

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-09-2008

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K. KANNAN

W.P.NO.18453 OF 2008
and
M.P.NO.1 OF 2008

- 
1. The Secretary to Government (Agriculture)
Govt. of Pondicherry,
Chief Secretariat Govt. Of Puducherry,
Representing Union of India.
2. The Director,
Agricultural Department, Puducherry.
3. The Director of Accounts and Treasuries,
Puducherry. ...Petitioner
- ...Vs...
1. A. Mohamed Thaheer
2. The Deputy Registrar,
Central Administrative Tribunal,
Chennai. ...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records pertaining to the order in O.A.No.306 of 2007, dated 7.11.2007, on the file of the Central Administrative Tribunal, Chennai, and quash the same.

For Petitioner : Mr.Syed Mustafa for
Mr.T. Murugesan,
Govt. Pleader (Puducherry)

For Respondent-1: Mr.P.V.S. Giridhar

J U D G M E N T

P.K. MISRA, J

The facts in brief are as follows :-

<https://hcservices.ecourts.gov.in/hcservices/>

Respondent No.1 entered service under the Government of Pondicherry in 1971 and ultimately retired from service on

30.9.2004. While he was in service, a charge memo was issued on 3.6.2004, on the allegation of alleged sexual harassment. On 28.9.2004, a complaint was filed relating to alleged misappropriation by present Respondent No.2. Since there was some dispute relating to payment of provisional pension and leave encashment, Respondent No.1 had filed O.A.No.660 of 2005. Initially the grant of pension and other benefits had been with-held apparently on account of the pendency of the departmental proceedings. Subsequently, however, the departmental proceeding was dropped as the alleged victim did not turn up for enquiry. Respondent No.1 filed O.A.No.306 of 2007 for grant of full pension and payment of DCRG. Even though a reply statement was filed by the Puducherry Government stating that a criminal proceeding was pending and, therefore, the question relating to payment of pension and DCRG could be finalised after finalisation of such judicial proceeding, the Tribunal, on an erroneous assumption that no reply had been filed, proceeded to deal with the matter and directed full pension and DCRG should be paid without considering the question as to whether a judicial proceeding was pending. Subsequently, the Puducherry Government filed Review Application No.37 of 2007 by contending that O.A.No.306 of 2007 had been disposed of without taking note of the reply filed by the Puducherry Government and, therefore, the matter should be reviewed. The Tribunal by its order dated 25.1.2008, while conceding that reply had been filed, rejected the Review Application by observing that, on the date of retirement, merely an FIR had been filed and, as per Rule 9(6) of CCS Pension Rules, a judicial proceeding shall be deemed to be instituted on the date on which the report of a Police Officer, of which the Magistrate takes cognizance, is made and, therefore, since on the date of retirement, no such judicial proceeding was pending, the applicant before the Tribunal was entitled to full pension and DCRG. These orders of the Tribunal allowing the O.A.No.306 of 2004 and subsequently dismissing Review Application No.37 of 2007 are the subject matter of challenge in the present writ petition at the instance of the Puducherry Government.

2. Learned counsel for the Puducherry Government submitted that the departmental proceeding, which was initiated against the present Respondent No.1, was dropped on a technical ground as the victim of the sexual harassment did not turn up during enquiry. It is further submitted by him that at any rate a criminal case had been initiated against Respondent No.1 alleging misappropriation and, therefore, Respondent No.1 was not entitled to the full pension and DCRG and the matter could be decided only after conclusion of such judicial proceedings.

3. Learned counsel appearing for Respondent No.2 has supported such conclusion of the Tribunal by emphasising on the fact that as per the definition clause in Rule 9(6), a judicial proceeding shall be deemed to have been commenced on the date on which the report under Section 173(2) Cr.P.C. was made as it can be said that the court takes cognizance only after such report under Section 173 Cr.P.C. is filed by the Police Officer.

4. Rule 9(1), 9(4), 9(6) and 69 of the CCS (Pension) Rules, being relevant, are extracted hereunder :-

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(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 President,

(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 President 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 servants during his service.

. . .
9 (4) In the case of 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 69 shall be sanctioned.

. . .
9(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

"69. Provisional pension where departmental or judicial proceedings may be pending

(1)(a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government 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 Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

5. A perusal of Rule 9(1) of the above Rules make it clear that the right to withhold pension or gratuity, or both, either in full or in part, is vested with the President. Similarly, the President has the power of withdrawing the pension in full or in part, permanently or for a specified period. Moreover, the President has the right to recover the whole or part of any pecuniary loss caused to the Government from the pension or gratuity of the retired employee. This power is of course subject to the retired person being found guilty of grave misconduct or negligence in any departmental or judicial proceedings.

Rule 9(4), however, envisages that the retired employee against whom the departmental or judicial proceedings are instituted or continued, a provisional pension as envisaged in Rule 69 should be sanctioned. Rule 69(1) envisages the manner in which the provisional pension should be calculated and Rule 69(2) envisages that payment of provisional pension made under Rule 69(1) is to be adjusted against final retirement benefits upon conclusion of the departmental or judicial proceedings, as the case may be. However, Rule 69(2) also makes it clear that no recovery shall be made where the pension finally sanctioned is less than the provisional pension. Rule 69(1)(c) specifically enjoins that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. The proviso, however, contemplates that if the departmental proceeding is in respect of minor penalties, payment of gratuity shall be authorised.

6. Before the Tribunal, the main contention of the applicant (Respondent No.1) was based on Rule 9(6)(b) of the CCS (Pension) Rules. The relevant portion is to the effect that for the purpose of Rule 9, judicial proceedings shall be deemed to be instituted, in the case of criminal proceedings, the date on which the complaint or report of a Police Officer is made.

7. Relying upon the language contained in Rule 9(6)(b) of the CCS (Pension) Rules, learned counsel for Respondent No.1 has invited our attention to the provisions contained in Sections 190 and 173(2) of the Code of Criminal Procedure. It is contended by

him that as per Section 190 Cr.P.C., a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. In this context, he has submitted that reference to police report as contained in Section 190(1)(b) obviously means a report of a police officer as contemplated in Section 173(2) Cr.P.C. It is therefore submitted by him that, in the present case, merely an FIR had been registered, but the report of the police officer as contemplated under Section 173(2) Cr.P.C., had not been filed and, therefore, it cannot be said that a judicial proceeding was pending as envisaged in Rule 9, particularly keeping in view the definition clause in Rule 9(6) of CCS (Pension) Rules.

8. If a literal meaning is given to the expression used in Rule 9(6)(b), it would mean that in case of a private complaint, as contemplated in Section 190 Cr.P.C., a judicial proceedings is deemed to be pending from the date of filing of a complaint or filing of a plaint in a Civil Court, whereas in a case initiated on the basis of a First Information Report under Section 154 Cr.P.C., which necessarily involves some investigation before filing of a report under Section 173(2), the judicial proceedings shall be deemed to be instituted only on the date on which such report under Section 173(2) is made. Such a literal interpretation would give rise to startling results. If in a given case, an employee commits a very serious crime just a few days before his retirement or even on the date of retirement and completion of the investigation and filing of the report contemplated under Section 173(2) Cr.P.C. with attendant inevitable possibility of delay because every investigation takes its own time, the retired employee can claim that he must be given his full pensionary benefits including gratuity notwithstanding pendency of such investigation. It is quite well known that First Information Report registered under Section 154 Cr.P.C., involves more serious allegations as compared to a private complaint in respect of offences which are considered non-cognizable. In other words, in relation to less serious crime, a judicial proceeding shall be deemed to be instituted on the date of filing of the complaint. Similarly, in case of a civil litigation involving such Government servant, a judicial proceeding shall be deemed to be instituted on the date of filing of the plaint, but in respect of investigation relating to more serious crime, judicial proceeding shall be deemed to be commenced only on filing of the final report as envisaged under Section 173(2) Cr.P.C., which would in effect result in grant of full pension as well as full gratuity to such Government servant.

9. In our considered opinion, by giving a literal interpretation, the very object of Rule 9(1) would be defeated, if it is construed that notwithstanding the lodging of FIR and notwithstanding the pendency of investigation in all cases the retired employee would be entitled to get pension as well as gratuity as a matter of right. In this connection, it is also to be noticed that though there is a provision for provisional pension where departmental or judicial proceeding is pending, there is no

such provision relating to payment of gratuity. On the other hand, Rule 69(c) of the CCS (Pension) Rules contemplates that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

10. It is not in dispute that on the date when the matter was decided by the Tribunal, charge-sheet in the criminal case had been filed after obtaining the sanction from the Lieutenant Governor relating to prosecution of the present Respondent No.1. Even assuming that the interpretation adopted by the Tribunal and advocated by the learned counsel for Respondent No.1 that no criminal proceeding was pending when the Original Application was filed, at least on the date when such Original Application was decided, it could be said that a criminal proceeding was pending. In such a scenario, the contention now raised by Respondent No.1 that, on conclusion of the departmental proceedings, since no other judicial proceeding was pending at that time, he was entitled to receive full pension and gratuity cannot be countenanced at least in view of the subsequent event, namely, completion of the investigation and filing of the charge-sheet after obtaining the order of sanction.

11. For the aforesaid reasons, we are unable to uphold the orders passed by the Tribunal in O.A.No.306 of 2007 and the subsequent order in Review Application No.37 of 2007. However, since the matter relates to finalisation of the pension and other retirement benefits, we would urge the present petitioners to take all possible steps for expeditious disposal of the criminal case so that the fate of Respondent No.1 should not hang in balance for an indefinite period. Therefore, we observe that on production of a copy of this order, the court, where the criminal case is pending, shall make all efforts to conclude the proceedings as expeditiously as possible preferably within a period of six months from the receipt of such order. The present petitioners, who are the Prosecutor, should take all necessary steps to expedite the completion of the trial. It goes without saying that it would be in the interest of Respondent No.1 to co-operate in early disposal of the trial. Subject to the aforesaid observation, the writ petition is allowed and the orders passed by the Tribunal are quashed. No costs. Consequently, M.P.No.1 of 2008 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

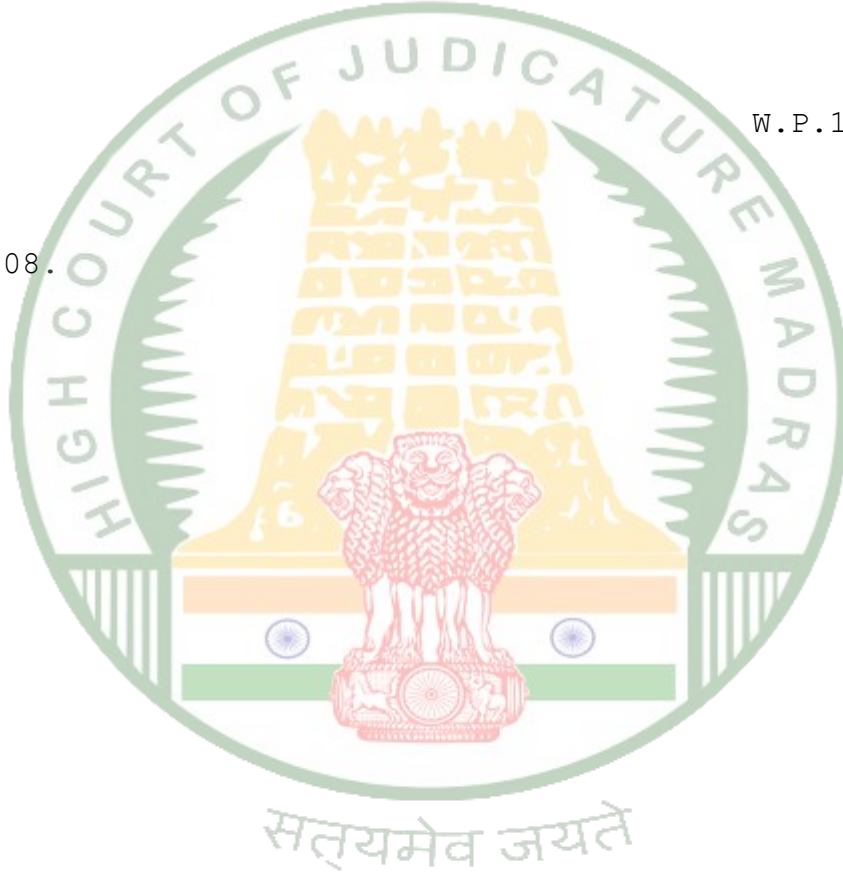
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To

1. The Secretary to Government (Agriculture)
Govt. of Pondicherry,
Chief Secretariat Govt. Of Puducherry,
Representing Union of India.

2. The Director,
Agricultural Department,
Puducherry.
3. The Director of Accounts and Treasuries,
Puducherry.
4. The Deputy Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

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MG (CO)
GSK 29.10.2008.



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