

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.4374 of 2017

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is a retired Assistant Engineer of the erstwhile Andhra Pradesh Housing Board. His prayer in this writ petition reads as under:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of mandamus, declaring initiation and pendency of disciplinary proceedings against the petitioner pursuant to a clandestinely generated, un-disclosed vigilance report is contrary to law and, therefore, such pendency for such a long period is null and void and with-holding of pension benefits along with retirement benefits is illegal, arbitrary, capricious, especially ignoring petitioner's representation dated 29.6.2013 and consequently direct respondents 1 and 2 to release petitioner's all retirement benefits, attendant emoluments and to forthwith release petitioner's pension by setting aside G.O.Rt.No.129 dated 12.6.2013 and pursuant G.O.Rt.No.134, dated 12.6.2013 otherwise I will suffer serious hardship.”

The petitioner retired from the service of the erstwhile Andhra Pradesh Housing Board on 30.04.2013 as an Assistant Engineer, upon attaining the age of superannuation. The proceedings dated 30.04.2013 issued by the Vice Chairman and Housing Commissioner of the erstwhile Andhra Pradesh Housing Board read as under:

“O R D E R:-

In pursuance of the orders issued in the circular cited, Sri K.Dhananjaya Konda, AE, North Division, A.P. Housing Board, Hyd, is permitted to retire from service on attaining the age of superannuation on 30.04.2013 (AN) without prejudice to the disciplinary cases pending against him if any.

The Executive Engineer, North Division, A.P. Housing Board, Hyderabad, is directed to relieve the above AE on 30.04.2013 (AN) and report compliance.

The Chief Accounts Officer, APHB, Hyderabad is requested to recover the dues / loans / advances if any, outstanding against the above officer from his Pensionary benefits/retirement benefits.”

The petitioner retired from service before the bifurcation of the erstwhile State of Andhra Pradesh on 02.06.2014. It is also an admitted fact that as on the date of retirement of the petitioner, no disciplinary proceedings were pending against him. It was only by way of G.O.Rt.No.129, Housing (Vig.Cell) Department, dated 12.06.2013, that the erstwhile Government of Andhra Pradesh initiated disciplinary proceedings against the petitioner and others and directed a common enquiry to be held under Rule 24 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

However, it appears that the Chief Engineer of the Telangana State Housing Board, the successor-in-interest of the erstwhile Andhra Pradesh Housing Board in the State of Telangana, issued Memo dated 20.09.2018, forwarding the Note Orders of the Vice Chairman and Housing Commissioner of the Telangana State Housing Board in relation to the disciplinary proceedings initiated against the petitioner and the said Note indicates that the Vice Chairman and Housing Commissioner of the Telangana State Housing Board recommended that the charges framed against the staff, including the petitioner, should be dropped. We are informed that the Government is yet to take a decision in the matter.

The grievance of the petitioner is that owing to the pendency of these disciplinary proceedings, he is not being paid retirement benefits or pension.

Sri A.K.Jayaprakash Rao, learned counsel for the Telangana State Housing Board, would inform this Court that the Telangana State Housing Board already forwarded the pension file of the petitioner to the present Andhra Pradesh Housing Board, the successor-in-interest of the erstwhile Andhra Pradesh Housing Board in the present State of Andhra Pradesh, on 10.12.2017 but no action has been taken.

Sri D.Ranganatha Kumar, learned counsel for the present Andhra Pradesh Housing Board, would inform this Court that the erstwhile Andhra Pradesh Housing Board figures in the Ninth Schedule to the Andhra Pradesh Reorganisation Act, 2014 (for short, 'the Act of 2014'), and therefore, its assets and liabilities would have to be apportioned between the successor Boards in the manner provided in Section 53 of the Act of 2014 but the said process is yet to conclude. He would further state that owing to the pendency of the disciplinary proceedings, the petitioner is not justified in seeking payment of retirement benefits and pension.

In this regard, we may note that the petitioner was allowed to retire from service without reserving liberty to initiate fresh disciplinary proceedings. The Vice Chairman and Housing Commissioner of the erstwhile Andhra Pradesh Housing Board merely stated that his retirement would be without prejudice only to the pending disciplinary proceedings, if any. The source of power of the Government to initiate disciplinary proceedings against a retired employee of the Andhra Pradesh Housing Board is not explained. Significantly, G.O.Rt.No.129 dated 12.06.2013 does not even indicate as to in exercise of what power the Government has done so. Rule 9(7) of the Revised Pension Rules, 1980, would have no application to this case and it not even the case of the authorities that it would. That apart, as it appears that the Vice Chairman and Housing

Commissioner of the Telangana State Housing Board has already recommended dropping of charges against the petitioner and others. The said disciplinary proceedings therefore cannot be cited as a ground for stalling payment of pension and retirement benefits to the petitioner, who retired from service as long back as on 30.04.2013.

However, as the assets and liabilities of the erstwhile Andhra Pradesh Housing Board are yet to be apportioned between the successor Boards in terms of Section 68(2) of the Act of 2014, we are of the opinion that it would be appropriate at this stage that the present Telangana State Housing Board and the Andhra Pradesh Housing Board bear the liability in relation to the retirement benefits and pension of the petitioner in equal proportions, *i.e.*, 50% each, pending determination of such apportionment. It is not open to either of the successor Boards to cite the pendency of such apportionment as a ground to completely deny the petitioner of his pension and retirement benefits.

The writ petition is accordingly disposed of directing the present Housing Boards of the States of Andhra Pradesh and Telangana to pay pension and retirement benefits to the petitioner in equal shares of 50% each, pending the final apportionment of the assets and liabilities of the erstwhile Andhra Pradesh Housing Board between them. After such apportionment, payments made pursuant to this order may be adjusted accordingly. The present Andhra Pradesh State Housing Board, which has already received the petitioner's pension file from the Telangana State Housing Board, shall determine the retirement benefits and pension payable to him within two weeks from the date of receipt of a copy of this order. Thereupon, the determined retirement benefits and pension shall be borne by both the Housing Boards in equal proportion of 50% each.

The retirement benefits and the arrears of pension payable in terms of this order shall be released to the petitioner expeditiously and in any event, not later than three months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M. GANGA RAO, J

Date: 28.12.2018
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