

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

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THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.13310 of 2015

Y.S.Sampath Kumar

.. Petitioner

Versus

- 1 The Central Administrative Tribunal
Chennai Bench
Rep. by its Registrar
High Court Buildings, Chennai.
- 2 The General Manager
Southern Railways, Chennai.
- 3 The Chief Personal Officer
Southern Railways, Chennai.
- 4 The Chief Workshop Manager
Carriage wagon Works
Perambur, Chennai - 600 023. .. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamaus calling for the records of the 1st respondent Tribunal viz., The Central Administrative Tribunal, Chennai Bench in O.A.1547/2013 dated 31/10/2014 and quash the same and consequently, direct the respondents 2 to 4 herein to release 2/3rd of the pension and gratuity to the petitioner herein with all arrears and attendant benefits with effect from 18/01/2013 in accordance with the sanction order of the 4th respondent dated 24/06/2013.

For Petitioner : Mr.V.Vijay Shankar

For Respondents 2 & 3 : Mr.P.T.Ramkumar
Senior Counsel

For Respondent-4 : No appearance

ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)

The Writ Petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1547 of 2013 dated 31.10.2014 dismissing the Original Application filed by the petitioner herein.

2. The petitioner was an employee of the Southern Railway and he approached the learned Tribunal seeking the following reliefs:-

" To direct the respondents to disburse the amount of 2/3rd pension benefits and 2/3rd gratuity benefits with effect from 18.01.2013 in accordance with the sanction order of the 3rd respondent order bearing No. CPB/227/A/5/2012/16/YSS/SEE/PROG/Ca/2214 dated 24.06.2013/30.07.2013....."

3. While he was working as Section Engineer, he was charge sheeted for unauthorised absence from 15.01.2012 to 20.04.2012 and an inquiry was ordered. The petitioner did not participate in the inquiry and on the basis of the findings of the exparte inquiry, the charges were held to be proved. Thereafter, he was imposed with the penalty of removal from service with effect from 18.01.2013. The said penalty order has neither been appealed against nor has been challenged.

4. While the matter stood thus, the 4th respondent herein vide proceedings dated 24.06.2013 conveyed the sanction of the Competent Authority for grant of 2/3rd pension and gratuity in terms of Rule 65 of Railway Services (Pension) Rules, 1993. According to the petitioner, inspite of the sanction for grant of pension and gratuity, the same was not implemented. Therefore, he was constrained to approach the learned Tribunal seeking the afore stated relief.

5. Resisting the claim of the petitioner, the official respondents contended before the learned Tribunal that the petitioner had earned his appointment against Scheduled Tribe quota and the Railway Administration insisted on verification of the Community Status of the petitioner, for which the petitioner replied that he had misplaced the Community Certificate and the same would be produced on tracing of the same. However, eventually no Community Certificate produced by him in support of his communal status and that was the reason, the Administration had not implemented the pension and gratuity sanction in favour of the petitioner.

6. After taking note of the submissions of the parties, the learned Tribunal dismissed the Application, on the basis of the decision of the Hon'ble Supreme Court of India, in the case of "Viswanatha Pillai .vs. State of Kerala and others" [JT 2004 (10 SC 88)] and the operative portion of the order was also extracted in paragraph-7 of the impugned Order. As against the order passed by the learned Tribunal, the present Writ Petition has been filed.

7. Sri.V.Vijayashankar, learned counsel appearing for the petitioner strenuously contended that the dismissal of the Original Application was improper and cannot stand judicial scrutiny in view of the fact that pending verification / investigation under the caste status cannot be the reason for holding back the retirement benefits. In the present case, the

Railway Administration suo mottu having sanctioned the pension and gratuity cannot withhold its implementation on the stated ground. The learned counsel Sri.V.Vijayashankar further contended that there was no charge or any proceedings pending in respect of the communal status of the petitioner and that being the case, the non-implementation of the sanctioned pension and gratuity is impermissible in law and the same requires interference from this Hon'ble Court.

8. Per contra, it is contended on behalf of the Railways that as long as the communal status of the petitioner is not finally settled, he is not entitled to any retirement benefits and in the instant case, the communal status of the petitioner is very crucial as the petitioner secured his employment against the quota reserved for Scheduled Tribe candidates. During the course of arguments, the learned counsel appearing for the Railways produced a memorandum dated 11.12.2014, by which the original sanction of pension and gratuity by proceedings dated 24.06.2013 came to be cancelled. This memorandum is purported to have been issued in pursuance of certain observations made by the Tribunal while disposing of O.A.No.1547 of 2013. The learned counsel for the petitioner, however, stated that his client was not aware of the memorandum cancelling the original sanction of pension and gratuity and the memorandum, according to him, had not been communicated.

9. However, the learned counsel Sri.Vijayashankar appearing for the petitioner submitted that in view of the subsequent development, he may be permitted to challenge the memorandum dated 11.12.2014, as according to him, such cancellation cannot be countenanced in law. He also submitted that the original order of removal from service for petitioner's unauthorised absence was not put to challenge in view of the subsequent sanctioning of 2/3rd pension and gratuity and because of the present development, he may be permitted to challenge the said removal of service also.

10. We gave our anxious consideration to the submissions made on behalf of the learned counsel appearing for the petitioner. As far as the first submission is concerned, We deem it appropriate and proper that O.A.No.1547 of 2013 is to be remanded back to the Tribunal for fresh consideration by allowing the petitioner to amend the Original Application with and raise additional grounds assailing the cancellation memorandum dated 11.12.2014. The learned Tribunal is directed to afford opportunity to the parties and take a decision in accordance with the merits and legal principles to be pleaded by the parties. We do not propose to make any observations as to the merits and demerits of the claim of the petitioner's herein, as that would impede the impartial adjudication of the dispute between the parties before the learned Tribunal.

11. As regards the second submission is concerned, We do not think that this Court can give any liberty to the petitioner to challenge the order of removal from service, as it is always open to the petitioner to work out his remedy as he deems fit,

in terms of the legal channels open to him. We were also informed by the learned counsel for the petitioner that one of the sons of the petitioner is mentally retarded and he has to take care of him on a day-to-day basis. In view of this and moreover the issue being the grant of pension and gratuity, We expect the Tribunal to dispose of the Original Application as expeditiously as possible, but not beyond the period of six months from the date of receipt of a copy of this order.

12. With this observation, the Writ Petition is disposed of. The files pertaining to the Original Application No.1547 of 2013 shall be transmitted to the first respondent Tribunal forthwith for its consideration and disposal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mra

To

- 1 The Central Administrative Tribunal
Chennai Bench
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High Court Buildings, Chennai.
- 2 The General Manager
Southern Railways, Chennai.
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Carriage wagon Works
Perambur, Chennai - 600 023.

Copy to: The Section Officer,
ER Section, High Court, Madras.

+ 1 cc to M/s. V. Vijay Shankar, Advocate Sr.6625
+ 1 cc to M/s. P.T. Ramkumar, Advocate Sr.6450

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