

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 6237 of 2010

Between:

K. Dora Reddy

... Petitioner

And

The Sports Authority of Andhra Pradesh,
Hyderabad, rep. by its Vice-Chairman-cum-
Managing Director

... Respondent

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 6237 of 2010****% 05.06.2023****Between:**

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... Respondent

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr Vedula Srinivas

^ Counsel for Respondents : Mr G. Satish Reddy
Mr. Hari Sreedhar

? Cases Referred:

1. AIR 1985 SCC 356

2. (2013) 12 SCC 210

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P NO. 6237 of 2010

ORDER:

Heard learned counsel for the petitioner and learned standing counsel for the SAAP appearing for the respondent.

2. This writ petition is filed to issue a writ of Mandamus or any other appropriate writ, order or orders, direction or directions declaring the action of the respondent in not releasing the Pay arrears of Rs.4,48,274/-, non-fixation of full pension with effect from 01.07.2004 and non-payment of other retirement benefits like Gratuity to the petitioner on the ground of pendency of the charges pertaining to the period 1985 to 1994 without passing any final order as illegal, arbitrary and unconstitutional and to issue a consequential direction to the respondent to release the pay arrears of Rs.4,48,274/-, to release the full pension with effect from 01.07.2004 and to pay the other retirement benefits like Gratuity to the petitioner forthwith and also to pay interest on the above amounts.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner working as Manager in the Main Sports Hostel, Hyderabad since 1986, he was transferred to Vizag in August, 1992 and was posted back in the Sports Hostel, Hyderabad in March, 1993. The petitioner was asked to work in the Accounts Section in May, 1994, he was suspended on 16.07.1994 on certain allegations.

b) Six charges were framed against the petitioner. The petitioner denied the said charges vide explanation dated 10.10.1994. The petitioner participated in the enquiry and the Enquiry Officer submitted report on 11.11.1994.

c) The petitioner was served with a show-cause notice dated 24.11.1994 and he submitted explanation on 21.12.1994. Thereafter, the respondent ordered a fresh enquiry on 19.06.1995 holding that the report of the earlier enquiry officer was not acceptable.

d) The Deputy Director (E&L) was appointed as Enquiry Officer to conduct a fresh enquiry. The petitioner was reinstated on 08.12.1995. Therefore, the respondent removed

the petitioner from service on 18.01.2000 on the basis of original enquiry report.

e) The petitioner challenged the said removal order in W.P.No.4130 of 2000 before the High Court and the High Court suspended the said removal order vide order dated 15.03.2000 in WPMP No.5485 of 2000 and consequently, the petitioner was reinstated into service and ultimately the proceedings dated 18.01.2000 were withdrawn on 13.11.2000 by the respondent and accordingly, the said writ petition has become infructuous.

f) The petitioner retired from service on 30.06.2004 on attaining the age of superannuation of 58 years. The petitioner was allowed to retire by the respondent without any objection. The petitioner had to be paid with certain salary arrears, arrears of pay fixation, pension worked out to Rs.5,016/- per month etc., amounting to Rs.4,48,274/- by the respondent.

g) On several representations made by the petitioner, the respondent issued proceedings dated 15.06.2007 whereunder provisional pension of Rs.2,508/- per month was sanctioned and arrears of provisional pension of Rs.95,350/- was also

sanctioned. The respondent did not pay the other amounts and full pension to the petitioner on the ground of pendency of charges pertaining to the year 1994.

h) The respondent did not conduct any proceedings so far after the retirement of petitioner except serving a charge sheet dated 25.06.2004 wherein the charges pertaining to the original charge sheet of 1994 were revived. The petitioner submitted explanation on 10.09.2004 and thereafter, no enquiry took place.

i) The petitioner was served with show cause notice on 04.11.2006 wherein the respondent informed the petitioner that they have referred all the bills submitted by the petitioner for the period 1985 to 1994 for an amount of Rs.26,07,076/- to a Chartered Accountant who had found them to be bogus and accordingly it had been decided to recover the said amount from the petitioner. The petitioner was directed to show cause as to why the said amount should not be recovered. A copy of the report of the Auditor was also furnished to the petitioner in turn he submitted his explanation on 29.01.2007 denying the findings of the Auditor and requested the respondent to drop further action as well

as to release pensionary benefits. Since then the petitioner did not receive any communication from the respondent. Hence, this writ petition.

4. The case of the respondent as per the counter affidavit filed by the respondent, is as follows:

a) The petitioner filed W.P.No.15896 of 2003 and the same is pending. After due verification of the claims of the petitioner in the said writ petition, the petitioner is eligible for Rs.4,48,274/- towards arrears of salary i.e. incremental arrears, pay fixation, extension of 8 and 16 years special grade post to the petitioner from January, 1993 to June, 2004. The said amount was released and adjusted towards misappropriated amount of Rs.26,07,759.70 ps.

b) After thorough verification of records and accounts regarding the advances drawn by the petitioner, the respondent found that the petitioner had drawn a total amount of Rs.40,50,985.15 ps during the years 1985-86 to 1993-94 and the petitioner settled an amount of Rs.14,43,225/- leaving an amount of Rs.26,07,759.70 ps without rendering accounts till

date. The petitioner did not even dispute as to his receipt/withdrawing of the said advances.

c) A charge sheeted Government Employee is only eligible for provisional pension and other benefits as per G.O.Ms. No. 1097 and as matter of fact, petitioner is being paid provisional pension.

d) The petitioner had informed by a letter dated 07.07.2003 to the respondent and also to the Enquiry Officer on 14.03.201 as to his submission of photo copies of the accounts for Rs.19,34,307.70 ps. From rendition of accounts furnished by the petitioner, the respondent found the accounts correct to a tune of Rs.14,43,225.45 ps only, and that an amount of Rs.4,48,274/- was adjusted towards the misappropriated amount, thus a balance amount of Rs.21,59,485.70 ps is still an unexplained amount, in spite of demands, and thus rendered himself liable for the misappropriation of the funds pertaining to the respondent.

e) Respondent issued a memo dated 27.05.2004 to the petitioner, to furnish the details of the advances drawn from

1985-86 to 1993-94. Further, the petitioner was put on the notice of initiation of the disciplinary action as per the procedure under CCA rules in the event of petitioner's failure to account for the misappropriated amount and as the petitioner failed to submit explanation to the notice, another notice dated 07.06.2004 had been issued on the petitioner proposing to conduct an enquiry in accordance to the procedure laid down under rule 20 of APCS (CCA Rules).

f) Petitioner on the receipt of the said notice had submitted a letter dated 03.07.2004 requesting the respondent, 2 (Two) Months time to submit account of advances for the misappropriated amount.

g) As the petitioner failed to give convincing and satisfactory explanation and rendition of accounts to the tune of Rs.21,59,485-70, the petitioner is not entitled for full pension and is only entitled for provisional pension. The bills submitted by the petitioner were forwarded to the Accounts Department of the respondent authority for scrutiny and to take further action.

h) The auditors verified the bills and reported that all the bills are bogus and based upon the said auditor's report a Show Cause Notice dated 04.11.2006 was issued to the petitioner against which, the petitioner submitted explanation requesting to re-examine the case and to drop further action.

i) The respondent is empowered to withhold the terminal benefits under certain heads such as gratuity etc when a delinquent employee is facing misappropriation charges and further, the delay in concluding the enquiry was attributable to the petitioner's non availability at the head quarters of the respondent and not on account of any other reason. Hence the writ petition is liable to be dismissed.

PERUSED THE RECORDS :

DISCUSSION AND CONCLUSION :

5. A bare perusal of the specific pleadings of the Petitioner in the Petitioner's affidavit in paras 5 and 6 of the affidavit filed in support of the present writ petition and specific averments of the Respondents in the counter affidavit filed by the respondents, in

particular paras 6, 7(c), and 7(e) clearly indicates that the subject issue pertains to the period 1985-86 and 1993-94 and admittedly the show cause notice issued to the Petitioner is dated 04.11.2006 and thereafter the Petitioner furnished explanation dated 29.01.2007 denying the findings of the Auditor and requested the Respondent to drop further action and to release the Petitioner's pensionary benefits, but since then the Petitioner did not receive any communication from the Respondent till as on date.

6. In State of Kerala Vs. M. Padmanabham Nair AIR 1985 Supreme Court 356, the Hon'ble Supreme Court observed that pension and gratuity are no longer any bounty to be disbursed by the Government to its employees on their retirement but are valuable rights and property, in their hands. The aforesaid authoritative law was thereafter reiterated by the Hon'ble Supreme Court in "Dr. Umar Agarwal Vs. State of U.P. and another", reported in 1999 (2) SCT 347 (SC).

7. The Hon'ble Supreme Court in another authoritative judgment passed in "State of Jharkhand and others Vs Jitendra Kumar Srivastava and another reported in 2013(12) SCC 210 again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits Para Nos.8 and 16 of the aforesaid judgment is reproduced as under-

"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and im-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India: (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty at gratis payment depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoks Nandan Prasad State of Bihar and Ors. [1971] S. SCR 6H wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to

that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh(6) reported in (1976) IILLJ 377 SC"

It is thus hard earned benefit which accrues to an employer and is in the nature of "property" This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property" Article 300-A of the Constitution of India reads as under:

"300-A Persons not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article

300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

8. **The counter affidavit refers to Rule 9(2)(a) of A.P. Revised Pension Rules, 1980 and justifies the continuance of disciplinary proceedings even after the Petitioner's superannuation** but however, the counter affidavit is silent and does not trace its power available under law justifying the action of the Respondents in withholding the full pension and all other retirement benefits due to the Petitioner under the guise of pending disciplinary proceedings.

9. The Petitioner superannuated on 30.06.2004 itself, this Court opines that withholding the Petitioner's full pension and other retirement benefits and further keeping the disciplinary proceedings pending against the Petitioner since 2006 onwards after receiving the explanation of the Petitioner on 29.01.2007 to the show cause notice dated 04.11.2006

issued to the Petitioner by the Respondent authority is neither just and proper nor sustainable. This Court opines that disciplinary proceedings cannot be kept pending for years together and under the guise of the said pendency of the disciplinary proceedings the full pension and the terminal benefits of the Petitioner cannot be denied to the Petitioner.

10. Taking into consideration the view taken by the Apex Court in the judgments referred to and extracted above i.e. i.e. State of Kerala Vs. M. Padmanabham Nair reported in AIR 1985 Supreme Court 356 and State of Jharkhand and others Vs Jitendra Kumar Srivastava and another reported in 2013(12) SCC 210 and all the above referred facts and circumstances of the case the Writ Petition is allowed and the Respondents are directed to release full pension of the Petitioner w.e.f 01.07.2004 and also all pay arrears legally entitled to by the petitioner as per rules, which had been withheld for the last nearly 18 years duly deducting the provisional pension which had been released or paid to the Petitioner and all other retirement benefits,

terminal benefits due to the Petitioner within a period of four weeks from the date of receipt of the copy of this order due to the Petitioner as per law since a retired employee cannot be put to untold suffering and hardship on the ground of pending disciplinary proceedings for years together. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
b/o kvrm