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Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 57 of 2023

Sri Anil Kumar Samanta @ Anil Samanta
Vs.
The State of West Bengal and others.

Mr. Sovam Majumder,
Mr. Gopal Chakraborty.
... for the petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mrs. Saheli Mukherjee.
... for the State.

Assailing the final order passed in a disciplinary proceeding on 5th May 2022, the Tribunal was approached with OA 586 of 2022 and an interim order was sought therein that pending the said tribunal application, the operation of the final order should remain suspended and the respondent authorities may be directed to disburse the pension along with retiral benefits including the interest.

Indubitably, the disciplinary proceeding was initiated against the petitioner while in service and continued even after attaining the age of retirement. So far as the final relief claimed in the tribunal application is concerned, the same shall be decided after affording an opportunity to the State respondents to file affidavits, to which we do not intend to make any observations thereupon at the interim stage.

Though the impugned order does not contain any observations relating to refusal to pass an interim order but the tenet thereof unequivocally suggests that the prayer for interim order has been refused impliedly. The tribunal application is fixed for hearing on 10th July 2023 and we expect that the Tribunal would take up the said application on the said date and decide the dispute on its merit. We noticed from the final order dated 5th May 2022 that the Governor in consultation with the Public Service Commission, West Bengal, has inflicted the penalty of pension cut of 20 percent for five years upon the petitioner in terms of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

Our attention is drawn to Rule 10 of the said Rules, which runs thus:

> "10. Right of the Governor to withhold pension in certain cases.
>
> (1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement: Provided that —-
>
> (a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the office, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;
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> (b) Such departmental proceedings, if not instituted while the office was in service, whether before his retirement or during his re-employment—
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> (i) shall not be instituted save with the sanction of the Governor;
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> (ii) shall not be in respect of any event which took place more than [four years] before such institution; and
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> (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 service could be made in relation to the officer during his service;
>
> (c) no such judicial proceeding, if not instituted while the officer 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 an event which took place more than [four years] before such institution; and

(d) the Public Service Commission, West Bengal shall be consulted before final order are passed.

Explanation—For the purpose of this article—

(a) a departmental proceeding shall be deemed to have been instituted on the date on which the statement of charges is issued to the officer or pensioner, or it the or if the officer has been placed under suspension from an earlier date, on such date ; and

(b) a judicial proceeding shall be deemed to have been instituted-

(i) in the case of criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate take cognizance, is made, and

(ii) in the case of a civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1) or where a departmental proceedings is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension; but no gratuity of death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

(3)Payment of provisional pension made under clause (2) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note – The grant of pension under this rule shall not prejudice the operation rule 65 when final pension is sanctioned upon conclusion of the proceeding.”

Upon meaningful reading of the aforesaid provision, which, according to the learned Additional Government Pleader as well as the learned Advocate appearing for the petitioner, is applicable, we find that sub-rule (1) empowers the Governor to withhold or withdraw the pension or any part thereof whether permanently or for specified period together with a right to recover from pension of the whole or part of any pecuniary loss caused to the Government provided the delinquent is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence during the period of his service. We do not find any fetter on the part of the Governor to withhold the pension or withdrawing the pension or any part thereof permanently or for a specified period, which, in fact, has been exercised in the instant case.

By the final order dated 5th May 2022, the Governor has been pleased to withhold the pension to the extent of 20 percent of the pension admissible to the petitioner on attaining superannuation for a period of five years, but we do not find from the said final order as to when such order would take effect. It can be logically inferred that the said penalty by withholding 20 percent of the pension admissible to the petitioner should reckon from the date of superannuation as the right to receive pension fructified from the said date.

Sub-rule (2) of Rule 10 of the said Rules postulates that where a departmental proceeding is continued even after attainment of superannuation by the delinquent until the final order is passed, a provisional pension not exceeding to maximum pension as admissible on the basis of his qualifying service up to the date of retirement shall be paid to such employee with further stipulation that no gratuity on Death-cum-Retirement Gratuity shall be paid to such delinquent until the conclusion of the said proceeding and the issuance of the final order thereon. Naturally, the moment the statutory provision puts an embargo on disbursement of the gratuity of the Death-cum-Retirement Gratuity till the departmental proceeding culminated into a final order, there is no obligation on the part of the Government to pay the same.

The fact remains that the final order has been passed on 5th May 2022, which is the subject matter of challenge before the Tribunal. So long the said order remains in operation, the delinquent cannot seek any relief as an interim measure to suspend the operation of the said order unless a very strong prima facie case is made out.

We do not feel that the interim order of such nature can be passed at this stage suspending or staying the operation of the final order, as the legality and validity of the said final order shall be decided at the time of final disposal of the writ petition. However, we cannot countenance to the proposition that pending final decision taken in the writ petition, no amount by way of gratuity or pension should be paid to the petitioner as it would run contrary to the spirit and object of Sub-rule (2) of Rule 10 of the said Rules. The said Sub-rule (2) provides that the moment the final order is passed, the gratuity would be immediately payable depending upon the nature of the final order, which in this case does not appear to have put any absolute fetter on the part of the authorities to deny the disbursement of the gratuity. Furthermore, the final order reveals that the pension was withheld to the extent of 20 percent of the admissible pension for a period of five years and, therefore, it cannot be said that any major penalty has been imposed upon the petitioner.

It is undisputed that the petitioner was paid a provisional pension under the aforesaid provision, which, according to the learned Additional Government Pleader, was 50 percent of the admissible pension in the event no disciplinary or judicial proceeding is pending against the employee, which, according to the petitioner, has been withheld and/or suspended since the month of May 2022. We do not find any reasons for withholding the provisional pension when the final order does not indicate so. The moment the authorities have inflicted the punishment withholding 20 percent of the admissible pension for a period of five years, it cannot withheld the provisional pension, which was in effect paid upto the month of April 2022.

We have indicated that the final order does not reveal the operation thereof from a date; it is logically inferred that such withholding of the pension would be from the date immediately after attainment of superannuation and, in this case, the petitioner retired with effect from 31st March 2014. Since the five years period expired on 31st March 2019, we do not find any justification in not paying the full pension thereafter.

The law as it stands does not give unbridled right into the employer to do certain things, which is in conflict with the said statutory provision nor can travel beyond the circumference thereof. There is no justification in adopting such approach by the authorities and, therefore, the moment the right is crystallized under the aforesaid provision, such right cannot be defeated at the behest of the executives.

We, therefore, direct the respondent authorities to pay the difference of the pension after deducting the percentage of pension as indicated in the final order dated 5th May 2022 together with the gratuity of the Death-cum-Retirement Gratuity and the other retiral benefits admissible to the petitioner on the post, which he lastly held, within two months from the date of communication of this order.

We expect that the authorities would take all possible steps in order to adhere the time limit indicated herein above and all authorities, who have a role to play in this regard, are supposed to show alacrity in discharging their respective duties in this regard.

Since the tribunal application is pending where the final order is assailed by the petitioner, none of the observations made herein above shall have any persuasive impact thereupon.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)