

73

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 525/99

Date: 8/3/2000

Between:

Dr. T.K. Suman Kumar

.. Applicant

A N D

1. Kendriya Vidyalaya Sangathan,
Jt. Commissioner,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.

2. Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
Hyderabad Region,
Picket,
Secunderabad - 500 009.

.. Respondents

Counsel for the applicant : Mr. G.S.Rao

Counsel for the respondents: Mr. M.C.Jacob for Mr.B.N.Sharma

Coram:

Hon. Shri B.S. Jai Parameshwar, Member (J)

3

74

(Per Hon.Shri B.S.Jai Parameshwar, Member (J)

Heard Mr. G.S.Rao, learned counsel for the applicant and Mr. M.C.Jacob, for Mr. B.N. Sharma, learned standing counsel for the respondents.

2. The applicant was initially appointed as Post Graduate Teacher in Kendriya Vidyalaya Sangathan w.e.f. 24-6-1968. He was promoted to the post of Principal on 13-5-1983. He worked as such at various places and ultimately while working at Hyderabad retired from service w.e.f. 31-10-97 on attaining the age of superannuation.

3. Before his entry into Kendriya Vidyalaya the applicant had worked in Andhra Pradesh Education Subordinate Service as a teacher for a period of 14years, 9months, 6 days i.e. from 17-9-1953 to 22-6-1968.

4. The applicant submits that he is entitled for full superannuation service benefits for the continuous service rendered by him for 44 years 1 month and 15 days. According to him he is entitled to the following benefits:

- (a) Death-cum-retirement gratuity.
- (b) Pension plus Dearness relief on Pension.
- (c) Leave encashment(175 days earned leave and 93days Half Pay Leave)
- (d) The last instalment of CDS which was deposited with PF Commissioner by the KVS.

The above benefits have not been paid. He submits that for the purpose of calculating the amount liable to be paid towards Pension, gratuity and leave encashment, re-fixation of pension in the revised pay scale of Rs.10,000-325-15,200 has to be done and all retirement benefits ~~have~~ to be paid. His basic pay has to be fixed at Rs.11,950+200PP =Rs.12,150/- in the revised scale of pay vide letter No.F-6-29/83 KVS(E.II) dt. 13-11-1998 (Annexure A-4).

2

75

5. The K.V.S. had sanctioned a sum of Rs.1,16,452/- by its letter bearing no. F.18(2677)2577/98/KVS/P&I dt. 22-6-1998 (Annexure A-5). However, by the letter of even no. dt. 23-7-98 with which the said sanction letter was sent the KVS had sent a DD only for Rs.19,099/-. It has deducted Rs.97,353/- from the sanctioned gratuity by stating that the deduction was made towards alleged outstanding advance as indicated in the letter no. F.1-1/98-KVS(JR)4598 dt. 20-5-98 from the Asstt. Commissioner(Jammu) (Annexure A-6).

6. The applicant submits that the deduction of Rs.97,353/- is illegal. The copy of the letter dt. 20-5-98 of the Asstt.Commissioner(Jammu) has not been made available to him. At no time during his service he was informed of any dues -neither while he was working at Jammu for six years nor while he was working at Ordnance Factory at Medak. It is submitted that at the time of internal audit and also at the time of external audit at Jammu and Medak there was no reference to any outstanding advances. In fact the Principal, K.V.S.Edumallaram have issued "no due certificate" as per Annexure A-7. The deduction made out of his gratuity even without notice to the applicant is illegal, arbitrary and unjust. No such deduction is permissible from the retirement benefits.

7. The applicant got issued a legal notice dt. 8-8-1998 to pay full gratuity amount with 18% interest without any deduction. The respondents have not sent any reply. He submits that the gratuity amount was sanctioned vide letter dt. 22-6-98 and the same was calculated on the basis of previous basic pay. Gratuity has not been calculated on the basis of the re-fixed pay as per letter dt. 13-11-1998. The arrears of gratuity has not been paid. The applicant in page-6 of the application had given details of commutation of pension. As regards leave encashment the applicant submits that he is having 175 days EL and 93 days of HPL at his credit (as per annexure

75

A-9). But till now leave encashment has not been paid to him. The DA arrears deposited in CDS during the period 1977 to 1980 has not been refunded to him. Even though he submitted ^{several} representations to settle all the terminal benefits they have not paid to him. Hence he has filed this OA for the following reliefs.:

(a) Declare that recovery of Rs.97,353/- towards the alleged outstanding advances as mentioned in the letter No.F.18(2677)2577/97/KVS/P&I,dt. 23-7-1998(Annexure A-6) is illegal, and direct refund of the same.

(b) Direct the respondents to pay full death-cum Retirement Gratuity and balance of commutation pension, encashment of leave, as per pay fixation done by office order no.F.6-29/83-KVS (E-II) dt. 13-11-98 by counting the service rendered under A.P. State for which pro-rata pensionary contribution was made by the A.P. State Govt. as per G.O.Rt.no.1264, Edn., dated 23-8-1997(Annexure A-2). And the arrears as a result of pay fixation and pay the last instalment of Dearness Allowance arrears under Compulsory Deposit Scheme.

(c) Direct the contending respondents to pay the applicant the costs of this original application.

8. The respondents have filed a reply. The service rendered by the applicant in the education department of the AP is not in dispute. Further the service rendered by him at KVS is also not in dispute. They submit that auditing of the accounts of Kendriya Vidyalaya No.2 at Jammu Cantt. was made for the period from 1-8-1987 to 31-3-1992. During this period the applicant was the principal of the said school. Auditor found a sum of Rs.97,353/- recoverable from the applicant as per his report. The auditor submitted the report to the applicant who was then working as the principal of the school on 12-8-93 by his proceedings no. F.1-1/Acta/KVS(JR)/766, 767(PB). Subsequently the applicant was transferred in December, 1993 to Kendriya Vidyalaya, Ordnance Factory, Eddumailaram. The applicant suppressed the audit report at the time of his relief at Jammu. Hence a sum of Rs.97,353/- has to be recovered from the DCRG payable to

2

77

the applicant. As regards payment of leave encashment vigilance clearance certificate from KVS Head Quarters is not yet received. With regard to the counting of the past service rendered by the applicant in the State of AP the following conditions are yet to be fulfilled :

- (i) Age at the time of initial appointment of Dr.T.K.Suman Kumar in Govt.High School, Nizamabad.
- (ii) The interruption period and or leave without pay spell, if any and reason thereof.

The above clarification have been sought from the office vide letter No.F.6-29/83-KVS(Estt.2) dt. 5-2-99 and on receipt of the same proposal for counting of past service would be examined as per rules. They submit that the initial appointment on 17-9-1953 has to be verified taking into account the date of birth of the applicant. Thus they submit that the applicant has not made out any case for the relief he claimed and therefore OA is liable to be dismissed.

9. After hearing the learned counsels for the parties and after perusing the averments made in the application and the reply the following points arise for my consideration :

- (a) Whether withholding of payment of Rs.97,353/- as per annexure A-6 page 19 from the gratuity payable to the applicant was justified ?
- (b) Whether the respondents have calculated the pension and terminal benefits of the applicant as per the rules ?
- (c) Whether the respondents have explained the delay in settling the retiral benefits of the applicant ?
- (d) To what order ?

2

10. My findings :

- (a) NO
- (b) NO
- (c) NO
- (d) as under :

R E A S O N S

11. (a) The applicant retired from service as Principal KVS, Medak w.e.f. 31-10-97. The respondents calculated the gratuity payable to him at Rs.1,16,452/- as per annexure A-6. Relying upon the letter No.F.1-1/98-KVS(JR) 4598 dt. 20-5-98 a sum of Rs.97,353/- has been withheld on account of outstanding advance.

12. After the receipt of this letter the applicant issued a legal notice to the Commissioner KVS a copy of which is at Annexure A-8, which is dated 8-8-98. The respondents have not sent any reply to the said legal notice.

13. The applicant has challenged the action of the respondents in withholding the same from the gratuity payable to him. His further grievance is that his pensionary benefits have not been calculated on the basis of the revised scales of pay which came into effect from 1-1-1996. The applicant retired during October'97.

14. The respondents while justifying the action of withholding the said sum of Rs.97,353/- from the gratuity payable to the applicant rely upon a portion of audit report of the internal auditor who audited the accounts of the KVS School No.2 Jammu Cantonment.

15. During the course of arguments the learned counsel for the applicant submitted that merely on the basis of the report submitted by internal auditor payment cannot be withheld; that the said report must be scrutinised by the competent authority and the competent authority after scrutinising the report in case he

2

agrees with the irregularities mentioned by the internal auditor then he must have to fix the responsibility on the official concerned and thereupon call the official to explain the irregularities noticed by the internal auditor and thereafter attempt to recover the same. Thus the learned counsel for the applicant submitted that even the report was submitted on 12-8-93 and that the applicant was in service upto 31-10-97 no notice was served on him to explain any of the irregularities to which he was attributable. When that was so it was not proper on the part of the respondents to withhold the amount from the gratuity on the basis of the letter dt. 20-5-98 of the Asstt.Commissioner, Jammu.

16. The learned counsel for the respondents submitted that the applicant was working at KVS School No.2, Jammu Contonment during the period of audit 1986-87 to 91-92; that the internal auditor had noticed some irregularities in the matter of purchase and had pointed out that the applicant was responsible for such purchases and that therefore the internal auditor had advised to recover the said sum of Rs.97,353/- from the applicant. It is their contention that this internal audit report dt. 20-8-93 was submitted to the Principal of the said school who was none other than the applicant; the applicant had acknowledged the receipt of the said internal audit report; that the applicant was duty bound to take follow up action on the said report; that the applicant had not only failed to take the follow up action on the said internal audit report but also after his transfer somewhere during December'93 the applicant took away the copy of the internal audit report to avoid his successor taking any follow up action against the applicant. It is their case that internal audit report pointed out irregularities mostly committed by the applicant. Thus the applicant was mainly responsible for not taking any action on the internal audit report dt.12.8.93.

2

17. The learned counsel for the applicant denied this submission in toto. He submitted that he never carried the audit report when he was transferred from that school. Whatever the case may be the applicant was in service till 31-10-97. A copy of the internal audit report was also submitted to the Deputy Commissioner, Finance, KVS HQ and to the Administrative Officer, KVS Jammu Region.

18. I may accept the submission made by the learned counsel for the respondents that the applicant carried away the copy of the report. What the other officers were doing with the copy of the internal audit report when they received the same in August'93 ? Was it not their responsibility to ascertain what follow up action had been taken by the Principal of the school on the internal audit report when they found that the copy of the internal audit report was not available in the school Cantt ? no.2 at Jammu. What action the respondents took against the applicant if really he had carried away/ copy of the internal audit report so as to prevent his successor(Principal) to take further action on the same? These are the matters to be answered by the respondents. Without satisfactorily answering these questions they cannot simply say they were justified in withholding the gratuity payable to the applicant. In fact the Deputy Commissioner Finance, New Delhi should have taken initiation to take follow up action. He should have instructed the successor principal of the school to take follow up action ^{forwarding} ~~ing~~ a copy of the report. It is not made clear why the respondent authorities and the competent authority slept over their rights for nearly 4years and odd while the applicant was in service. Moreover, they have not furnished a copy of the internal audit report to the applicant to explain his stand as regards the findings recorded by the internal auditor. That apart the competent authority has not scrutinised the report and fixed the responsibility on the applicant.

2

The irregularities may be with regard to the purchase. In case irregularity has been committed in regard to purchase then the competent authority cannot order recovery of the entire money. It is not their case that the applicant carried away the items purchased by him along with him for the school and made the school to bear the cost of the purchase. Merely on the basis of the internal audit report recovery is not justified. They should have given an opportunity to the applicant to explain the findings recorded by the internal auditor. After considering the explanation they could have fixed the responsibility having regard to the extent of loss caused to the school. Without doing anything and keeping quiet for nearly four years when the applicant was in service till 31-10-97 and when they were not in a position to proceed against the applicant for any of the irregularities noticed by the internal auditor in his report, they just sent a letter dt. 20-5-98 to recover the amount of Rs.97,353/- from the gratuity. In my opinion the action of the respondents cannot be accepted under any of rules or law. Therefore in my humble view the respondents were not justified in withholding Rs.97,353/- from the gratuity payable to the applicant. In this connection the learned counsel for the applicant relied upon the decision of the Hon. High Court of Punjab & Haryana in the case of Amrik Singh v. State of P&H reported in 1994 Lab.IC 151(P&H) to contend that the respondents are debarred from initiating disciplinary proceedings after retirement. Further before 31-10-1997, the respondent authorities should have

2

satisfied as to any sum or advance outstanding against the applicant. They should not have allowed the applicant to draw the salary for the month of October '97.

19. Normally, the authorities must initiate processing of pension papers of an employee atleast two years prior to the date of retirement. During these two years, the respondents should collect necessary no due certificates from the schools where the applicant worked and had power and authority to enter into financial dealings on behalf of the school. This sort of exercise appears to have not at all made by the respondents. This kind of lethargic attitude on the part of the respondents exhibits clear lack of devotion to duty. The competent authority may, if he felt necessary, take such action against the responsible official as he deems fit. It may also enquire as to how the KVS Eddumalaran issued "No ..Due.. ion Certificate" dt. 15-11-97 (Annexure A-7) by the Principal.

20. Therefore in my humble view withholding a sum of Rs.97,353/- from the gratuity payable to the applicant as per Annexure A-6 cannot be sustained in the eyes of law.

21. The applicant submits that the following retiral benefits have not been sanctioned to him till to this date :

2

- (a) encashment of leave salary;
- (b) group insurance scheme amount;
- (c) arrears on fixation of pay; and
- (d) commutation of pension.

Further he submits that the gratuity determined by the Senior Audit officer is on the basis of the pre-revised scales of pay.

22. It is an admitted fact that he had served in the education department of State of AP between 17-9-1953 to 22-6-1968 as disclosed from Annexure-A2. The education department of the State of AP by its GO Rt.No.1264, Edn. dt. 23-8-1997 permitted the Commissioner & Director of School Education Hyderabad to accept the request of the applicant for payment of pro-rata pensionary liability to KVS for the service rendered by him in the state of AP during the said period. This has been done by the State of AP long prior to the applicant retiring from service. Even then the respondents have not taken his services rendered for the State of AP as qualifying service for determining the pensionary benefits of the applicant in KVS. No proper explanation is forthcoming from the respondents. As regards non payment of leave encashment the respondents submitted that the certificate from the vigilance side has not been received. However, the applicant has furnished the leave entitlement at Annexure A-9 and submits that at the time of his retirement he had 175 days of EL and 93 days of HPL to his credit. The applicant retired in October'97. It is not known why vigilance has failed to furnish a certificate.

23. As regards counting of past service the respondents state that the age and other particulars were required for taking into consideration his past service in the State of AP and a letter addressed on 5-2-99. When the State Govt. in its letter dt. 23-8-97 has accepted for pro-rata pensionary liability I fail to understand why the respondents addressed a letter dt. 5-2-99 for

2

...11/2

~~Certain~~ particulars. It is not known whether a copy of the said letter was sent to the applicant. ^{The} The applicant could have furnished the said particulars. Learned counsel for the applicant submits that his ~~register~~ ^{service} clearly indicates the date of birth. Further the period he has served in State of AP is from 17-9-1953 to 22-6-1968. When the date of birth ~~is~~ ^{was} available they could as well ^{have} calculated the age at the time of his initial entry into service in the education department of the state of AP. These particulars could have been secured from the applicant ^{also}. Even though the respondents addressed a letter dt. 5-2-99 they have not been able to secure ^a suitable reply. The respondents have not explained any convincing reasons for the delay in settling the group insurance amount, commutation of pension, fixation of pension and pensionary benefits on the basis of the revised scales of pay which came into force w.e.f 1.1.96.

24. The learned counsel for the applicant relied upon the decision of the Hon. Supreme Court in the case of Dr.Uma Agrawal vs. State of UP & another,1999(3) Supreme 138. The observations made by the Supreme Court may be reproduced herein :

"Now-a-days, several writ petitions are being filed in this Court and various High Courts seeking relief for disbursement of retiral benefits because of inordinate delays in payment of these benefits. As Krishnya Iyer,J. stated in State of Mysore v. C.R.Sheshadri & Ors., 1974(4)SCC 308, a retired government official is sensitive to delay in drawing monetary benefits. And to avoid ⁵ posthumous satisfaction of the pecuniary expectation of the superannuated public servant-not unusual in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala & Ors. v. M.Padmanabhan Nair,1985(1)SCC 429, this Court had occasion to point out that usually the delay occurs by reason of non-production of the LPC(Last Pay Certificate) and the N.L.C.(no liability certificate) from the concerned department's but both the documents pertain to matters, records whereof would be with the concerned government

2

departments. It was observed that inasmuch as the date of retirement of every government servant was very much known in advance, it was difficult to appreciate why the process of collecting the requisite information and issuance of the above said two documents should not be completed wellbefore the date of retirement so that the payment of gratuity amount could be made on the date of retirement or on the following day and the pension, at the expiry of the following month. This Court stated that the necessity for prompt payment of the retirement dues to a government servant immediately after his retirement could not be over emphasised and it would not be unreasonable to direct that there would be a liability to pay penal interest on these retirement benefits. In several cases, decided by this Court interest at the rate of 12% per annum has been directed to be paid by the State. "

25. The respondents should have been diligent to collect certain materials even before the applicant attained the age of superannuation. Normally the process of preparing the pension and pensionary benefits takes two years before the official actually attains the age of superannuation. When that is so, the respondents should have formed a policy to see that each employee on retirement should not be allowed to suffer financially beyond certain reasonable time limit.

26. I hope and trust that the respondents will make every efforts to pay retiral benefits to its employee at least three months after he retires if it is not practicable to pay the said benefits on the date of his retirement.

27. Hence I pass the following order :
(a) Application is hereby allowed;

2

(b) The respondents shall refund the sum of Rs.97,353/- withheld as per letter dt. 23-7-98 with interest @ 6% p.a. from 23-7-98 to the applicant within one month from the date of receipt of a copy of this order;

(c) the respondents shall revise the pension and pensionary benefits in accordance with the revised scales of pay within two months from the date of receipt of a copy of this order;

(d) the respondents shall pay pension and pensionary benefits in full to the applicant within 15 days thereafter;

(e) On their failure the respondents shall pay interest @12% p.a. on the outstanding amount due to the applicant, thereafter, till the date of payment.

(f) The respondents may after scrutiny of the Internal Auditor report for the period from 1-8-87 to 31-3-92 fix the responsibility on the concerned official after providing him an opportunity of being heard. Thereafter, they may recover the amount. For the said purpose the respondents may obtain an undertaking from the applicant as per rules; in case they form an opinion that the applicant is accountable;

(g) Parties are directed to bear their own costs.

MD

Bhushan
8.300
(B.S. JAI PARAMESHWAR)
Member (J)

8.2
15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,
HYDERABAD.

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

COPY TO

1. HDHNJ THE HON'BLE MR. JUSTICE D.H. NASIR,
VICE CHAIRMAN

2. HRRN (ADMN) MEMBER. THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

3. HBSJP. M. (JUDL)

4. D.R. (ADMN) THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER 8/3/09

MA/RAT/CF. NO

IN

C.A. NO. 525/09

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED ✓

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक बिधिक्रम
Central Administrative Tribunal
HYDERABAD BENCH

15 MAR 2009
100