HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.478/2020

Sri Tapan Chandra Das.

…….. *Petitioner(s).*

Vs.

The State of Tripura and Ors.

…….. *Respondent(s).*

For Petitioner(s) : Mr. Somik Deb, Advocate,
Mr. Anujit Dey, Advocate.
For Respondent(s) : Mr. Mangal Debbarma, Addl. Govt. Adv.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

_O_R_D_E_ R_

18/12/2020

The petitioner is a retired employee of State Government. Though the petitioner has complained about non-release of several post-retiral benefits, in this petition at the request of learned advocates for the parties I have focused only on non-finalization of petitioner's pension.

[2] This prayer arises in following background:

While in service, the department had issued a charge sheet to the petitioner on 29th June, 2017. The charges contained in the said charge sheet were rather stale and pertained to period between 2001 to 2004. Even

after issuance of the charge sheet the departmental inquiry was not completed within reasonable period. The petitioner, therefore, filed WP(C) No.515/2019 which was disposed of by the learned Single Judge by a judgment dated 2nd April, 2019 in which following directions were issued:

> *"10. Considering the matter in its entirety, this court directs the respondents to complete the proceeding within a period of 3(three) months from the date of receipt of this order failing which the entire proceeding shall automatically be deemed to be dropped. It is also made clear that while continuation of the proceeding, the authorities concerned must take into consideration, both the decisions, stated supra, rendered by the apex court. This court further observes that by the long lapse of time, the petitioner may not have any document in his possession to defend himself in the proper manner as required by law. So, the respondents are strictly directed to supply all the relevant documents they have relied upon, to the petitioner within 2(two) weeks from the date of receipt of this order, enabling the petitioner to take appropriate defense in accordance with law. However, the petitioner will co-operate with the authority in all respects and will not ask for any unnecessary adjournment for which the respondents cannot be blamed."*

Since the department did not complete the inquiry within the time stipulated, the same stood automatically dropped as provided by the learned Single Judge in the said judgment.

[3] The petitioner in the meantime retired on superannuation w.e.f. 28th February, 2019. Ordinarily, he would have received his post-retiral

benefits such as pension, gratuity, leave encashment etc. at least after the effect of the High Court providing for deemed termination of the departmental proceedings took effect. However, the department did not release such benefits on the ground that a criminal case was lodged against the petitioner on 18th July, 2019. A copy of this FIR is produced at Annexure R/1 with the reply. The allegations made in the said FIR read as under :

> *"It has been decided by the government to file an FIR against Sri Tapan Chandra Das, TES Gr.-II(Civil) the then Superintending Engineer of PWD, Government of Tripura on the following reasons:*
>
> > *i) Sri Das being a Govt. employee neither informed the Department nor took permission from the Competent Authority in respect of involvement of his wife Smt. Manasi Das in AMWAY chain marketing business since 9th September, 1999.*
> >
> > *ii) Sri Tapan Ch. Das being a Govt. employee attended one Business Seminar organized by Amway outside India i.e. in Singapore on 22nd November, 2004 for which he neither submitted any application for permission of the Competent Authority of the Department nor took any permission from the Competent Authority.*
> >
> > *iii) Sri Tapan Ch. Das while functioning as the Executive Engineer, PHE, Circle-2, Ambassa, Dhalai during the period 12th June, 2001 to 2nd May, 2011 submitted forged and fabricated Medical Certificate of illness for the period from 1st June, 2002 to 30th June, 2002 containing forged &*

fabricated signature of Dr. S K. Paul, Mahim Clinic, Akhaura Road, Agartala for regularization of his unauthorized absence from Govt. duty.

iv) Sri Tapan Ch. Das while functioning as the Executive Engineer, PWD(R & B), Agartala Division No.1, Agartala during the period 18th August, 1997 to 30th June, 2000 issued many work orders in PWD Form-11 for an amount exceeding Rs.20,000/- each in violation of relevant guidelines/rules framed by the Govt.

v) Sri Tapan Ch. Das while functioning as the Executive Engineer, PWD(R&B), Agartala Division No.I, Agartala during the period 18th August, 1997 to 30th June, 2000 issued many work orders in PWD Form – 11 to partnership firms/unemployed graduate engineers/unemployed diploma engineers etc. exceeding Rs.30 Lakhs per year in division of relevant rules of annual ceiling limit or Rs.30 Lakhs per year division in respect of awarding such nature of work orders Sri Tapan Ch. Das as an Executive Engineer of Agartala Division No.1, PWD(R&B), Agartala made expenditure in issuing work orders in PWD Form-11 to partnership firms/unemployed graduate engineers/unemployed diploma engineers etc. the tune of Rs.1,62,48,366/- during the financial year 1998-1999 Rs.43,36,533/- during the financial year 1999-2000 and spent Rs.22,25,919/- during the 1st quarter of 2000-2001.

vi) Sri Tapan Ch. Das during his incumbency as the Executive Engineer, PWD(R & B), Agartala Division No.1, Agartala during the period 18th August, 1997 to30 June, 2000 issued many work orders in PWD Form-11 to partnership firms/unemployed graduate engineers/ unemployed diploma engineers etc. by splitting single work

in violation of relevant rules in this regard, which is gross misconduct on the part of the Govt. employee.

vii) Sri Tapan Ch. Das while functioning as the Executive Engineer, PWD(R & B), Agartala Division No.I, Agartala during the period 18th August, 1997 to 30th June, 2000 issued many work orders in PWD Form-11 to partnership firms/unemployed graduate engineers/unemployed diploma engineers etc, allowing rate more than 50% above the schedule of rates even though the Schedule of Rates where current at the relevant point of time which is gross misconduct on the part of a Govt. employee."

[4] Learned counsel for the petitioner submitted that there are no departmental proceedings pending against the petitioner. The criminal case relates to old instances. In any case, by virtue of sub-rule (3) of Rule 9 of Central Civil Service (Pension) Rules, 1972 *(hereinafter to be referred to as "CCS Pension Rules")* which is adopted by the State of Tripura, petitioner's pension cannot be withheld on this ground. On the other hand, learned Additional Government Advocate, Mr. Mangal Debbarma, opposed the petition contending that the pendency of criminal case would ensure that the petitioner's pension cannot be released unconditionally. He is being paid provisional pension. His pension cannot be finalised till criminal case is not over.

[5] Since the departmental proceedings could not be completed within 3 months as directed by the High Court, the effect of deeming fiction of the same being dropped, would automatically operate. It is not the case of the department that any extension was sought and granted in this respect or that the judgment of the learned Single Judge is either stayed or reversed. In eye of law thus from the date of completion of 3 months from the date of the judgment of the High Court departmental inquiry was obliterated. The only factor against the petitioner is the lodging of an FIR by the department contents of which we have noted above. Perusal of these allegations would clearly reveal that all the allegations pertained to several years before the petitioner's retirement. In any case, all allegations pertained to a period more than 4 years of lodging of the FIR and even 4 years before the petitioner's retirement. In this context, Rule 9 of CCS Pension Rules, as adopted by the State of Tripura, need to be appreciated.

> *"9 RIGHT OF GOVERNOR TO WITHHOLD OR WITHDRAW PENSION.*
>
> *(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his*

service, including service rendered upon re-employment after retirement:

Provided that the Tripura Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced before the limit specified in sub-rule(5) of rule 49.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report recording its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,

(i) shall not be instituted save with the sanction of the Governor,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from

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service could be made in relation to the Government servant during his service."

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution."

[6] Under sub-rule (1) of Rule 9 thus the Governor reserves the right of withholding or withdrawing a pension or any part thereof either permanently or for a specified period or even ordering recovery from pension, if in the departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service including during re-employment after retirement. As per sub-rule (2), inquiry referred to in sub-rule (1), if instituted while the Government servant is in service would be deemed to continue even after his retirement. Sub-rule (2) has a proviso, sub-clause (b)(ii) thereof provides that the departmental proceedings, if not instituted while the Government servant was in service whether before retirement or during his re-employment, shall not be in respect of any event which took place more than 4 years before such institution. Sub-rule (3) of Rule 9, on the other hand, provides that no judicial proceedings, if not instituted while the Government servant was in service, shall be instituted in respect of a cause of action which

arose or in respect of an event which took place more than 4 years before such institution. Clause (b) of sub-rule (6) of Rule 9 provides that for the purpose of the said rule, judicial proceedings shall be deemed to be instituted in case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made.

[7] Learned counsel for the petitioner did not canvas a strict interpretation of this provision arguing that no criminal case for any event which took place 4 years prior to institution of the FIR can be lodged against a retired Government servant. This would effectively create a limitation provision in the penal law which otherwise did not exist. For example, there are range of offences under Indian Penal Code for which looking to the gravity of the offence no limitation period is prescribed under the Code of Criminal Procedure. Even the starting point of limitation as per section 469 of Cr.P.C where the commission of the offence where the commission was not known to the person aggrieved or to any police officer would be the first day on which such offence comes to the knowledge of such person or police officer. Mr. Deb, however, submitted that sub-rule (3) of Rule 9 should be read along with sub-rules (2) and (3) of Rule 9 and in such a manner as to prevent the Government from

withholding the pensionary benefits of a retired Government servant on the strength of an FIR which is lodged after retirement and which relates to an incident which has occurred 4 years prior to the date of filing of the FIR. This contention I am fully in agreement with. The respondents, therefore, cannot withhold the finalization of the petitioner's pension on the ground of pendency of the criminal case against him.

[8] Before closing, though not argued, one aspect needs to be clarified. In the State of Tripura, the CCS Pension Rules have been adopted by a notification dated 8th August, 1978. In CCS Pension Rules sub-rule (3) of Rule 9 has been deleted w.e.f. 15th February, 1992. The question of applicability of such amendment in the CCS Pension Rules to the State of Tripura would, therefore, arise. When a law is borrowed in one statute from the other, it may either be by reference or by incorporation. The question of applicability of any subsequent amendment in the parent Act in the borrowing statue would depend on the question whether the provision is included by a reference or by incorporation. In the present case, the situation is amply clear and is this.

The notification dated 8thAugust, 1978 by virtue of which the CCS (Pension) Rules, 1972 have been adopted by the State of Tripura carries the following preamble :

" NOTIFICATION

In exercise of the powers conferred by Article 309 of the Constitution of India and all other powers enabling him in that behalf the Governor of Tripura has been pleased to adopt the Central Civil Services (Pension) Rules, 1972 as given in the Annexure which shall be applicable to the Government Servants serving in connection with the affairs of the Government of the State of Tripura, subject to the following modifications namely :"

Below this portion, there are modifications in the CCS (Pension) Rules for the purpose of application in the State. Even the first portion of the notification which we have reproduced, states that the Governor of Tripura has been pleased to adopt the said Rules ***"as given in the Annexure which shall be applicable to the Government Servants serving in connection with the affairs of the Government of State of Tripura."*** Thus, by virtue of the said notification what the Government of Tripura adopted was a specific set of rules which were embodied in CCS Pension Rules prevailing at that time. This adoption was subject to further modifications which formed part of the notification itself. When the State Legislator thus adopted a certain set of Central Rules, as they existed at the relevant time, by a conscious decision and making suitable modifications to suit the requirements of the State service, any subsequent amendment in the parent law would have no applicability in the State Rules. Thus, the deletion of sub-rule (3) of Rule 9 in CCS Pension Rules, 1972 subsequent

to the Rules being adopted by the State of Tripura would have no effect on the State legislation.

[9] Counsel for the petitioner has not pressed for release of remaining post-retiral benefits and therefore, I have not discussed the same and in any case, the reasons for withholding of such benefits are entirely different.

[10] In the result, the petition is allowed by directing the respondents to finalise the petitioner's pension within a period of 3(three) months from today. Consequently, arrears of pension shall be paid and if the petitioner is desirous his commutation may also be released within 2(two) months thereafter. Petition disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI, CJ)

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