



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 16TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

WRIT APPEAL NO. 100422 OF 2023 (S-R)

BETWEEN:

1. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED. REPRESENTED BY MANAGING DIRECTOR KAVERI BHAVAN, BENGALURU-560009
2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED, REP. BY THE DIRECTOR (HUMAN RESOURCE), KAVERI BHAVAN, BENGALURU-560009
3. THE CHIEF EXECUTIVE OFFICER (TL AND SS DIVISION) KARNATAKA POWER TRANSMISSION CORPORATION LIMITED, HUBBALLI, DHARWAD-580008

APPELLANTS

(BY SRI.SHIRISH KRISHNA FOR SRI. SHIVRAJ S BALLOLI, ADVS.)

AND:

MALLIKARJUN

...RESPONDENT

(BY SRI.SANTOSH B MALLIGAWAD, ADVOCATE)

THIS WRIT APPEAL IS FILED U/S. 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THE INSTANT APPEAL AND SET ASIDE IMPUGNED ORDER DATED MAY 31, 2023, RENDERED BY LEARNED SINGLE JUDGE OF THIS COURT IN W.P.NO.104770/2022 AND DISMISS THE SAID WRIT PETITION.

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THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **S. SUNIL DUTT YADAV J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The appellant-KPTCL has called in question the correctness of the order dated 31.05.2023 passed in WP No.104770/2022 by the learned Single Judge, wherein the petitioner-retired employee had challenged the order of Corporation withholding the pension, which writ petition came to be allowed directing the appellant/Corporation to settle/disburse all retirement benefits to the petitioner expeditiously.

2. The parties are referred to by their rankings before the learned Single Judge for the purpose of convenience.

3. The petitioner had retired from service on 31.05.2022 upon attaining the age of superannuation. While he was in service, on 9.4.2018, FIR came to be registered by the ACB police against the petitioner under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act,



1988 (for short, 'PC Act') on the basis of a complaint at the instance of a complainant (third party) and not on a complaint by the employer. It is further made out from the facts that the petitioner was suspended and subsequently, however, was reinstated.

4. The petitioner, after attaining the age of superannuation, had sought for payment of pension to which, an endorsement came to be passed on 28.06.2022, wherein the respondent/Corporation, who is the employer, sanctioned only 50% of his pension in the nature of provisional pension in terms of Regulation 172(1) of Karnataka Electricity Board Employees' Service Regulations, 1996 (for short, 'Regulations, 1996') w.e.f. 1.6.2022 in light of criminal proceedings initiated against the petitioner.

5. It is made out from the facts that subsequently charge sheet was filed by the ACB on 6.8.2022 and cognizance was taken by the Special Court in Special A.C.B. in C.C. No.6/2022 as regards the offences under Section 13(1)(e) read with Section 13(2) of the PC Act. The



endorsement sanctioning only 50% of the pension came to be challenged before the learned Single Judge, who by a detailed consideration, has upheld the contention of the petitioner and quashed the endorsement while directing the respondent/Corporation to release the pension in favour of the petitioner in its entirety.

6. The learned Single Judge had specifically observed that the petitioner had not caused any pecuniary loss taking note of the judgment of this Court in the case of ***L. Narasegowda Vs. The Karnataka Power Transmission Corporation Limited***¹ wherein it was held that where the proceedings do not relate to any pecuniary loss by the employee, power under Regulation 172 of the Regulations 1996 could not be exercised and has proceeded to set-aside the endorsement. The said order is challenged by the Corporation before this Court.

7. Learned counsel for the appellants/Corporation has assailed the order of the learned Single Judge on various grounds including that the learned Single Judge has grossly

¹ 2014 SCC Online Kar 12629



erred in recording a finding that the pecuniary loss is required to be established for the purpose of withholding the pension. It is submitted that such restriction cannot be read into Regulation 172. It is further contended that the learned Single Judge has not taken note of decision of Co-ordinate Bench of this Court in the case of ***Managing Director, KPTCL Corporate Office Vs. Boregowda & Another***², wherein under similar circumstances, the Court has upheld the power under Regulation 172 for withholding of Death-cum-Retirement Gratuity as well as pension. It is further contended that the interpretation of Regulations 171 and 172 ought to be done on the basis of the said Regulations and it would not be permissible to travel beyond the plain language by importing the language of similar regulations covering an identical aspect in other establishments which are however worded differently.

8. Learned counsel appearing on behalf of the petitioner/employee, on the other hand, would contend that the only manner of interpreting the Regulations is that the

² WA No.3251/2018



power of withholding pension would be available only if there is an element of pecuniary loss in terms of Regulation 172. In support of his contention, reliance is placed on the judgment in **L. Narasegowda's** case supra. The learned counsel relies on the judgment of the Hon'ble Apex Court in the case of **State of Jharkand and Others Vs. Jitendra Kumar Srivastava and Others**³ and submits that the right to receive pension would constitute property and the same cannot be abridged except as sanctioned by the Regulation, as pension it relates to past service rendered. It is further contended that the judicial proceedings under Regulation 172 must refer to judicial proceedings instituted by the employer and cannot refer to proceedings instituted by third party. Therefore, the order of the learned Single Judge is sought to be affirmed.

9. Heard both sides.

10. Regulations 171 and 172 framed by the employer require to be interpreted. Regulations 171 and 172 reads as under:

³ (2013) 12 SCC 210



171. The Board further 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 a pension of the whole, or part of any pecuniary loss caused to the Board, if, in a departmental or judicial proceedings, the pension is found guilty of grave misconduct, or negligence, during the period of his service, including service rendered on re-employment after retirement; provided that

(a) such departmental proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement or during his re-employment, shall, after the final retirement of the employment, be deemed to be a proceedings under this Regulation and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

(b) such departmental proceedings, if not instituted while the employee was in service, whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Board.

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Board may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service.

(c) no such judicial proceedings, if not instituted while the employee was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a case of action which arose, or in respect of an event which took place, more than 4 years before such institution.

(d) Deleted.

Explanation:- For the purpose of this Regulation:



- (a) a departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the employee or pensioner, or if the employee has been placed under suspension from an earlier date, on such date; and
 - (b) a judicial proceedings shall be deemed to be instituted;
 - (c) in the case of a criminal proceedings, on the date on which the complaint or report of police office of which the Magistrate takes cognizance is made; and
- (ii) in the case of a civil proceedings, on the date of presentation of the plaint in the Court.

Note:- Where a case of loss to the Board arising from fraud or negligence on the part of a retired employee while he was in service, comes to the knowledge of the pension sanctioning authority before his pension is actually sanctioned by that authority, and no departmental or judicial proceedings can be instituted at that stage under the proviso to this Regulation, although no direct penal recovery from pension is permissible the pension sanctioning authority can order a reduction in the amount of pension under the provisions of Regulation 218 if the service of the employee can be held to have been not thoroughly satisfactory.

172. (1) Where any departmental or judicial proceedings is instituted under Regulation 171 or where a departmental proceedings is continued under clause (a) of the provision thereto against an employee who has retired on attaining the age of superannuation or otherwise, he shall be paid the period commencing from the date of his retirement to the date on which upon conclusion of such proceedings 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, or if he was under suspension on the date of retirement upto the date immediately preceding the date on



which he was 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 order thereon.

Note: In the case of a retired employee entitled to pension without death-cum-retirement gratuity under the pension Regulations elected by him, the provisional pension shall not exceed three-fourths of the maximum pension admissible to him.

(2) Payment of provisional pension made under clause(1) shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension, or the pension is reduced or withheld either permanently or for a specified period.

Note: The grant of pension under this Regulations shall not prejudice the operation of Regulation 218 when final pension is to be sanctioned upon conclusion of the proceedings.

11. From the narration of the facts and it is not in dispute that the proceedings under the PC Act are pending against the petitioner in Special A.C.B. C.C. No.6/2022, which is yet to be concluded and is pending adjudication before the learned Sessions Judge. The subject matter of the proceedings before the Special Court relate to offences under Section 13(1)(e) read with Section 13(2) of the PC Act. As on the date of attaining the age of superannuation, there were no judicial proceedings pending against the



petitioner, which is also an admitted fact. The question as to whether after taking of cognizance in the criminal proceedings, judicial proceedings can be stated to have commenced in terms of Regulation 172 permitting withholding of pension requires to be considered.

12. It must be noticed that Regulation 172, which provides for withholding of pension insofar as retired employee is concerned, refers to the proceedings instituted under Regulation 171. A close reading of Regulation 171 would make it clear that the proceedings under Regulation 171 relate to pecuniary loss caused to the Board either in whole or part. While interpreting Regulation 171, the words “any pecuniary loss caused to the Board”, are required to be construed as a condition precedent even as regards enquiry sought to be initiated after attaining superannuation in terms of Regulation 172(b). Such interpretation would be necessary taking note of nature of the pension being a reward for the past services rendered and if sought to be withheld, the same must be sanctioned by the applicable regulation. If right to receive pension is treated as property



in terms of law laid down by constitution bench of the Hon'ble Apex Court in ***Deokinandan Prasad Vs. State of Bihar***⁴ case supra, it is clear that abridging of pension must be strictly in terms of Regulations.

13. The question in the present case is also as to whether the judicial proceedings as contemplated under Regulation 171 have been instituted for purposes of Regulation 172. The word "institute" would refer to commencement of certain proceedings. The reference to proceedings instituted under Regulation 171 would imply that the proceedings must be instituted by the employer, that is the only manner of construing the power of withholding the pension, since the pension is a service condition between the employer and employee. If that were to be so, the judicial proceedings instituted by third party under the PC Act cannot be considered to be proceedings instituted under Regulation 171. Proceedings instituted by third party cannot be construed to fall within the category of

⁴ (1971) 2 SCC 330



judicial proceedings permitting the employer to withhold the pension of the employee.

14. In terms of Regulation 172, the reference to judicial proceedings and its pendency would take us to the explanation and as regards criminal proceedings, the same can be deemed to be instituted, is only on the date when the cognizance is taken. In the present case, the cognizance was taken on 6.8.2022 after he had retired from service on 31.05.2022. Though proceedings were instituted before the ACB even prior to the petitioner having retired, cognizance was taken subsequently.

It is relevant to note that the endorsement withholding the pension came to be passed on 28.6.2022. As cognizance was taken only on 6.8.2022 in terms of the explanation to Regulation 172, as on the date of endorsement, there was no judicial proceeding that was pending.

15. It must be noticed that the co-ordinate Bench of this Court in **Boregowda's** case supra was dealing with the departmental enquiry and not judicial proceedings. Further



in ***Boregowda's*** case, judicial proceedings were pending as on the date of retirement and accordingly, the said authority relied upon would be of no support to the learned counsel for the appellants.

16. However, we clarify that the present case relates to withholding of pension in terms of Regulation 172 and leave open all rights of the employer under the Regulations as are available upon conclusion of the judicial proceedings. Accordingly, we find that the reasoning of the learned Single Judge does not call for interference and accordingly, Writ Appeal stands ***rejected***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JTR
List No.: 1 Sl No.: 7