

State Of Orissa And Ors vs Kalicharan Mohapatra And Anr on 20 September, 1995

Equivalent citations: 1996 AIR 684, 1995 SCC (6) 105, AIR 1996 SUPREME COURT 684, 1995 (6) SCC 105, 1995 AIR SCW 4701, 1996 LAB. I. C. 579, (1995) 7 JT 167 (SC), 1996 (1) UJ (SC) 93, 1996 UJ(SC) 1 93, (1996) 1 SERVLJ 142, 1996 (1) UPLBEC 407, 1995 (7) JT 167, (1996) 1 UPLBEC 407, (1995) 2 CURLR 1017, (1995) 31 ATC 471, 1995 SCC (L&S) 1354, (1995) 4 SCT 782, (1995) 71 FACLR 1000, (1996) 1 LABLJ 945, (1996) 81 CUT LT 64

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, M.K Mukherjee

PETITIONER:
STATE OF ORISSA AND ORS.

Vs.

RESPONDENT:
KALICHARAN MOHAPATRA AND ANR.

DATE OF JUDGMENT 20/09/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MUKHERJEE M.K. (J)

CITATION:
1996 AIR 684 1995 SCC (6) 105
JT 1995 (7) 167 1995 SCALE (5) 506

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY, J.

Leave granted.

This appeal is preferred against the judgment of the Central Administrative Tribunal (Cuttack Bench) allowing the Original Application filed by the respondent and directing the appellants (respondents in the Original Application) to release final pension and gratuity to the respondent within ninety days of the judgment.

The respondent was a member of the Indian Police Service. He retired on December 31, 1990. About six months prior to his retirement, a raid was conducted on his residential premises. On the basis of the material recovered, a prosecution has been launched against him in the Special Court, Cuttack under Section 13(2) read with Section 13(1) of the Prevention of Corruption Act for being in possession of assets disproportionate to his known sources of income. [According to Section 13(1) of the said Act, misconduct includes being in possession of assets disproportionate to his known sources of income.] The case is still pending. In view of the pendency of the said criminal case, the appellants withheld the gratuity amount and did not also sanction the pension finally. A provisional pension equal to ninety percent of his entitlement was, however, sanctioned. Aggrieved by the refusal to release the gratuity amount and the refusal to sanction his pension finally, the respondent approached the Tribunal.

The appellants relied upon Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 in support of their action. The appellants' case was that in view of the pendency of the said criminal case, they were justified in withholding the gratuity amount and also in not sanctioning the pension finally. The Tribunal has held that the said rule does not avail the appellants inasmuch as the charge against the respondent is not one of causing pecuniary loss to the Central or State Government by misconduct or negligence within the meaning of Rule 6(1). We are of the opinion that the reading of the rule by the Tribunal is unsustainable and incorrect. The rule reads thus:

"6. Recovery from pension:- 6(1) The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered or re-employment after retirement.

Provided that no such order shall be passed without consulting the Union Public Service Commission:--

Provided further that--

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and

shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;

(b) [Omitted as unnecessary]

(c) [Omitted as unnecessary] Explanation.- For the purpose of this rule:-

(a) a departmental proceeding shall be deemed to be instituted which the charges framed against the pensioner are issued to his or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted--

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-

cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clause (i),

(ii) and (iv) of sub-rule 1 of rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or Death-cum-

Retirement gratuity shall not be withheld.

(3) [Omitted as unnecessary]."

A reading of sub-rule (1) of Rule 6 discloses the following features: (a) if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or (b) where a pensioner is found in a departmental or judicial proceeding to have caused pecuniary loss to the Central or State Government by his misconduct or negligence during his service (including the service rendered on re-employment after retirement), (c) the Central Government is entitled to withhold or withdraw pension or any part of it whether permanently or for a specified period. The Central Government is also entitled to order recovery from pension of the whole or part of any pecuniary loss caused to the Central or State Government. Sub-rule (2) says that (a) where a departmental or judicial proceeding is instituted under sub-section (1) or (b) where a departmental proceeding is continued under clause (a) of the proviso to sub-rule (1), (c) such employee shall be sanctioned by the government which instituted such proceedings a provisional pension not exceeding the maximum pension admissible to him during the period of pendency of such proceeding, (d) but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issuance of final orders thereon.

It is thus clear from an analysis of sub-rules (1) and (2) that where a judicial proceeding is pending against a pensioner for grave misconduct, the government is entitled to withhold gratuity amount and/or death-cum-gratuity amount and is also entitled to sanction provisional pension for the period of pendency of the said proceedings. It is not necessary that a judicial proceeding should relate to the charge of causing pecuniary loss to the Central or State Government by misconduct or negligence during his service. Sub-rule (1) of Rule 6 specifies two grounds upon which action thereunder can be taken. One is where the pensioner is found guilty of grave misconduct and the other is where he is found to have caused pecuniary loss to the Central and State Government by misconduct and negligence during his service. Sub-rule (2) provides for orders to be made during the pendency of such proceedings. It may also be mentioned that neither the All India Service (Death-cum-Retirement) Rules nor the Pensions Act, General Clauses Act or the Leave Rules [referred to in Rule 2(2)] define the expression "misconduct". It would, therefore, be reasonable and permissible to understand the said expression in Rule 6 aforesaid in the manner defined in the Prevention of Corruption Act.

The Tribunal was, therefore, in error in holding that unless the charge expressly charges the pensioner with causing pecuniary loss to Central or State Government by his negligence or misconduct during his service, the action under sub-rule (2) of Rule 6 cannot be taken.

The appeal is accordingly allowed and the judgment of the Tribunal is set aside. No order as to costs.