

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Petition Nos.15558 of 2005 and 21958 of 2016

Common Order: (per V.Ramasubramanian, J.)

Both these writ petitions arise out of two different orders passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, at various points of time. While the first of writ petitions is by the Union of India challenging an order of the Central Administrative Tribunal dated 08-12-2004, the 2nd writ petition is by the employee challenging another order of the Central Administrative Tribunal passed in O.A.No.140 of 2011.

2. Heard Mr. B.Narayana Reddy, learned Assistant Solicitor General of India and the party appearing in person.

3. The petitioner in the 2nd writ petition was employed as a Lower Selection Grade Postal Assistant in the Department of Posts and Telegraphs. On 12-02-1999, a criminal complaint in Crime No.50 of 1999 was registered on the file of Musheerabad Police Station, as against unnamed accused, for alleged offences under Sections 420, 468 and 471 IPC. Subsequently, the Inspector of Police informed the Senior Superintendent of Post Offices by a communication dated 13-3-1999 that the petitioner in the 2nd writ petition herein was arrested in connection with Crime No.50 of 1999 and was detained in custody for more than 48 hours.

4. On the basis of the said information, the employee was placed under suspension with effect from 12-3-1999. The suspension continued up to 09-5-2001, and it was later revoked.

5. After the revocation of the order of suspension, the employee went before the Tribunal in O.A.No.1519 of 2000 and secured even an order for the grant of promotion. Accordingly, he was promoted by an order dated 02-3-2003 and he retired on reaching superannuation on 29-02-2004.

6. After reaching superannuation, the employee filed O.A.No.242 of 2004 challenging an order dated 03-7-2003 by which his request for payment of all benefits during the period of suspension was rejected. The said application O.A.No.242 of 2004 was allowed by the Central Administrative Tribunal on the ground that neither any disciplinary proceedings nor any criminal proceedings were pending as against the employee as on the date of his retirement. Aggrieved by the said order, the Union of India has come up with W.P.No.15558 of 2005.

7. During the pendency of the above writ petition, the employee approached the Tribunal once again and filed O.A.No.140 of 2011 seeking the reliefs of all terminal benefits such as gratuity, commutation of pension and earned leave. This application was dismissed by the Central Administrative Tribunal by an order dated 16-02-2012 forcing the employee

to come up with the 2nd writ petition W.P.No.21958 of 2016.

This is how there are two writ petitions before us.

8. There are no disputes about the following facts, namely, (a) that a First Information Report in Crime No.50 of 1999 was registered on 12-02-1999 against unnamed accused, (b) that the employee herein was arrested in connection with the said crime and detained in custody for more than 48 hours leading to his suspension, (c) that after the investigation, a final report was filed on the file of the 17th Metropolitan Magistrate, Hyderabad, implicating the employee herein as accused No.5, for alleged offences under Sections 420, 467, 471, 472, 473, 474 and 475 read with Section 120-B, IPC, (d) that the final report appears to have been filed long back, namely 16-02-2000, and (e) that the trial of the criminal case is still pending for the past nearly 16 years.

9. The main contention of the employee is that he reached superannuation on 29-02-2004 and that as on the date of his superannuation, the Criminal Court had not taken cognizance of any offence. Therefore, the employee claims that under Rule 9(6) of the Central Civil Services (Pension) Rules, 1972, he is entitled to all the benefits, irrespective of the framing of the charge by the Criminal Court subsequently.

10. We have considered the above submissions.

11. We are concerned in this case with the two claims, namely (a) the treatment of the period of suspension and (b) the grant of terminal benefits such as gratuity, encashment of earned leave etc.

12. Insofar as the 1st claim is concerned, the entitlement of the employee to have the period of suspension treated in a particular way, has to be tested on the touch-stone of Fundamental Rule 54(B). Under sub-rule (6) of F.R. 54(B), the period of suspension one way or the other, would depend upon the final outcome of the criminal or departmental proceedings. If a suspension was on account of the pendency of disciplinary proceedings or criminal case, the question as to how the same is to be treated, would depend only upon the final outcome of those proceedings. Therefore, the Tribunal was wrong in holding that the employee would be entitled to the pay and allowances for the period of suspension.

13. Primarily the Tribunal appears to have committed a mistake in its order dated 08-12-2004 in O.A.No.242 of 2004. The Tribunal has observed in para 8 of its order that no criminal proceedings or disciplinary proceedings are pending against the employee. This overlooks the factum of filing of the final report way back in 2000 and the cognizance taken by the Criminal Court. Since the order of the Tribunal is on a factually wrong basis, the order in O.A.No.242 of 2004 is liable to be set aside.

14. The reliance placed by the employee appearing in person, upon Rule 9(6) of the CCS (Pension) Rules, is completely misplaced. Rule 9 of the CCS (Pension) Rules deals with the right of the President to withhold or withdraw pension. Rule 9 has nothing to do with the manner in which the period of suspension will have to be treated, as indicated in F.R. 54. Therefore, what is indicated as a deeming fiction under sub-rule (6) of Rule 9 would apply only to a case of withdrawal or withholding of pension and not for the treatment of the period of suspension. Hence, the writ petition filed by the Union of India W.P.No.15558 of 2005 deserves to be allowed.

15. Insofar as the next case is concerned, the fact of the matter is that the proceedings in the criminal case are still pending. The criminal case may end one way or the other. The allegations forming the basis for the criminal complaint are that with the use of fake Indira Vikas Patras, of the denomination of Rs.5,000/- each to the tune of Rs.1.20 Crores, the 1st accused availed loans from Nationalised Banks, Financial Institutions and individuals, by offering them as security. The alleged role played by the employee herein, who is accused No.5 in the final report, is stated to be that he made available to accused No.1, the Issue Register containing the serial numbers of the original Indira Vikas Patras and that it was only through the same, accused No.1 was able to prepare fake Patras and offer them as securities

for the loan. In the light of such a final report and the pendency of the criminal proceedings, we do not think that the order of the Tribunal in O.A.No.140 of 2011 calls for any interference. Therefore, W.P.No.21958 of 2016 is liable to be dismissed.

16. In the result, W.P.No.15558 of 2005 filed by the Union of India is allowed and the order in O.A.No.242 of 2004, dated 08-12-2004, is set aside. W.P.No.21958 of 2016 filed by the employee/party-in-person is dismissed and the order in O.A.No.140 of 2011, dated 16-02-2012, is confirmed. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.S.K. JAISWAL, J.

07th December, 2016.

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Petition Nos.15558 of 2005 and 21958 of 2016
(per VRS, J.)



07th December, 2016.
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