

(2008) 08 AP CK 0006

Andhra Pradesh High Court

Case No: Writ Petition No. 10497 of 2008

Khaja Syed Rafiuddin

APPELLANT

Vs

Govt. of A.P. and
Others

RESPONDENT

Date of Decision: Aug. 22, 2008

Acts Referred:

- Andhra Pradesh Revised Pension Rules, 1980 - Rule 52, 52(1), 9, 9(4)
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Citation: (2009) 1 ALD(Cri) 176 : (2009) 1 ALT 215

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: K.R.K.V. Prasad, for the Appellant; P.R. Balarami Reddy, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

The petitioner was appointed as Assistant Engineer in the erstwhile A.P. State Electricity Board, on 01-11-1976. With the reorganization of the Board into Generation, Transmission and Distribution Companies, he became the employee of A.P. Southern Power Distribution Company of A.P. Ltd., the 2nd respondent herein, and earned promotion, as Divisional Engineer.

2. On 02-01 -2003, a trap was laid against the petitioner, by the officials of the A.C.B. He was tried in C.C. No. 23 of 2003, by the Court of Special Judge for SPE & ACB Cases, Nellore, for the offence u/s 13(2), read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner was placed under suspension, immediately after the trap. He retired from service on 31-05-2003, on attaining the age of superannuation. Inasmuch as the petitioner was facing trial in the criminal case, he was sanctioned provisional pension, @ Rs. 9,759/- per month, vide proceedings dated 29-08-2003, by the 2nd respondent. The Trial Court convicted the petitioner,

through its judgment dated 20-06-2007, and sentenced him to undergo rigorous imprisonment for one year, and to pay a fine of Rs. 1,000/-. Petitioner preferred Criminal Appeal No. 851 of 2007, before this Court, against the judgment of the Trial Court. The sentence against the petitioner was suspended by this Court, through its order dated 10-07-2007 in Crl. A.M.P. No. 1151 of 2007. The 2nd respondent issued memo dated 27-09-2007, withholding the pension and gratuity of the petitioner, permanently. He feels aggrieved by the said order.

3. Petitioner submits that the provisional pension was sanctioned to him, under Rule 52 of the A.P. Pension Rules, 1980 (for short "the Rules"), and inasmuch as the judicial proceedings are pending, in the form of an Appeal, before this Court, there was no basis for the 2nd respondent, to withhold the pension. He contends that the criminal proceedings can be said to have been concluded, only when the Appeal, before this Court, is finally decided.

4. The respondents filed a counter-affidavit, opposing the claim of the petitioner. It is stated that the sanction of the provisional pension was, pending the disposal of the proceedings before the Trial Court, and once a judgment is rendered therein, convicting the petitioner, the necessity, to pay provisional pension, ceases to exist. Reliance is placed upon the judgment of the Supreme Court in K.C. Sareen v. C.B.I. Chandigarh 2001 (5) Supreme 437.

5. Sri K.R.K.V. Prasad, learned Counsel for the petitioner, submits that the pension, which was sanctioned to the petitioner, was withheld without any legal or factual basis. He contends that once the provisional pension was paid, during the pendency of the criminal proceedings, it needs to be continued, as long as the proceedings are pending before this Court, though the Trial Court had convicted the petitioner. He further submits that under Rule 9 of the Rules, it is only the Government alone, that is competent, to direct withholding of the pension, and such an order was not at all passed, in the instant case.

6. Sri, P.R. Balarami Reddy, learned Standing Counsel for the respondents, on the other hand, submits that once the petitioner was convicted by the Trial Court, he lost the right, to be paid the provisional or final pension, and even after the interim orders, passed by this Court, the conviction, against him, continues to operate.

7. The scope of Rule 52, read with Rule 9, of the Rules, arises for consideration, in this writ petition. The Rules prescribe the procedure for sanction or withholding of the pension. They were adopted by the 2nd respondent. Therefore, wherever the word "Government", occurs in the Rules, reference needs to be taken, to the 2nd respondent, in the context of its employees.

8. Though the pension of an employee is recognized as a right to property, the release thereof, is not, as a matter of course, particularly, when the employee is facing departmental or judicial proceedings, when he is about to retire. Depending upon the outcome of the departmental or judicial proceedings, the appointing

authority is empowered to withhold pension, or gratuity, or both, of an employee.

9. In case, an employee attains the age of superannuation, when the departmental or judicial proceedings are pending, Rule 52 of the Rules, comes into play, and it provides for sanction of provisional pension. Rule 52 reads as under:

Rule 52: Provisional pension where departmental or judicial proceeding may be pending:

(1)(a) In respect of a Government servant referred to in Sub-rule (4) of Rule 9, the Audit Officer/Head of Office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, 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.

(b) The provisional pension shall be paid by the Audit Officer/Head of Office during the period commencing from the date of retirement to the date on which, upon the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Govt. servant until the conclusion of the departmental or judicial proceedings and issue of final orders:

(Remaining part of the Rule is not necessary, and as such omitted)

10. A perusal of the provision discloses that, the sanction, and the consequential payment of provisional pension, is only a temporary measure, till the departmental or judicial proceedings, instituted against the employee are concluded. In case, the said proceedings end in favour of the employee, he becomes entitled to be paid the pension, on regular basis. On the other hand, if they go against him, the occasion to pay provisional pension, ceases to exist. Either way, the measure, under Rule 52 of the Rules, becomes untenable, once the departmental or judicial proceedings are concluded. In the instant case, the petitioner did not face any departmental proceedings, and he was facing trial in C.C. No. 23 of 2003.

11. The contention that though the petitioner was convicted in C.C. No. 23 of 2003, the proceedings cannot be said to have terminated, as long as the appeal preferred before this Court is pending; cannot be accepted, for more reasons than one. Firstly, what becomes relevant under Rule 52(1)(b) of the Rules, is, passing of final orders, in the proceedings, by the competent authority, i.e. the Court. The judgment, rendered by the Trial Court, answers the description of final order, in the present context. Irrespective of its purport, viz., acquittal or conviction, a final order; in the criminal case, would terminate the provisional pension. If the end result is acquittal, it paves the way, for sanction of regular pension, and if it is conviction and sentence, it leads to permanent stoppage thereof, as contemplated under Rule 9 of the Rules. Either way, the provisional pension cannot be continued, once the criminal case is

disposed of.

12. Secondly, it is only in civil matters, that the first appeal can be treated as a continuation of a suit. In matters dealt with under Cr. P.C , such is not the case. The presumption, as to innocence of an accused, ceases, once he is convicted by a Trial Court. Even where the sentence against him is suspended, the conviction continues to operate, and, at any rate, he cannot be treated as innocent, till the Appellate Court sets aside the conviction and sentence.

13. Even otherwise, in categorical terms, the Supreme Court held in Sareen's case (supra), that, once an employee is convicted on corruption charges, he does not have any right, to receive pension of any kind, even if the sentence was suspended in Criminal Appeal. It was also pointed out that, on conviction, the employee is deemed to have been under suspension, by a statutory fiction; and viewed in that context also, the pension cannot be released to the petitioner.

14. The writ petition is dismissed. There shall be no order as to costs.