THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.965 OF 2017
AND
CONTEMPT CASE (TR) No.136 OF 2017

Dated:29.06.2017

W.P.(TR).No.965 of 2017

Between:

S. Venkateswarlu, S/o. Late Cengal Raidu, aged about 65 years, Occ: Retired District Tribal Welfare Officer, R/o.H.No.12-1-777, Asifnagar, Hyderabad .. Petitioner

And

The Government of Andhra Pradesh, Rep., by Principal Secretary, Tribal Welfare department, Andhra Pradesh Secretariat Buildings, Hyderabad And others .. Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.965 OF 2017
AND
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COMMON ORDER:

Heard Sri Venkat Ram Reddy, learned counsel for the petitioner, and learned Government Pleader for Services – II.

2. Petitioner retired from service on attaining the age of superannuation on 31.10.2006. After retirement, his retirement benefits were settled and he was granted monthly pension. While so, on 05.07.2008 a charge memo was drawn alleging certain irregularities said to have been committed by the petitioner while he was in service. On 23.08.2013, the Commissioner of Tribal Welfare, addressed a letter to the Accountant General (A&E), Andhra Pradesh, Hyderabad, requesting him to stop pension and retirement benefits to the petitioner on the ground that he was served with charge memo and disciplinary proceedings are pending. Aggrieved thereby, petitioner filed O.A.No.7037 of 2013, which is now transferred to this Court and renumbered as W.P.(TR).No.965 of 2017. The Tribunal by order dated 30.09.2013, suspended the letter of the Commissioner addressed to the Accountant General. Alleging that even though the Tribunal suspended the letter of the Commissioner of Tribal Welfare to withhold the pension, pension is not released, C.A.No.838 of 2014 is filed, which is now transferred and renumbered as C.C.(TR).No.136 of 2017.

3. The Government passed orders in G.O.Rt.No.84, dated 07.10.2014, sanctioning provisional pension to the petitioner and

on 13.02.2015 provisional pension was released to an extent of 75% of the normal pension w.e.f. 07.10.2014, i.e., the date on which the Government passed orders. In other words, from 01.10.2013 till 06.10.2014 even provisional pension was not paid.

4. The only issue for consideration in the Writ Petition is, whether the Commissioner, Tribal Welfare, is justified in directing the Accountant General to stop payment of pension, which was already sanctioned, on the ground that disciplinary proceedings were initiated after retirement of the petitioner.

5. The State Government took upon the obligation to pay pension and retirement benefits to the employees, who serve the Government and retire on their attaining the age of superannuation. The Government therefore pays monthly pension to the employee as long as he survives and after his/her demise his/her spouse gets family pension. If such employee got children, those children would also get proportionate family pension till they attain a particular age.

6. Since the Government has taken itself the responsibility of payment of pension on retirement, it has reserved itself the power to withhold pension in full or part if the employee committed any delinquency/crime while he was in service or his conduct is questionable even after his retirement. The relationship between the Government and the employee after retirement is governed by the Telangana Revised Pension Rules 1980 (for short, 'the Rules'). If proceedings were initiated while employee was in service and was allowed to retire, till the disciplinary/crime proceedings are concluded, such ex-employee is entitled to draw only provisional

pension. Provisional pension can be paid to an extent of 50% of the monthly pension normally paid which can be enhanced to 75% as per the discretion of the competent authority. On conclusion of the disciplinary/crime proceedings, it is permissible for the Government to impose punishment of cut in pension which can vary from 1% to 100%. It can be for a limited period or permanently depending upon the delinquency/crime alleged to have been proved. Thus, during the pendency of the disciplinary/crime proceedings, which were initiated prior to retirement, on permitting the employee to retire, such employee is entitled to draw only provisional pension. The power to restrict payment of pension to that of provisional pension is traceable to Rule 52 of the Rules.

7. According to Rule 9(6) (a) of the Rules, departmental proceedings are deemed to have been instituted on the date on which the statement of charge is issued to the Government servant or if the Government servant was placed under suspension. Rule 52 (1) of the Rules provides that in respect of a Government servant facing disciplinary proceedings provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service should be paid from the date of retirement to the date on which the proceedings are concluded and final orders are passed. It is thus clear from the reading of this provision that payment of provisional pension would arise only if on the date of retirement, disciplinary proceedings were already initiated or employee was placed under suspension while in service. Except the provision in Rule 52 of the Rules, there is no other provision which enables the Government to

withhold full pension and grant only provisional pension as is sought to be done in the instant case. Once full pension is sanctioned, there is no power to reduce/stop any portion of the monthly pension even if disciplinary/crime proceedings are initiated after retirement.

8. In the instant case, admittedly, there were no disciplinary proceedings initiated and pending by the time petitioner retired from service and therefore he was granted all the benefits as if he was retired without any blemish. The disciplinary proceedings commenced only on 05.07.2008.

9. Important aspect to be noted in the instant case is that the letter of the Commissioner of Tribal Welfare, dated 23.08.2013, is never in force as the Tribunal suspended the said letter on 30.09.2013. It is not in dispute that till 30.09.2013, petitioner was drawing monthly pension. Thus, petitioner was entitled to draw pension from 01.10.2013 also as he was drawing earlier. Strangely and contrary to the directions issued by the Tribunal, full pension was not paid; provisional pension to an extent of 75% was sanctioned only on 07.10.2014 and the same was released on 13.02.2015 that too only from 07.10.2014. In other words, from 01.10.2013 to 06.10.2014 no pension was paid to the petitioner either full or provisional. No explanation is forthcoming as to such conduct of the respondent authorities in not complying with the directions of the Tribunal, when the directions of the Tribunal are subsisting. This clearly speaks volume of the conduct of the officers in not complying with the orders of the competent Court or Tribunal and not giving effect to the statutory provisions in true letter and spirit and their actions speak volumes of the

carelessness in dealing with the matters, more particularly the matters pending before this Court or Tribunal in respect of the directions of this Court and Tribunal and requirement to comply the statutory mandate. The competent authorities act on behalf of the Government and are governed by the provisions of law and have to work within the framework of law.

10. Having regard to the statutory mandate, withholding of pension and restricting the payment of pension only to 75% is *ex facie* illegal and without power or jurisdiction. At any rate, Commissioner has no competency to withhold pension whether full or partial and it is only the Government which can take such decision, even assuming it is permissible. Therefore, on that ground itself the letter impugned before the Tribunal is liable to be set aside.

11. Learned Government Pleader informs the Court that disciplinary proceedings initiated on 05.07.2008 culminated in imposing punishment of 5% cut in pension for a period of three years vide orders issued in G.O.Rt.No.314, dated 24.06.2017.

12. As seen from the facts noted above, illegally the petitioner was denied his monthly pension as payable to him for no justifiable cause or reason and there was absolutely no application of mind. Thus, the respondents have to be saddled with the burden of paying interest to the petitioner for non-payment of pension for the period from 01.10.2013 to 06.10.2014 and for the balance amount of pension from 07.10.2014 till the date of payment. In the facts of this case and having regard to the history

of the case, I deem it proper that interest at 12% per annum is just and reasonable.

13. With reference to interest, in **S. K. Dua v. State of Haryana and another[1],** the Supreme Court held that even if the statutory rule does not provide for payment of interest, on account of delay in payment of retirement benefits, claim is valid for payment of interest and such claim flows out of Articles 14, 19 and 21 of the Constitution of India. In paragraph No.14, the Supreme Court held as under:

> "14. In the circumstances, *prima facie,* we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the filed, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retrial benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

14. The fact that the Government ultimately resorted to imposing punishment of cut of 5% in pension for a period of three years would show that the Government was not viewing the disciplinary proceedings against the petitioner as grave. Though learned counsel for the petitioner sought to contend that there was inordinate delay in conclusion of the disciplinary proceedings and

[1] (2008) 3 SCC 44

that said disciplinary proceedings are not maintainable if such proceedings are initiated four years after the alleged incident, the Court is not inclined to enter into the merits of the Government decision and it is left open to petitioner to agitate in independent proceedings, if so advised.

15. However, the petitioner is entitled to full pension till the orders issued by the Government on 24.06.2017 and interest shall be calculated and paid till the date on which the amount quantified for the above period is paid. The order shall be complied and all the amounts including interest component shall be paid within a period of two months from the date of receipt of a copy of this order.

16. The Writ Petition is accordingly allowed and I deem it just and proper to award costs of Rs.5,000/-. Miscellaneous Petitions, if any, pending in the Writ Petition (TR) shall stand closed.

17. In view of the disposal of W.P.(TR).No.965 of 2017, C.C.(TR).No.136 of 2017 is closed. However, it is open to the petitioner to take appropriate steps, if the directions issued in the Writ Petition are not complied.

P. NAVEEN RAO, J

Date:29.06.2017

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