

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 962/2010
CMP No.1341/2010

Date of decision: 29.12.2010

Ghulam Mohd. Runyal vs. State and ors.

Coram :-

Mr. Justice J. P. Singh, Judge.

Appearing Counsel:

For Petitioner(s) : Mr. D.S.Thakur, Advocate.
For Respondent(s) : Mr. Gagan Basotra, AAG.

- | | | |
|-----|--|--------------|
| i) | Whether approved for reporting
in Press/Journal/Media | : Yes |
| ii) | Whether to be reported
in Digest/Journal | : Yes |
-

The petitioner-Ghulam Mohammad Runyal, a Sub Inspector of Police in the Police Department of the State Government, retired from service, on superannuation, on January 31, 2010, has approached this Court seeking quashing of the enquiry initiated/sought to be initiated by the respondents against him, besides a Command to the State-respondents to release his pensionary and other service benefits.

The grievance projected by him in the Writ Petition is that the enquiry proposed to be initiated against him for remaining in service and receiving salary from the State Government for two years more than the date of

retirement on the basis of his actual date of birth i.e. 12.01.1950 as against 12.01.1952, as projected at the time of entry into service, was unauthorized and unwarranted being against the provisions of Regulation 168-A of the Jammu and Kashmir Civil Service Regulations, 1956. Further grievance of the petitioner is that the stoppage of pensionary and other service benefits by the respondents was without the authority of law.

Contesting the petitioner's Claim, the respondents say that they received complaints in August, 2009 to the effect that the petitioner had entered the Government Service on the basis of a Certificate, which incorrectly recorded his date of birth as 12.01.1952 whereas his actual date of birth was 12.01.1950 but the Petitioner did not respond to the notices issued to him in this behalf and thus having cheated and defrauded the department causing wrongful loss to the State Exchequer, the petitioner was not entitled to the release of his pensionary and other service benefits, which are stated to have been temporarily withheld by the Superintendent of Police, Ramban, while submitting the

result of his enquiry to DIG Doda-Kishtwar-Ramban Range, Headquarter Batote vide DPO Ramban's No.Clt/Rbn/10/270-72 dated 31.03.2010.

Perused the pleadings and documents placed on records by the parties and heard their learned counsel.

Before proceeding further, reference needs to be made to the provisions of Regulation 168-A of the Jammu and Kashmir Civil Service Regulations, which for facility of reference is reproduced hereunder:-

“The Government reserves to itself the right to order the recovery from the pension of an officer of any amount on account of losses found in Judicial or Department proceedings to have been caused to Government by the negligence or fraud of such officer during his service provided that-

(a) such Departmental proceedings if not instituted while the officer was on duty-

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

(ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later;

(iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and

(iv) shall be conducted by such authority and in such places as the Government may direct;

(b) all such departmental proceedings shall be conducted if the officer concerned so requests in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and

(c) such judicial proceedings if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (a) above.”

It is not in dispute that the petitioner retired from service on attaining the age of superannuation on January 31, 2010. Until then, there was no Judicial or Departmental proceedings, in which it could be

ascertained that any amount on account of loss had been caused to the Government by the negligence or fraud of the petitioner during his service. The respondents appear to have initiated only preliminary proceedings in the year 2009 on the complaints received by them that the petitioner had stayed in the department for two years more than the actual date, on which he had to retire on superannuation.

In these circumstances, in view of the provisions of Section 168-A of the Jammu and Kashmir Civil Service Regulations, referred to hereinabove, no Departmental Proceedings may be warranted against the petitioner unless the State Government had sanctioned initiation of such proceedings.

The respondents are not stated to have obtained Government sanction for holding Departmental proceedings against the petitioner, till date.

Another impediment in holding the Departmental Proceedings against the petitioner is that such proceedings could be held only in respect of an event, which took place not more than one year before the date on which the officer was last on duty.

In these circumstances, holding of Departmental Proceedings against the petitioner for an event which occurred about forty years ago and that too, without any Government sanction, may not be warranted.

That apart, the Departmental or Judicial proceedings having not commenced during the service of the petitioner, these cannot be so initiated in the absence of the Government Sanction.

Thus, having earned Pension and other service benefits, pursuant to his authorized retirement on superannuation, the temporary stoppage of the release of pensionary and other service benefits of the petitioner, by the respondents, is unwarranted, besides being unjustified, in that, the petitioner cannot be deprived of his property i.e. Pension and other service benefits save and except in accordance with law resort where to is not stated to have been had by the respondents.

The action of respondent No.4 in directing the temporary stoppage of the release of pensionary and other service benefits of the petitioner is, thus, found to be against law.

The respondents are, therefore, required to be commanded to release the Pensionary and other service benefits to the petitioner.

This Petition, therefore, succeeds and is, accordingly, allowed.

A direction shall issue to the respondents to release the pensionary and other service benefits, payable to the petitioner, under rules, within a period of eight weeks.

(J. P. Singh)
Judge

JAMMU:
29.12.2010
Vinod.