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WP No.11390 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

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R.A. Mahadevan

... Petitioner

versus

1. Union of India,
Represented by the General Manager,
Integral Coach Factory,
General Manager Office,
Personnel Branch,
Chennai- 600 038.

2.The Assistant Personnel Officer,
Integral Coach Factory,
General Manager,
Personal Branch,
Chennai-600 038.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus to call for the records of the order passed in OA No.310/578/2017 dated 14.03.2019 and to quash the same consequently direct the second respondent herein to disburse the



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amount due to the petitioner under DCRG and Communication pertaining to the petitioner terminal benefits and consequently direct the second respondent herein to disburse the amount due to the petitioner under DCRG and Commutation pertaining to the petitioner terminal benefits.

For the Petitioner :Mr.A.Kumanaraja
For the Respondents:Mr.V.Radhakrishnan
Senior Counsel
for Mrs.T.P.Savitha
for respondent Nos.1 and 2

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petition has been filed challenging the order in OA No.310/578/2017, dated 14.03.2019 passed by the Central Administrative Tribunal.

2. Brief facts of the case:

2.1. The petitioner was employed as Senior Technician/Blacksmith in the Integral Coach Factory. He rendered his service for more than 20 years and attained superannuation on 28.02.2017. Prior to his superannuation, the second respondent has passed an order dated 08.02.2017, stating as follows: "*Consequent to the pending criminal proceedings, it is hereby*



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informed that the provisional pension is sanctioned in terms of Rule 9(3) of RSPR-1993. However the PF, Insurance amount & Leave encashment amount will be settled at the time of superannuation. The family pension, DCRG and Commutation will be decided after the outcome of criminal proceedings".

2.2. Aggrieved by the said order dated 08.02.2017, the petitioner has filed an Original Application in OA No.310/578/2017 before the Central Administrative Tribunal, Chennai. The Tribunal, by order dated 14.03.2019, dismissed the said OA holding as follows: *"It is not in dispute that a criminal case is still pending against the applicant as on date. Accordingly, I find no infirmity in the order dated 08.02.2017 whereby the applicant has already been allowed provisional pension as also the dues under provident fund, insurance and leave encashment. DCRG and Commutation of pension alone are pending for want of acquittal of the applicant by criminal court"* Challenging the said order of the Tribunal, the petitioner has filed the present writ petition.



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3. Learned counsel for the petitioner submits that the criminal case was lodged against the petitioner by a third party based on false allegations. He further vehemently argued that the respondent Department does not have any authority to withhold the pension amount or any gratuity amount as the same is the property of the employees under Article 300 A of the Constitution of India. The petitioner also relied on a decision of the Hon'ble Supreme Court in Civil Appeal No.6770 of 2013, wherein the Hon'ble Supreme Court has held as follows:

14. Article 300 A of the Constitution of India reads as under:

'300A Persons not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law.'

Once we proceed on that premise, the answer to the question posted by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension



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without the authority of law, which is the constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbarage of administrative instruction cannot be countenanced"

4. Learned counsel for the petitioner further submits that there is no statutory provision for denying the part of pension and gratuity under the umbarage of administrative instruction and therefore, the order of the Tribunal is liable to be set aside. On this ground, he seeks for allowing the writ petition.

5. Learned Senior Counsel appearing for the respondent Department has strongly objected to the contention of the petitioner by relying on Sub Rule (3) of Rule 9 and Sub Rule 1(c) of Rule 10 of the Railway Services (Pension) Rules, 1993. According to him, the said Rule clearly states that the Department has the right to withhold the pension and gratuity amount.



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6. Learned Senior Counsel further submits that a criminal case in Crime No.481 of 2007 under Sections 465, 468 r/w 471 and 420 IPC r/w 34 and 109 IPC was lodged against the petitioner. The gravity of the offence in the aforesaid criminal case is serious in nature. Therefore, in the light of the aforesaid Rules, the petitioner is not entitled for withdrawal of the gratuity amount as a criminal case is pending against the petitioner. Therefore, he seeks for dismissal of the writ petition.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The point involved in the present writ petition is whether Rule 9(3) and 10(1)(c) of the Railway Services (Pension) Rules, 1993 applies to the case on hand, for denying the pensionary benefit and gratuity amount to the petitioner. It is therefore necessary to extract Rule 9(3) and 10(1)(c) of the Railway Services (Pension) Rules, 1993, which reads as follows:



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"9.....

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 10 shall be sanctioned. (Authority: Railway Board's letter No.F(E)III/99/PN 1(Modification) dated 23.05.2000)

10(1)(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i),(ii),(iiia) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant.

9. According to the respondent Department, in the light of the aforesaid Rule, the petitioner is entitled for the provisional pension as provided under Rule 9(3) of the said Rule. Accordingly, the provisional pension amount has been sanctioned to the petitioner and the said fact has also not been disputed by the petitioner.



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10. Thus, the only contention of the petitioner that remains for consideration now is with regard to the withholding of DCRG and commutation of pension. As per Rule 10(1)(c), no gratuity amount shall be paid to the petitioner until the conclusion of the judicial proceedings pending before the criminal court in Crime No.481 of 2007. The learned Senior Counsel appearing for the respondent Department states that the criminal case lodged by the private parties against the petitioner is serious in nature and the same has been registered under Sections 465, 468 r/w 471 and 420 IPC r/w 34 and 109. In the aforesaid criminal case, the petitioner is arrayed as 5th accused.

11. Rule 10(1)(c) of the Railway Services (Pension) Rules, 1993 clearly states that no gratuity shall be paid to a railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. It is also argued that there is no clarity in the Rule about the



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nature of gravity of offence for withholding the gratuity amount. However, on considering the facts on hand, we find that the gravity of offence is very serious in nature, which leads to the very moral turpitude of the employee. In such circumstances, accepting the contention of the respondent Department that the petitioner was involved in a criminal case, which is registered for offences grave in nature, and the same is pending before the criminal Court. At this juncture, we are not interfering with the order of the Tribunal and there is no case made out to interfere with the order of the Tribunal. Hence, the said contention of the petitioner cannot be accepted and accordingly, the writ petition is liable to be rejected. Insofar as the pensionary benefits are concerned, the legal right warrants payment of provisional pension, and in pursuance of the said Rule, the petitioner has also received the provisional pension and therefore, on that ground also, we are not inclined to grant any relief. We make it clear that the petitioner will become entitled for the gratuity as well as the entire pensionary benefits, if he is discharged or acquitted from the criminal case pending in Crime No.481 of 2007 on the file of the III Metropolitan Court, George Town, Chennai.



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12. With the above observation, the Writ Petition stands dismissed.

There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
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Index : Yes/No
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