(2022) 12 TEL CK 0033

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 2800 Of 2022

M. Sravan Kumar — APPELLANT

Vs

Joint Commissioner St And 2 Others — RESPONDENT

Date of Decision: Dec. 15, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 226, 300A
- Andhra Pradesh Revised Pension Rules, 1980 - Rule 9(2)(b), 9(2)(b)(ii), 9(4), 9(6), 52

Hon'ble Judges: E.V.Venugopal, J

Bench: Single Bench

Advocate: Santhapur Satyanarayana Rao

Final Decision: Disposed Of

Judgement

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1 Challenging the action of the respondents in withholding the Gratuity, commutation value of pension and only releasing provisional pension without

there being any departmental enquiry/ proceedings pending against him, the petitioner filed the present writ petition under Article 226 of the

Constitution of India and a consequential direction was also sought to release the retirement benefits to the petitioner.

2 Petitioner asserts that he was initially appointed as Junior Assistant on 02.03.1994 and subsequently rose to the post of Deputy State Tax Officer in

the year 2015 and ultimately retired from service on attaining superannuation on 30.11.2020. Prior to retirement itself he submitted set of pension papers on 27.11.2020 to the first respondent which was forwarded to the third respondent for sanction of service pension and other retirement

benefits. But unfortunately only provisional pension was sanctioned by withholding Gratuity of more than ten lakhs and commutation value of pension

of twelve lakhs. Petitioner further asserts that while he was working as ACTO at Border Commercial Tax Check Post, Wadepally, Nalgonda District

a surprise check was conducted by the ACB officials on 30.07.2016, however, nothing was found suspicious or any ill-gotten from him. No

disciplinary enquiry was initiated even as on today. Therefore, question of withholding the pension and retirement benefits is violative of Article 14 and

300-A of the Constitution of India apart from contrary to Rule 9 (6) of Revised Pension Rules, 1980. Hence the present writ petition.

3 The second respondent filed counter affidavit stating that the petitioner, while working as Assistant Commercial Tax Officer, Vishnuparam

(Wadapally), Nalgonda District on 30.07.2016, committed certain irregularities by allowing three unauthorized private persons to divert the transport

vehicles by collecting bribe of Rs.18,000/- and odd, by colluding with the staff working there and the said amount was seized by ACB officials during

surprise check. It is further submitted that the Government in Memo dated 22.03.2022 entrusted the case against the petitioner along with three other

accused officers to the Tribunal for Disciplinary Proceedings on the allegation of corruption and irregularities committed at Border Check Post,

Wadapally, Nalgonda district, which is still pending. Therefore, no Gratuity shall be paid until the conclusion of the departmental or judicial proceedings

so also the pension.

4 Sri S.Satyanrayana Rao, the learned counsel for the petitioner submitted that as per Rule 52 of the Revision Pension Rules 1980, pension and

Gratuity can be withheld and only provisional pension can be paid if departmental proceedings /criminal proceedings were set in motion while the

incumbent was in service and are pending. Therefore, the action of the respondents in withholding Gratuity and commutation value of pension and only releasing provisional pension is unsustainable in the eye of law. He further submitted that in connection with the same issue, one of his colleagues by

name Syed Iqbal Ali, who was also denied retiral benefits in view of the alleged surprise check by the ACB officials on 30.07.2016 while he was also

at the Border Check Post, Wadapally, filed W.P.No.7852 of 2021. This HonÃ¢â‚¬â„¢ble Court disposed of the said writ petition by order dated 27.12.2021

observing that the action of the respondents in not releasing the pension and pensionary benefits to the petitioner therein is an arbitrary exercise. Since

the petitioner in the case on hand also stands on the same footing as that of the petitioner in the above writ petition, the same relief may extended to

the petitioner also.

5 Learned Government Pleader appearing for the respondents submitted that the Government in Memo dated 22.03.2022 entrusted the case against

the petitioner along with other three accused officers to the Tribunal for Disciplinary Proceedings on the allegation of corruption and irregularities at

Border Check Post, Wadapally, Nalgonda district, which is still pending, therefore, the action of the respondents in withholding the pension and

Gratuity to the petitioner is not illegal and no interference by this Court is warranted.

6 It may be true that the Government might have entrusted the case against the petitioner along with other three accused officers to the Tribunal for

Disciplinary Proceedings on the allegation of corruption and irregularities at Border Check Post, Wadapally, Nalgonda district, in Memo dated

22.03.2022. But so far no charge sheet is issued to the petitioner. The alleged surprise check was conducted by the ACB officials on 30.07.2016 in

respect of which no charge sheet was given to the petitioner nor any disciplinary proceedings have been initiated.

7 At this stage this Court deems it apt to extract Rule 9(2)(b) of the Revision Pension Rules, 1980, which reads as under:

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-

employment:

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the State Government 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 Government servant during his service.

8 As seen from the above provision of law, particularly, Rule 9(2)(b)(ii) it is manifest that initiation of departmental proceedings are vitiated against the

petitioner since the respondents are proposing to initiate such proceedings against the petitioner for the check exercised by the ACB officials that took

place on 30.07.2016. The petitioner retired from service on 30.11.2020, which is four years after the alleged check. Therefore, Rule 9(2)(b)(ii) would

come into play and apply on all fours. Learned Government Pleader also fairly conceded that as of now, no criminal and disciplinary proceedings are

pending against the petitioner. In such circumstances, the action of the respondents in withholding the pension and Gratuity to the petitioner is illegal

and arbitrary. It is only in the case of a Government 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 52 shall be sanctioned as per Rule 9 (4) of the Revision Pension Rules, 1980.

9 Further, it is to be noticed that in the order passed in I.A.No.1 of 2022, this HonÃ¢â‚¬â„¢ble Court, upon the submission made by the learned

Government Pleader that though the ACB officials submitted a final report to the Government in the year 2018, as of today, no sanction has accorded

to initiate action against the petitioner, by order dated 14.02.2022, observed that in anticipation of according permission by the Government for initiation

of proceedings against the petitioner in respect of an incident said to have taken place five years back, the respondents cannot use the alleged incident as a ruse for not granting retirement benefits to a person who has retired from service 14 months back and accordingly granted the interim direction as

prayed for.

10 Taking into consideration all the above facts and circumstances into account, and also in view of the order passed in W.P.No.7852 of 2021, this

writ petition is disposed of directing the respondents to release pension and pensionary benefits to the petitioner within a period of three months from

the date of receipt of a copy of this order. However, it is needless to state that it is for the State Government to act upon the report submitted by the

ACB officials. No costs.

11 Miscellaneous petitions if any pending in this writ petition shall also stand disposed of.