

22.05.2024
Item No.02
Court No.11
Avijit Mitra

WP.CT 47 of 2024

In re: An application under Article 226 of the Constitution
of India;

And

Union of India & ors.
- Versus -
Dr. Jayram Hazra

Mr. Dilip Kumar Chatterjee,
Mr. Subit Majumdar
... for the petitioners

Mr. Tushar Ranjan Mohanty
...for the respondent

The present writ petition has been preferred challenging an order dated 18th August, 2023 passed by the learned Tribunal in an original application being O.A. 350/00442/2023. By the said order, the learned Tribunal directed the respondents therein to pay the retirement benefits of the original applicant/ employee with effect from the date of his retirement (i.e. 30th September, 2020), upon observing *inter alia* that since no disciplinary or judicial proceeding was pending against the employee on the date of his retirement, he was entitled to all the retirement benefits including DCRG on and from the date of his retirement.

Mr. Chatterjee, learned advocate appearing for the respondents in the original application/petitioners

herein submits that under Rule 9 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 1972 Rules), the employer has the jurisdiction and authority to initiate departmental proceedings even after the retirement of the employee, however, subject to the conditions as incorporated under Rule 9(2)(b) of the 1972 Rules. Such issue, as urged, was glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

He further submits that in view of the provisions of Rule 69 of the 1972 Rules, provisional pension has already been disbursed in favour of the employee but the gratuity amount was withheld in terms of Rule 69(c) of the 1972 Rules. Such fact was also not taken into consideration by the learned Tribunal.

Mr. Mohanty, learned advocate appearing for the original applicant/respondent herein submits that admittedly no disciplinary proceeding was pending against the employee at the time of his retirement. In the absence of such pending proceeding, the petitioners have no jurisdiction to withhold the pensionary benefits of the employee.

He informs this Court that subsequent to the retirement of the employee, a charge sheet was issued against him on 31st October, 2022 i.e., more than four years after the alleged incident. The said charge sheet

was subsequently assailed by the employee before the learned Tribunal by an original application being O.A. No.350/00422/2023 and the same upon contested hearing was disposed of by an order dated 2nd May, 2024 quashing the impugned charge sheet. From the said conspectus of facts, it is explicit that the petitioners have illegally withheld the full pensionary benefits of the respondent including the DCRG.

Mr. Mohanty argues that the allegation on the rudiments of which the charge sheet was issued are pertaining to an alleged event which was stated to have occurred more than four years prior to issuance of the charge sheet. The allegations were pertaining to a period when he was serving at Kolkata and admittedly he left Kolkata on 7th May, 2018.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the employee retired on 30th September, 2020. On and from the said date, there was cessation of employer-employee relationship. On the date of such retirement, no disciplinary proceeding was pending against the employee. Subsequently, a charge sheet was issued on 31st October, 2022. The said charge sheet was also quashed by the learned Tribunal in the original application being O.A. No.

350/00422/2023. The said order has not been challenged by the petitioners.

The order impugned has been passed on the ground that no disciplinary or judicial proceeding was pending against the employee on the date of his retirement. Such fact could not be disputed by the petitioners herein. In view thereof, we do not find any infirmity in the order impugned.

The learned Tribunal upon dealing with all the factual issues arrived at a specific findings and we do not find any error, least to say any patent error of law in the order impugned and as such we are not inclined to interfere with the same.

Accordingly, the present writ petition is dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)