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Court : Delhi

Decided On : Jan-24-1994

Reported in : 1994(28)DRJ692

Judge : P.K. Bahri and; Vijender Jain, JJ.

Acts : Civil Services Pension Rules, 1972 - Rule 9

Appeal No. : Civil Writ Appeal No. 2814 of 1993

Appellant : C.P. Arora

Respondent : Union of India

Advocate for Pet/Ap. : R.P. Sharma and; Meera Bhatia, Advs

Judgement :

P.K. Bahri and Vijender Jain, JJ.

(1) Rule D.B.

(2) Only a short question is involved in this writ petition. After hearing the learned counsel for the parties, we proceed to dispose of this writ petition..

(3) The petitioner has prayed for issuance of direction to the respondents to release all the pensionary benefits including gratuity, commuted value of pension and leave encashment etc. The petitioner had been allowed to voluntarily retire

w.e.f. 31st March. 1-993. In the order granting the voluntary retirement to the petitioner, it was mentioned that the same was being allowed subject to the enquiry pending in which petitioner was a witness. The petitioner, although retired, has not been released pensionary benefits and thus he came for seeking the aforesaid reliefs.

(4) The respondents have come up with the plea that the pensionary benefits could not be released to the petitioner as he was to be proceeded against for some departmental inquiry. It is asserted by the respondents that in the preliminary inquiry it was found that the petitioner had committed embezzlement of Government funds in some transaction of purchase of Sallies and the allegations is that about Rs. 15 lakhs had been embezzled by the petitioner.

(5) The short question, which arises, is whether the respondents are entitled in law to withhold the pensionary benefits on the ground that the respondents are yet to take some action against the petitioner for his alleged crime. The respondents have mentioned in the counter-affidavit that the provisional pension has already been paid to the petitioner w.e.f. 1st April, 1993 but other pensionary benefits are being withheld as some prosecution is to be lodged against the petitioner.

(6) RULE-9 of the Civil Services Pension Rules 1972, which is applicable to the petitioner, has laid down that either in departmental enquiry or judicial proceedings, if the pensioner is found guilty of grave misconduct or negligence during the period of his service, the President has the power to withhold or withdraw pension either in whole or in part permanently or for a specified period or to order recovery of the pecuniary loss in whole or in part from the pension.

(7) It is quite clear that till the petitioner is found guilty of grave misconduct or negligence in any departmental inquiry or judicial proceedings, the question of the respondents withholding the pensionary benefits of the petitioner does not arise.

(8) The learned counsel for the respondents argued that the petitioner could be proceeded with departmentally within six months of his retirement but the petitioner has avoided to appear and allow the respondents to commence the departmental proceedings. Learned counsel for the respondents states that now

the respondents will be lodging a criminal case against the petitioner. It is evident that mere fact that the respondents intend to lodge a criminal case against the petitioner does not mean that the respondents are entitled to withhold the pensionary benefits of the petitioner.

(9) As Rule-9 of the Pension Rules is very clear, the respondents are not now legally entitled to withhold the pensionary benefits of the petitioner.

(10) This Rule-9 is interpreted by the Supreme Court in the case of D.V. Kapoor Vs . Uoi & Ors. : [1990]3SCR697 . It has been held as follows:-

'AS seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period or to order recovery the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/.'

(11) In the present case, as yet no order has been passed against the petitioner under Rule 9. Obviously, no order can be passed for withholding the pensionary benefits till it is established that either in departmental inquiry or judicial proceedings, any Finding has been given holding the petitioner guilty of any misconduct or of any crime. Hence, we hold that the respondents are not entitled to withhold the pensionary benefits of the petitioner at present.

(12) In view of the above discussion, we allow this writ petition and make the rule absolute and direct the respondents to pay all the pensionary benefits to the petitioner within two months. If the pensionary benefits are not released within two months, the petitioner will be entitled to be paid interest @ 18% p.a. Copy of this order be given dusty to counsel for the respondents.