ss/jks
13.12.2023

FMA 281 of 2019
With
CAN 2 of 2021

Sri Pradeep Kumar Misra
Vs.
The Union of India & Ors.

Mr. Atarup Banerjee
Ms. Setu Das Roy
Ms. Suranjana Nandi
… … for the appellant
Mr. Satrajit Sinha Roy
… … for the respondent nos.1 to 3

1) Heard Shri Atarup Banerjee, learned counsel for the appellant and Shri Satrajit Sinha Roy, learned counsel for the respondents.

2) This appeal arises from the judgment and order dated 01.10.2018 in Writ Petition No.1137 (W) of 2018 (Sri Pradeep Kumar Misra Vs. The Union of India and others) passed by the learned Single Judge, whereby, relief for a direction for payment of pension, was declined by the learned Single Judge.

3) Briefly stated facts of the present case are that the appellant/petitioner was an employee of the respondent no.3 which is stated to be a Government of India undertaking. Disciplinary proceeding was initiated against him and a punishment order dated 24.02.2006 was passed imposing major penalty of compulsory retirement under Rule 23 of the relevant Rules. The aforesaid order of the compulsory retirement by imposing

major penalty on account of misconduct of the appellant/petitioner has attained finality.

4) The appellant/petitioner agitated for payment of pension and ultimately filed the aforesaid Writ Petition No.1137 (W) of 2018 seeking relief in the nature of mandamus to the respondents for release of the entire pension. The aforesaid writ petition was dismissed by the learned Single Judge by the impugned judgment and order dated 01.10.2018.

5) Aggrieved with the aforesaid order passed in the writ petition, the appellant/petitioner has filed the present appeal.

6) Heard the learned counsel for the parties and carefully considered their submissions and perused the record.

7) It is undisputed that a major penalty of compulsory retirement under the Rules was imposed upon the appellant/petitioner on account of misconduct. That order of imposing major penalty has attained finality. Rule 10 of the Executive Staff Pension Scheme/Rules provides as under :

> "10. An employee whose services are terminated for misconduct by the Company shall not be entitled to any pension under the scheme. The Company, may however, at its sole discretion grant such smaller pension than what the employee would have been entitled to receive had his employment terminated for reason other than misconduct. The Company's decision as to whether the employment of the company has been terminated for misconduct or otherwise shall be final."

8) Thus, as per Rule 10 of the Rules aforequoted, if services of an employee are terminated for misconduct by the company then such an employee shall not be entitled to any pension under the scheme. The validity of the aforesaid pension Rules has not been challenged by the appellant/petitioner. Therefore, as per Rule 10 of the Rules the appellant/petitioner has no right to pension since his services were terminated by the company for misconduct by order dated 24.02.2006. Under such circumstances, we do not find any manifest error of law in the impugned judgment and order passed by the learned Single Judge.

9) Learned counsel for the appellant/petitioner lastly submitted that even if full pension is not payable to the appellant/petitioner under clause 10 of the Pension Rules, yet as per later part of Rule 10, the respondent company may at its sole discretion grant such smaller pension than what the employee would have been entitled to receive had his employment is terminated for the reason other misconduct. He submits that as per Rule 10 of the aforequoted Rules, the respondent company should have considered the case of the

appellant/petitioner for smaller pension which has not been considered.

10) Learned counsel for the respondents submits that grant of smaller pension is a sole discretion of the respondents and not a right of the appellant/petitioner. Therefore, the appellant/petitioner cannot take benefit of the second part of Rule 10 of the Rules for payment of smaller pension.

11) We find that the later part of Rule 10 of the Pension Rules is in the nature of proviso. It carves out an exception that smaller pension may be granted at the sole discretion of the respondent company. Although, it does not confer any right for smaller pension upon the appellant/petitioner, but the respondent company cannot deny even not to consider the case of the appellant/petitioner for smaller pension. In its sole discretion the respondent company may either grant smaller pension or may decline to grant. But it cannot deny to consider the case of the appellant/petitioner for appropriate decision for a smaller pension.

12) For all the reasons aforestated, we dispose of this appeal modifying the impugned judgment and order of the learned Single Judge by providing that the appellant/petitioner may submit a representation for smaller pension before the

respondent no.3 within four weeks along with a certified copy of this order and copies of such documents which he may intend to rely in support of his representation. The respondent no.3 shall consider representation of the appellant/petitioner in accordance with law and take a decision for smaller pension by a speaking and reasoned order under Rule 10 of the Pension Rules, within next six weeks, after according reasonable opportunity of hearing to the appellant/petitioner.

13) It is made clear that grant of smaller pension under Rule 10 of the Rules is the sole discretion of the respondent company and as such we have not issued any positive direction for payment of any smaller pension amount to the appellant/petitioner and left it for an appropriate decision by the respondent company.

14) With the aforesaid directions, the appeal is disposed of. The impugned order of the Writ Court is modified accordingly. Pending applications, if any, also stands disposed of.

(Surya Prakash Kesarwani, J.)

(Rajarshi Bharadwaj, J.)