

01 23.03.23

Ct. No. 37

Akd

WP.CT. 135 of 2022

**Sri Sankar Saha
Vs.
Union of India & Ors.**

**Mr. Shibendra Narayan Sukul,
Mr. Sagnik Chatterjee.
... for the petitioner.**

**Mr. Dayashankar Mishra,
Ms. Sabita Roy.
... for the Union of India.**

**Mr. Soumya Majumdar,
Ms. Soma Kar Ghosh.
... for the respondent no. 13.**

Recently we have noticed that the Tribunal instead of deciding the issue involved in the judicial proceeding is mechanically directing either the petitioner to file representation for consideration by the authority or the authority, in the event the representation is made, to dispose of the same.

The moment the right is crystallized and apparent from the record and there is no statutory provision, which can stand in the way of granting relief to the petitioner, direction to consider the representation by the administrative authority is farcical. The moment litigant has approached the Court ventilating grievance against the action or inaction of the administrative authority, it is the ardent duty of the adjudicating authority to grant relief based upon the statutory provisions and not to divert the adjudication upon the administrative authority, as it would simply augment further litigation and shall be opposed to the very object of the judicial system that the litigation must attain finality. Such course encourages the litigation to explode the docket of the Court or the Tribunal and an aggrieved

person has to approach again and again to the Tribunal or the Court ventilating the same grievance.

Be that as it may, the respondent no. 13 approached the Tribunal alleging various grievances relating to disbursement of retiral/terminal benefits, which the writ petitioner is otherwise entitled under the statute after attaining superannuation. The grievance of the respondent no. 13 can be jotted down in the following:

Firstly she raised a question that while filling up the nomination in the service record her name figured therein as legally wedded wife, but she never signed on such paper and there is an allegation as to impersonation.

Secondly the petitioner has withdrawn himself from the company of the said respondent and, in fact, filed a proceeding for dissolution of marriage, which culminated into a decree for dismissal and an appeal against the said decree is pending.

Thirdly a First Information Report is lodged with the police authorities alleging fabrication or forged signature being put in the service record and, therefore, no disbursal should be made to the retiral/terminal benefits.

Astonishingly, the authority took a stand that they have received a complaint from the respondent no. 13 and considering the seriousness of such allegation, the disbursement could not be made and put it at halt until all the obstacles are removed.

We have not been shown any provision in this regard that on mere complaint the terminal/retiral benefits can be withheld. We have been taken to certain provisions, which authorize the authority to withhold the pension either in its entirety or part, but upon initiation of a valid proceeding and not in a manner as has been done in the instant case.

There is no proceeding, which has been initiated against the petitioner, nor there appears to be an order passed by the competent authority in this regard. What is patent from the record that merely on a complaint being lodged by the respondent no. 13 the retiral/terminal benefits have been withheld without any authority of law. The respondent no. 13 is very much vocal obviously to be so the moment the matrimonial relationship has fallen out and a proceeding for dissolution of marriage is activated.

We have been given to understand that in various proceedings initiated by the respondent no. 13 the order for granting maintenance to the said respondent has been passed, but the Counsel for the said respondent is unable to disclose any order which put any fetter on the authority in releasing the terminal/retiral benefits.

It is beyond cavil of doubt that the order granting maintenance is capable of being executed through a well recognized procedure of law and the Courts are not denuded of any power in passing an appropriate order on the facts of the case and the circumstances so warrant. In absence of any order passed by the Court creating interdict on the release of the retiral/terminal benefits, the authority on its own

cannot assume such jurisdiction and deny the legitimate right of the retired employee in withholding the disbursement of retiral/terminal benefits.

The right to receive retiral/terminal benefits including the pension is a statutory right and such right cannot be undermined either there is a dissent amongst the spouse or the matrimonial relationship has become bitter. Such an action or inaction on the part of the authority appears to be beyond the conceivable powers provided in the statutory document and, therefore, the Court must activate the process of law in granting reliefs instead of relegating such adjudication to the administrative authority.

The service of the Government employee is regulated, guided and controlled by the statutory provisions enacted in this regard and the authority cannot travel beyond the circumference of the provisions contained therein. The emotion, empathy and compassion cannot be the ground to done away the statutory provisions nor the statutory provisions which are conspicuously absent can be assumed to be exist in the statutory book. The authority can act within the precinct of law and cannot expand its horizon on an unknown terrain. It is an apparent example of an authority acting beyond the statutory powers and denying the statutory right of the retired employee in not granting retiral/terminal benefits.

We thus do not find that any fruitful result would come in relegating the petitioner to the authority as the right claimed by the petitioner has accrued and crystallized by the statutory provisions.

The impugned order is thus set aside.

The respondent authorities are directed to release the terminal/retiral benefits attributable to the post held by the petitioner at the time of attaining superannuation within three weeks from date, subject to any order passed by the competent forum which prevents such release of the amount.

With these observations, the writ petition is allowed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)