

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

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

Writ Petition No.5918 of 2016
& W.M.P.No.5277 of 2016

1. Union of India,
represented by the Chairman,
Railway Board, New Delhi.
 2. The Sr. Divisional Personnel Officer,
Southern Railway, Palghat.
- ... Petitioners

- Vs -

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
 2. Mr.P.V.Ponnuswamy
- ... Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorari to call for the
records from the file of the 1st respondent made in O.A. No.126
of 2014 including the order dated 30.1.2015 and quash the same.

For Petitioners : Mr.Radhakrishnan, S.C
for Mr.V.G.Suresh Kumar

O R D E R

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

Challenging the order passed by the Tribunal dated
30.01.2015 made in O.A.No.126 of 2014, wherein, the Tribunal
directed the concerned authorities to release the terminal
benefits withheld by the appellants, the Railways have filed
the present Writ Petition.

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

The second respondent/applicant joined service in Southern Railway as Gangman on 25.10.1977. It is stated that the second respondent belongs to Konda Reddy Community, which is a Scheduled Tribe in terms of the Constitution Scheduled Tribes Order, 1950. At the time of appointment, the second respondent produced the community certificate dated 03.04.1976 issued by the Tahsildar, Avinashi. It is stated that thereafter the second respondent got promotions as Clerk, Senior Clerk, Head Clerk, Chief Clerk, Office Superintendent and finally as Chief Office Superintendent on 01.11.2003. At this juncture, the All India Scheduled Caste/Scheduled Tribe Railway Employees' Association, Palghat, submitted a representation dated 21.08.2003 stating that the second respondent had produced a false certificate stating that he belongs to Konda Reddy Community. Hence, the Railway Authorities referred the matter to the District Collector, Coimbatore for verification under letter dated 03.12.2003 and the certificate produced by the second respondent was also forwarded to the District Collector vide letter dated 15.2.2005. Thereafter, the issue was referred to State Level Caste Scrutiny Committee vide letter dated 25.3.2009. In the meantime, the second respondent had attained the age of superannuation on 30.04.2013. Since the terminal benefits of the second respondent was not released, he made a representation for release of terminal benefits. The second petitioner vide letter dated 21.10.2013 informed the second respondent that since the community certificate was pending verification, the terminal benefits could not be released. Aggrieved by such order, the second respondent has filed an Original Application in O.A.No.126 of 2014.

3. The Tribunal, after hearing both sides and following the earlier order in respect of the same issue in O.A.No.1056 of 2014 dated 09.12.2014, allowed the application holding as follows:

"9. As the issue in the instant OA is similar to that decided in OA No.1056 of 2014 on 09.12.2014, it is considered that inasmuch as no proceeding has been taken up against the Applicant so far, the appropriate course is to release the terminal benefits to the Applicant without prejudice to the right of the appropriate authority to take up proceedings in accordance with law including even criminal action in case the State Level Scrutiny Committee finds that he does not belong to ST community and it is found that the Applicant had obtained appointment and earned promotions on the basis of false caste certificate and by playing a fraud. The payment of the terminal benefits should be made within a period of 4 months from the date of

receipt of this order. The Respondents are directed to take necessary action accordingly.

10. It is observed that the State Level Scrutiny Committee constituted by the State Government has been taking inordinately long time in doing the verification of community for the cases referred to it and there is a large number of cases pending with the Committee with the result that the employees concerned moved this forum seeking a direction to the concerned authorities to release the terminal benefits withheld pending verification of community status of the employees. the Tribunal is constrained to pass orders providing relief sought for by the Applicants in these cases as the release of terminal benefits cannot be withheld definitely. The chief Secretary/Secretary, Adi Dravidar and Tribal Welfare Department to Govt. of Tamil Nadu should look into this issue and evolve a system to ensure that the Committee gives its findings on the community status whenever any case is referred to the Committee, within a maximum period of 4 months. The Registry is directed to communicate a copy of this order to the Chief Secretary, Govt. of Tamil Nadu and the Secretary, Adi Dravidar and Tribal Welfare Department to Govt. of Tamil Nadu for taking necessary action in the matter."

4. 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.

5. Mr.Radhakrishnan, learned Senior Counsel appearing for the petitioners fairly submits that the factual scenario in the present case is covered by a decision 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.

6. Heard the learned Senior Counsel appearing for the petitioners and perused the materials placed before this Court.

7. 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."

8. It is not in dispute that the facts of the present case is 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 has 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."

9. 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."

10. In the present case, the Railways has referred the matter to the District Collector on 03.12.2003 and thereafter to the Scrutiny Committee on 03.12.2003 and in spite of series of communications, the said verification has not been concluded and the second respondent had attained the age of superannuation on 30.04.2013.

11. At this juncture, learned Senior Counsel appearing for the petitioners submitted that the Scrutiny Committee has directed the second respondent to attend the enquiry on 29.07.2010, but the second respondent had failed to do. It is relevant to note that the petitioners have not produced any material in support of such allegation that the second respondent has not participated in the proceedings. It is seen that on the request from the Committee dated 29.1.2003, the second petitioner has again furnished a copy of the community certificate for verification vide letter 11.2.2013. As per the statement of the learned Senior Counsel appearing for the petitioners that the said verification is still pending.

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 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 negated 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 Rup Singh 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 as early as 03.12.2003. The second respondent had attained the age of superannuation on 30.04.2013, nearly after ten years from the date of the petitioner starting the process of verification. Even after two and a half years of his retirement, that is even today, the verification process has not been completed. Hence, mere reference to the pendency of the verification of the community certificate of the second respondent before the State Level Scrutiny Committee is not a ground for the petitioners to deny the terminal benefits to the second 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 second 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 second 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, WMP No.5277 of 2016 is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. The Chairman,
State Level Scrutiny Committee & Secretary,
Adi Dravidar Tribal Welfare Department,
Government of Tamil Nadu, Fort St. George,
Chennai.

+1cc to Mr.V.G.Sureshkumar, Advocate sr.10868

Writ Petition No.5918 of 2016
& W.M.P.No.5277 of 2016

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