

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
And
HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.12557 of 2017

ORDER : (Oral :: Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioner has challenged the order dated 16th July 2010, passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.7469 of 2007, by which, the O.A. filed by the petitioner was dismissed.

2. In aforesaid O.A., the petitioner has assailed G.O.Rt.No.1743, Revenue (VIG.I) Department, dated 09.08.2007, through which, a penalty of withholding of pension and gratuity in full and permanently under Rule 9 of the A.P. Revised Pension Rules, 1980 was imposed on the ground that the petitioner was convicted by Special Judge for Special Police Establishment and Anti Corruption Bureau Cases, Nellore, vide judgment dated 04.04.2007 in C.C.No.28 of 2001 and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- for the offence under Section 7 of the Prevention of Corruption Act, 1988.

3. Learned counsel appearing on behalf of the petitioner submits that the aforesaid case was pending before the Criminal Court and the petitioner was suspended on 03.11.2000 and retired from service on 30th June 2004. Later on, the 1st respondent issued show cause notice to the petitioner for imposing penalty of withholding pension and gratuity in full, permanently. He submits that the petitioner filed O.A.No.7469 of 2007 seeking to quash G.O.Rt.No.1743, Revenue (VIG.I) Department, dated 09.08.2007 and

release all pensionary benefits and other attendant benefits. The learned Tribunal granted interim direction to release the provisional pension to the petitioner. Later on, the 1st respondent filed counter affidavit and Tribunal passed an order in O.A.No.7469 of 2007 with VMA No.2 of 2010 dismissing the O.A. and also vacated the interim order granted earlier. Learned counsel further submits that the Tribunal has erred in not considering the Statutory Rules. As per Rule 52 of Revised Pension Rules, 1980, the petitioner is entitled to provisional pension from 30.06.2004, the day he retired, till 04.04.2007, the date of conviction. He submits, the learned Tribunal has wrongly understood Rule 9 of A.P. Revised Pension Rules, 1980.

4. Learned Government Pleader appearing on behalf of respondents submits, there were grave allegations against the petitioner. He was booked in a criminal case as noted above and accordingly convicted by sentencing him to six months rigorous imprisonment and to pay a fine of Rs.500/-. Thus, he is not entitled for any retiral benefits.

5. Sub-clause (4) of Rule 9 of A.P. Revised Pension Rules, 1980 reads as under :

“In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 52 shall be sanctioned.”

Rule 52(b) of A.P. Revised Pension Rules, 1980 reads as under :

“The provisional pension shall be paid by the Audit Officer/Head of Office during the period commencing from the date of retirement to the date on which, upon the conclusion of departmental or Judicial proceedings, final orders are passed by the competent authority.

[Provided that Provisional pension shall not be paid to the Government servant who is convicted by a criminal court on the charges of indulging in corruption and criminal misconduct with effect from the date of such conviction though appeal is pending before the higher court against such conviction.”

6. As per Sub-clause (4) of Rule 9, if departmental proceedings or judicial proceedings are pending by the date of retirement of a delinquent officer, a provisional pension as provided in Rule 52 shall be sanctioned. As per Rule 52(b), the provisional pension shall be paid by the Audit Officer/Head of Office during the period commencing from the date of retirement to the date on which, upon the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority. In the present case, undisputedly, the petitioner was retired on 30th June 2004 and convicted on 04.04.2007, however, during this period, the provisional pension has not been disbursed in favour of the petitioner.

7. We are of the considered opinion that in view of Rules 9(4) and 52(b) as noted above, the petitioner is entitled for the provisional pension. The learned Tribunal has ignored this fact.

8. Accordingly, we allow the writ petition and direct the respondents to disburse to the petitioner, the provisional pension from 01.07.2004 to 04.04.2007 in terms of Rule 52 of A.P. Revised Pension Rules, 1980, within Four weeks from receipt of this order.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

DR. SHAMEEM AKTHER, J

12th June 2017

ajr

