

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.1525 of 2017

in

WPMP.No.20548 of 2017

in

WP.No.16740 of 2017

ORDER :

This Contempt Case is filed by petitioner to punish the respondents for wilful disobedience of the order dt.01.06.2017 passed in WPMP.No.20548 of 2017 in WP.No.16740 of 2017.

2. The petitioner herein worked as a Prohibition and Excise Inspector in Hyderabad Division under the jurisdiction of the respondents and he was allowed to retire from service on attaining the age of superannuation on 31.07.2013 without prejudice to a pending reference to the Tribunal for Disciplinary Proceedings vide Government Memo No.51905/Vig.V(2)/2012-1, dt.16.01.2013.

3. In April, 2017 petitioner filed W.P.No.16740 of 2017 contending that no charges were framed against him, that he was getting only provisional pension to an extent of 75% and he is entitled to full pension and Gratuity apart from benefit of commutation of pension, and they had been wrongly withheld by the respondents without any justification. He contended that a mere decision to initiate disciplinary proceedings does not amount pendency of disciplinary proceedings under Rule 9(2) and Rule 9(6) of the Andhra Pradesh Revised Pension Rules, 1980 (**for short, ‘the Rules’**), that only where charges were framed and communicated to a

charged officer, disciplinary proceedings can be said to be initiated or pending; and therefore, he is entitled to receive full pensionary benefits with interest at the rate of 18% per annum thereon w.e.f. 01.08.2013. He therefore sought release of full pensionary benefits comprising of full service pension, commutation thereof and gratuity and questioned the inaction of the respondents in releasing the same as violative of Articles 14, 16 and 300-A of the Constitution of India.

4. In a case similar to that of the petitioner (relating to the same Department), this Court on 28.04.2017 in WPMP.No.19783 of 2017 in WP.No.16092 of 2017 passed interim order stating that if no charges were framed by the Tribunal for Disciplinary Proceedings, the respondents should release full pension and Gratuity. It was also observed that the petitioner can apply for commutation of pension.

5. When the petitioner's case was listed before this Court, the said interim order was cited and following the same, on 01.06.2017, this Court passed the following order in WPMP.No.20548 of 2017 in WP.No.16740 of 2017 :

“Having regard to the order dt.28.04.2017 in WPMP.No.19783 of 2017 in WP.No.16092 of 2017, the respondents are directed to release full pension and gratuity to the petitioner, if no charges are framed by the Tribunal in disciplinary proceedings. It is also open to the petitioner to apply for commutation.”

6. Alleging that the said direction has not been complied with, the present Contempt Case has been filed on 18.07.2017 by the petitioner. It is important to note that no application to vacate the interim order has been filed by the respondents till date.

7. 'Notice Before Admission' was ordered by this Court on 04.08.2017, and after service of such notice, on 09.02.2018, the learned Government Pleader for Services (Telangana), sought time for two (02) weeks.

8. Thereafter, the matter was listed on 27.04.2018, and it was adjourned to 30.04.2018 in the 'Motion List'. On that date, after taking note of the statement of the learned Government Pleader for Services-III that the interim order passed by the Court had not been implemented, the Contempt Case was admitted and notice in Form-I was issued, and the case was directed to be listed on 08.06.2018. On that date, the 2nd respondent was present, and his presence was dispensed with.

9. The learned Government Pleader for Services produced proceedings in G.O.Rt.No.230 Revenue (Vigilance.II) Department dt.06.06.2018, wherein the State Government had directed release of full pension and gratuity to the petitioner "*subject to final outcome of the disciplinary proceedings pending before the Tribunal for disciplinary proceedings, and if no other cases are pending against him*". The said Government Order also records that the State Government had requested the Secretary to the said Tribunal to inform whether any charges were framed against the Prohibition and Excise Personnel including the petitioner in liquor syndicate cases, and that on 25.04.2017, the X Additional District Judge, City Civil Court, Hyderabad-cum-F.A.C.-III, Member of the said Tribunal, had informed that the posts of Chairman, II Member are vacant since

2013, and the post of the III Member is vacant since 2007, and since the said Court was conducting proceedings in enquiries only once a week, there is a delay in framing charges in the cases.

10. I.A.No.1 of 2018 was filed to dispense with the presence of the 1st respondent, and it was dispensed with on that day, and he was directed to appear before this Court on 14.06.2018.

11. On 14.06.2018, an affidavit was filed by the 1st respondent explaining the delay in implementing the interim order.

12. Arguments of the counsel for petitioner and the Special Government Pleader, Sri A. Sanjeev Kumar, attached to the Office of the Additional Advocate-General (Telangana), were heard and orders were reserved.

13. In the affidavit filed by 1st respondent, it is stated that petitioner was involved in a liquor syndicate case and basing on A.C.B. Official reports, it had been decided to entrust the cases for Tribunal for Disciplinary Proceedings. He stated that all cases were referred to the said Tribunal for framing of articles of charge against the persons involved in the year 2013, but, there was a delay in framing of charges by the said Tribunal due to lack of regular members since 2013. It is stated that when the interim order dt.01.06.2017 in WPMP.No.20548 of 2017 in WP.No.16740 of 2017 was passed, the file was sent to the Law Department for its advice on 02.06.2017; it was received on 06.06.2017; it was then sent to the Finance Department on 08.06.2017 for advice and was received back on 07.06.2017; after taking advice from the said Departments, the matter was referred to Advocate-

General's Office opinion on 26.07.2017, and the Advocate-General advised implementation of the interim order through his letter dt.03.08.2017. It is stated that the file was then circulated for taking a decision and the matter is under consideration.

14. It is stated that pursuant to the Contempt Case, a sub-file had been prepared and circulated to the concerned, orders were obtained in Circulation and G.O.Rt.No.230 Revenue (Vigilance.II) Department dt.06.06.2018 was issued directing release of pension and pensionary benefits to the petitioner and to submit compliance. It is stated that the 1st respondent had no intention of causing any delay in implementing the order of the Court, and the delay was on account of administrative reasons.

15. From the facts stated in the affidavit of the 1st respondent, it is clear that the respondents were aware of the order dt.01.06.2017 passed in WPMP.No.20548 of 2017 in WP.No.16740 of 2017, since they had referred the matter to the Law Department and the Finance Department apart from the Advocate-General's Office. Once the Advocate-General rendered his opinion on 03.08.2017 to implement the order, the respondents ought to have issued orders forthwith to implement the same. Instead, the matter was kept pending till G.O.Rt.No.230 Revenue (Vigilance.II) Department dt.06.06.2018 was issued, i.e., for a period of ten (10) months.

16. It is settled law that pension and Gratuity are not a bounty to be distributed by the Government to its employees on retirement, but are valuable rights in their hands and any culpable delay in disbursement

must be visited with the penalty of payment of interest. (See **State of Uttar Pradesh v. Dhirendra Pal Singh¹**, and **State of Kerala v. M. Padmanabhan Nair²**).

17. Admittedly, the petitioner has retired from service on 31.07.2013 and has been only receiving 75% of the pension and not full pension and Gratuity also was not paid. Such non-payment has to held to be wilful and deliberate.

18. I, therefore, do not accept the statement in the counter-affidavit filed by the 1st respondent that there was no intentional delay in implementing the order passed by the Court and the delay was purely administrative in nature.

19. Accordingly, the Contempt Case is allowed. The 1st respondent is sentenced to pay fine of Rs.2,000/- within a period of four (04) weeks from the date of receipt of copy of the order; and in default, sentenced to suffer simple imprisonment for a period of two (02) weeks.

20. As a sequel, miscellaneous petitions, pending if any in this Contempt Case, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.06.2018

Ndr/*

¹ (2017) 1 SCC 49

² (1985) 1 SCC 429