

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) No.3596 of 2017

ORDER:

With the consent of both the parties, this Writ Petition is disposed of at the admission stage.

This Writ Petition is filed for the following relief:

“.....declare the action of the respondents in not sanctioning or releasing the pension gratuity and commutation value of pension to the applicant as arbitrary, illegal, unjust and consequently direct the respondents to sanction and release all the pensionary benefits in full together with interest @ 18% per annum from 09.12.2011, the date of his acquittal, to the applicant forthwith.....”

Heard Sri Vangari Vittal, learned counsel for the petitioner and the learned Government Pleader for Services-II.

It has been contended by the petitioner that he was working as Senior Assistant with the respondents and while he was discharging his duties as Senior Assistant, ACB authorities have falsely implicated the petitioner in a case and petitioner was prosecuted in CC.No.36 of 2005 before the Principal Special Judge for SPE and ACB cases, City Civil Court, Hyderabad for the offences under Section 7 and 13(1)(d) r/w Section 13(2) of P.C.Act, 1988. The Principal Special Judge for SPE and ACB cases was pleased to acquit the petitioner vide judgment dated 09.12.2011. Thereafter, petitioner retired from service on 30.06.2013. The grievance of the petitioner is that though petitioner was retired on 30.06.2013, petitioner was not paid pension, gratuity and commutation value of pension on the

ground that State has preferred an appeal vide CrI.Appeal.No.303 of 2012 dated 30.03.2012 against the said acquittal order and the same is pending. Challenging the said action of the respondents, petitioner has filed the present writ petition.

Learned counsel for the petitioner relied upon the judgment rendered by the Division Bench of this Court in **Chief Commissioner of Land Administration, A.P., Hyderabad and another v. R.S.Ramakrishna Rao and another**¹, wherein it categorically held as follows:

“18. As per Rule 52 (1) (c) of the Pension Rules, the Government is empowered to withhold gratuity till the final orders are passed either in the departmental or judicial proceedings. Once final orders are passed, there is no provision that empowers the Government to withhold retirement benefits.

19. The final orders, as indicated in Sub-rules (b) and (c) of Rule 52 (1) of the Pension Rules, are the orders to be passed by the Department upon conclusion of the departmental or judicial proceedings. Once the departmental proceedings end in favour of delinquent employee, there is no question of agitating the orders of the disciplinary authority by the Department itself. Therefore, the final orders are required to be passed for the purpose of payment of retirement benefits.

20. Insofar as the criminal cases are concerned, the Department has got a right to file an appeal. But, it cannot be said that the judicial proceedings have not been concluded. Once the criminal court acquits the accused, it must amount to be the conclusion of the judicial proceedings in the first instance. Therefore, the appeals filed against the acquittal orders cannot be treated as

¹ 2010 (2) ALD 773

continuation of criminal proceedings. The same view was taken by a Division Bench of Calcutta High Court in **STATE OF WEST BENGAL's** case (1 supra), referred to above. Para 9 of the said judgment reads as follows:-

“The submission of Mr.Chakraborty to the effect that pendency of the appeal against acquittal will amount to continuation of the proceedings cannot be accepted. Continuation of the proceedings must relate to investigation, enquiry or trial, and such investigation, enquiry or trial, if any, have come to an end with the judgment of acquittal. The same being continuing in the instant case, is misconceived, only on the ground that an appeal there against is pending. If the respondent No.1 is convicted by the Appeal Court for commission of a criminal offence, sub-rule (4) of Rule 3 of the said Rules would be attracted. Keeping in view the fact that different sub-rules of Rules 3 operative in different fields, we are of the opinion that sub-rule (3) of Rule 3 be held to be operative only in the case namely, when an investigation enquiry or trial remains pending and not or when the employee person is acquitted. The situations obtaining under different sub-rule being absolutely different, in our opinion, sub-rule (3) of Rule 3 must be given a restrictive interpretation.”

21. If the appeal is not in continuation of original criminal proceedings, the order of acquittal is a final order within the ambit of Rule 52 of the Pension Rules, referred to above. After the orders of acquittal passed by the criminal court, as already stated above, there is no power for the Government to withhold pension or retirement benefits. The said benefits, therefore, are liable to be paid immediately after acquittal order.

22. If the appeal or revision proceedings are in continuation of the criminal proceedings, there will be no end for the litigation and the employees, who have been acquitted honourably, shall not get retirement benefits till conclusion of all appeals, revisions, special leave petitions etc. Appeal against acquittal, not being continuation of original criminal proceedings, Rule 52 as above, will not be available to Government for withholding retirement benefits.

23. For the aforesaid reasons, we are of the opinion that the Tribunal was correct in passing the impugned order and we do not see any error committed by

the Tribunal warranting interference by this Court under Article 226 of the Constitution of India.

24. Even otherwise, we have held in W.P.No.8000 of 2009 and batch, dated 17-11-2009 that when a Government employee suffers conviction and he is dismissed from service under Rule 25 of the State and Subordinate Service Rules, 1996, mere pendency of the criminal appeal and suspension of sentence does not enable such convicted Government employee to seek either reinstatement or payment of retirement benefits. The same analogy applies in the instant cases of acquittal as well and once the Government employee is acquitted of the criminal charge, merely because the State preferred an appeal, the Government cannot withhold retirement benefits of the Government employees, on account of pendency of the appeals against acquittal.

Learned counsel for the petitioner further contends that in view of the law laid down by this Court in the above said judgment, though the petitioner is entitled for pension, gratuity and commutation value of pension, the respondents are not releasing the same. Therefore, he contends that appropriate orders be passed in the writ petition directing the respondents to pay pension, gratuity and commutation value of pension in terms of the judgment referred supra.

Learned Government Pleader appearing for the respondents contends that since the State has preferred an appeal against the acquittal order passed by the competent Criminal Court, the respondents are not in a position to pay pension, gratuity and commutation value of pension to the petitioner.

This Court, having considered the rival submissions made by the learned counsel on either side, is of the considered view that in the counter filed by the respondents, except stating that State has preferred an appeal against the acquittal order, no other contention has been raised.

Therefore this writ petition is liable to be allowed with a direction to the respondents to release, pension, gratuity and commutation value of pension to the petitioner by duly taking into account the law laid down by the Division Bench of this Court in ***Chief Commissioner of Land Administration, A.P., Hyderabad and another's case*** (supra) within a period of four months from the date of receipt of copy of this order.

With the above observations, the Writ Petition is allowed.
No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

10.07.2019
dv