that the Community Certificate is under verification by the State Level Scrutiny Committee. In other words, the order impugned in the main Application did not refer to any particular statutory provision. Keeping this in mind, let us now take up the contentions of the learned counsel for the petitioners."

9. It is not in dispute that the facts of the present case are identical to the facts of the above-said case. The contentions raised by the Railways and the response given by the employee in the above-said case have been set out in paragraph 18 and 19 of the judgment, which are as follows:

"18. The contentions of Mr.M.Vellaisamy, learned counsel appearing for the petitioner-Railway Administration are actually two fold, viz., a] that the non-payment of regular pension and the nonpayment of the retiral benefits, were not by way of any penalty, but traceable to Rule 91 of the Railway Services [Pension] Rules, 1993 and hence the 2nd respondent cannot question the competence of the authority, and b] that since it was the 2nd respondent who prevented any kind of investigation or enquiry from being made into the genuineness of the Community Certificate of the 2nd respondent right from 1984, and managed to continue in employment for 30 years, the only alternative that the Railway Administration has, is to make a reference to the State Level Scrutiny Committee. It is his contention that if the State Level Scrutiny Committee decides in favour of the 2nd respondent, the petitioner will have no hesitation in releasing all the terminal benefits and pensionary benefits.

19. In response to the above contentions, it is contended by Mr.V.Vijay Shankar, learned counsel for the 2nd respondent that at the outset, Rule 91 of the Railway Services [Pension] Rules, 1993, has no application to cases of this nature and that so long as no departmental proceedings or judicial proceedings are initiated against the 2nd respondent, it is not open to the petitioner to

withhold any of his terminal benefits. In support of his contention, the learned counsel for the 2nd respondent relies upon Rules 9, 10 and 69 of the Railway Services [Pension] Rules, 1993, and various decisions of this Court, as well as the Supreme Court. We shall advert to the same at the appropriate stage."

10. After analysing the Rules, the Division Bench considered the above-said contentions and the contentions of the Railways were negated by the Division Bench holding as follows:

"24. At the outset, we should point out that Rule 91 cannot have any application to cases of this nature. Rule 91 is an enabling provision, which entitles the Railway Administration to release pension in cases where the various stages of action for the processing of the pension papers as contemplated under Rule 79, could not be completed within the time stipulated. A look at Rule 79 would show that the same lays down three stages for the processing of pension papers. Rule 79 makes it incumbent upon the Railway Administration to divide the period of preparatory work of two years, referred to in Rule 78 into three stages. In the first stage, the verification of records have to take place. In the second stage, making good the omissions in the Service Book has to take place. In the third stage, the Head of Office is obliged to take Form 8, at least eight months prior to the date of retirement of the railway servant. If for any administrative reasons, there is a lapse on the part of the Administration in completing the process, that should be gone through in three different stages as stipulated in Rule 79. It is only then, that the Administration is entitled to rely upon Rule 91 for the purpose of taking more time for the settlement of benefits. When the intention of the Administration is to withhold the entire terminal benefits and the regular pension pending a verification from the State Level Scrutiny Committee, Rule 91 has no application at all.

25. As a matter of fact, in the affidavit in support of the Writ Petition that is sworn to by the petitioner-Divisional Personnel Officer, no reference is made either to Rule 9, or to Rule 10, or even to Rule 91. Reference is made only with regard to Rule 96 in paragraph 6 of the affidavit. Again, Rule 96 relates only to sanction, drawal

and disbursement of provisional family pension and gratuity. Therefore, we do not think that we need to spend more time on Rule 96.

26. From the above, it is very clear that the provisions of Rule 91, has no application at all to the case on hand. If Rule 91 has no application and if at all the Railway Administration would rely upon any other Rule, it could only be Rules 9 or 10. If according to the Railway Administration, these two Rules cannot also be relied upon, then there is no statutory provision under which the action of the petitioner could be justified.

27. For a minute, we will presume that the action of the Railway Administration would be traced to Rule 9 or 10, even though it is not the contention of the petitioner that the present action could be traced to any of these two Rules.

28. Even if the petitioner could fall back upon Rule 9 or 10, both these Rules are very clear to the effect that they can be invoked only when judicial or departmental proceedings are pending against the employee concerned. We have already extracted both the Rules as above. Rule 9[1] specifically makes a mention about the pensioner being found guilty of grave misconduct or negligence, in any departmental or judicial proceedings. Today, no judicial or departmental proceedings have been initiated against the 2nd respondent. Therefore, the contingency contemplated under Rule 9[1] where the Railway Administration will have a right to withdraw pension, or gratuity in cases where a person is found guilty of a misconduct in a departmental or judicial proceedings, has not even arisen. Even Rule 9[3] makes a specific mention about the pending of a departmental or judicial proceedings, as on the date of railway servant reaching superannuation. On the date on which the 2nd respondent reached the age of superannuation, viz., 31.7.2010, there were no departmental or judicial proceedings either initiated or pending. Even after five years of his retirement, that is even today, no proceedings other than a mere reference of the Community Certificate of the 2nd respondent is pending with the State Level Scrutiny Committee."

11. It is not in dispute that the facts of the present case are identical to the facts of the above-said case. In the present case, though the matter was remanded by this Court for fresh disposal according to law as early as 21.11.1995, the matter is still pending with the Member Secretary and District Vigilance Committee and District Adi Dravidar and Tribal welfare Officer, Trichy and in spite of series of communications, the verification of community certificate of the 2nd respondent has not been concluded and the second respondent had attained the age of superannuation on 30.06.2008.

12. We find that the reasoning given by the Division Bench of this Court in the above-said decision would squarely apply to the facts of the present case. The said decision was also followed by this Court in W.P.No.5918 of 2016, dated 18.2.2016. The Division Bench, in the above-said case observed as follows:

"29.Therefore, the pendency, if at all it is taken to be pendency of the proceedings for verification before the State Level Scrutiny Committee, cannot impede the settlement of terminal benefits and pensionary benefits upon the 2nd respondent."

13. With regard to issue that in the event of the Scrutiny Committee cancels the Community certificate, the Division Bench answered as follows:

"36. That leaves us with one last question as to what would happen if the State Level Scrutiny Committee eventually holds that the 2nd respondent does not belong to the Scheduled Tribe. We cannot shirk this question, but the answer is too obvious. The right of a person to receive pension continues until his final departure. Even after his departure, his family become entitled to Family Pension. Therefore, if the State Level Scrutiny Committee eventually cancels the Community Certificate of the 2nd respondent, the petitioner can always pass orders forfeiting the pension as well as the Family Pension. "

(Emphasis supplied)

14. Finally, the Division Bench negatived the plea of the Railways holding as follows:

"37. The Railway Administration cannot raise a question as to how they will recover the terminal benefits that they will be now compelled to pay, as that is a very moot question. Logically, another question would also arise as to

how they would recover the salary paid for the past 30 years. For both questions, there cannot be an answer in law. So long as the Rules contemplate a particular position, it is not only the 2nd respondent, but also the Railway Administration which is bound by the Rules. The interpretation given to the Rules by various Benches of this Court and of the Supreme Court, in *State of Jharkhand v. Jitendra Kumar Srivastava* are very clear. Therefore, the Tribunal did not commit any error in law warranting interference by this Court. Hence, the Writ Petition is dismissed. The petitioner-Railway Administration shall settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of this order. The 3rd respondent-State Level Scrutiny Committee is directed to complete the proceedings, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs."

15. It is trite that a co-ordinate Bench is bound to follow the decision taken by the earlier Bench. In the case of *Dashrath Rupsingh Rathod V. State of Maharashtra & Another* (Crl.A.No.2287 of 2009) dated 01.08.2014, the Apex Court, while dealing with the criminal complaints filed under the provisions of Negotiable Instruments Act, held that a co-ordinate Bench is bound to follow the previously published view. For better appreciation, we extract below the relevant portion of the decision:

"The principle of precedence should promptly and precisely be paraphrased. A co-ordinate Bench is bound to follow the previously published view; it is certainly competent to add to the precedent to make it logically and dialectically compelling. However, once a decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied; whereas a Co-ordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend the precedent for reconsideration by referring the case to the Chief Justice for constitution of a larger Bench...."

16. Admittedly, in the present case, no judicial proceedings or departmental proceedings are pending against the second respondent and the Railways have started the process of verifying the Community Certificate of the second respondent, pursuant to the order dated 21.11.1995 and the 2nd respondent has retired as early as 30.6.2008. Though 13 years have lapsed from

the date of passing orders by the High Court till the date of his retirement in 2013 and even today, the verification process has not been completed. Hence, mere reference to the pendency of the verification of the community certificate of the 2nd respondent before the State Level Scrutiny Committee is not a ground for the petitioners to deny the terminal benefits to the 2nd respondent. As observed by the Division Bench of this Court in the above referred to decision, in the event of the Scrutiny Committee cancelling the Community Certificate, the Railways can pass orders forfeiting the pension. Hence, the mere pendency of the proceedings before the Scrutiny Committee cannot impede the settlement of terminal benefits to the 2nd respondent.

17. Accordingly, following the above-said decision of the Division Bench of this Court, we are not inclined to interfere with the order of the Tribunal.

18. In the result, the Writ Petition stands dismissed. No costs. The petitioners -Railway Administration shall settle the terminal benefits to the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order. It is open to the petitioners to approach the State Level Scrutiny Committee, which shall take up the matter on day-to-day basis without adjourning it for more than two working days and dispose of the proceedings within two months. It is further observed that, wherever such proceedings are pending, the State Level Scrutiny Committee will expedite the proceedings and pass orders at the earliest. Consequently, connected M.P.No.1 of 2009 is also dismissed.

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s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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

Copy to:
The Chairman,
State Level Scrutiny Committee & Secretary,
Adi Dravidar Tribal Welfare Department,
Government of Tamil Nadu, Fort St. George, Chennai.

+ 1 cc to Mr.V.G.Sureshkumar, Advocate SR 11539

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prk10/3

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& M.P.No.1 of 2009