

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09<sup>TH</sup> DAY OF NOVEMBER, 2020

**R**

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.11517/2018 (S - R)

**BETWEEN**

K.T.THIMMAIAH  
S/O LATE THIMMAPPAIAH,  
AGED ABOUT 77 YEARS,  
FORMERLY WORKING AS  
STORE KEEPER, GRADE - 2,  
INDHIRANAGARA DIVISION,  
BESCOM, BENGALURU.

NOW RESIDING AT  
NO.167, SRIGHANDHA NAGARA MAIN ROAD,  
HEGGANA HALLI,  
VISHWANEEDA ROAD,  
BENGALURU - 91.

... PETITIONER

(BY SRI RAGHAVENDRACHAR, M., ADVOCATE (VIDEO  
CONFERENCING))

**AND**

1. THE GENERAL MANAGER  
ADMIN AND HRD,  
KPTCL, CORPORATE OFFICE,  
CAUVERY BHAVAN,  
BENGALURU - 560 009.

2. THE SUPERINTENDENT ENGINEER (EL)  
BENGALURU SOUTH CIRCLE,  
BESCOM, NRUPATHUNGA ROAD,  
BENGALURU - 560 001.

... RESPONDENTS

(BY SMT.GIRIJA PATIL, ADVOCATE FOR  
SRI RAVINDRA REDDY, ADVOCATE (PHYSICAL  
HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES  
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING  
TO ISSUE DIRECTIONS TO THE RESPONDENTS PAY  
PENSION & ARREARS ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY  
HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE  
FOLLOWING:

**ORDER**

To quote Shakespeare from fall of Wolsey, with a  
slight variation to suit the context "***Had I served my God  
with half the zeal that I served my King, I would not  
have fallen in these days of impecuniosities***", is the  
cry of the petitioner in this petition seeking terminal  
benefits after having retired on attaining the age of  
superannuation twenty one years ago.

2. Shorn of unnecessary details, the facts germane  
for adjudication of the case are as follows:

The petitioner was a permanent employee of the respondent - Karnataka Power Transmission Corporation Limited (hereinafter referred to as 'KPTCL' for short) and at the relevant point of time, was working as a Store Keeper. Alleging that the petitioner had committed theft of store materials, a complaint was lodged with the jurisdictional police against the petitioner. On such allegation of theft, the KPTCL without holding any enquiry, terminated the services of the petitioner.

3. The petitioner challenged it before this Court in W.P.No.39882/1999 which was allowed by an order of this Court dated 20.1.2000. This Court quashed the impugned order reserving liberty to the respondent-KPTCL to hold a fresh enquiry in terms of the regulations. During the pendency of the aforesaid writ petition, the petitioner retired on attaining the age of superannuation on 30.06.1999.

4. Pursuant to the liberty reserved by this Court in the aforesaid case, again without holding any enquiry in

accordance with the regulations, entire pension and terminal benefits of the petitioner were withheld which was again challenged by the petitioner before this Court in W.P.No.23411/2004 c/w W.P.No.2531/2008. This Court by its order dated 25.03.2011 disposed the writ petitions observing that the order of forfeiture of pension was unsustainable and directed that the KPTCL should initiate proceedings for recovery after quantification of the loss caused.

5. By another order dated 22.06.2011 claiming to be acting in terms of the liberty reserved in the aforesaid case, without even issuing notice directed recovery of the entire amount. This was again challenged before this Court by the petitioner in W.P.27423/2011, which was allowed and the order of recovery was quashed directing the respondents to initiate proceedings in accordance with the regulations strictly in terms of the order passed by this Court on the earlier occasion.

6. This order was again not complied by the KPTCL, which drove the petitioner to this Court for the fourth time in W.P.No.17440/2012. This Court by an order dated 03.04.2013 allowed the writ petition and directed initiation of proceedings in terms of pension regulations by imposing cost of Rs.10,000/- after which, the KPTCL by an order dated 02.05.2015 dropped the entire disciplinary proceedings against the petitioner and also directed by an official memorandum that the petitioner is entitled to pension and the same be released.

7. Despite the aforesaid orders, terminal benefits were not released to the petitioner who again gave a representation on 25.07.2017 contending that he is already 77 years old and due to the adverse health conditions he is struggling to maintain his expenses with not a penny of terminal benefit granted to the petitioner.

8. The petitioner has presented this writ petition which is the fifth in line and the first one seeking release of his terminal benefits, which are yet to be paid despite the

petitioner retiring 21 years ago and all the proceedings against him being dropped 5 years ago.

9. Heard Sri.Raghavendrachar.M., learned counsel appearing for petitioner and Smt.Girija Patil, learned counsel appearing for Sri.Ravindra Reddy, learned counsel for respondent Nos.1 and 2.

10. The learned counsel appearing for the petitioner would vehemently contend that the action of the respondent-KPTCL is totally unfounded as they themselves have dropped the disciplinary proceedings against the petitioner and have directed release of 100% pension but not other terminal benefits. He would further submit that there is no warrant for the KPTCL to withhold the terminal benefits of the petitioner who is already in the evening of his life.

11. On the other hand, the learned counsel appearing for the respondent-KPTCL though sought to justify the action of non-payment of terminal benefits on a

very flimsy ground that the file concerning the petitioner is pending in the corporate office and it is on that account the terminal benefits are yet to be released, as there are clarifications sought whether they can write off the material that was lost due to the theft that had occurred in 1998.

12. I have given my anxious consideration to the submission made by the learned counsel for the parties and perused the material on record.

13. The undisputed facts are, on an allegation of theft, two proceedings were initiated against the petitioner one, registration of a criminal case for theft and the other, termination of the petitioner from service, which was without holding any enquiry.

14. The said termination was set aside by this Court by its order dated 20.1.2000, by then the petitioner had already attained the age of superannuation on 30.06.1999. Exercising liberty that was granted by this Court, the

KPTCL forfeited the entire pension and terminal benefits, which was again questioned by the petitioner before this Court and this Court by its order dated 25.03.2011 disposed the writ petition by holding thus:

*"14. Accordingly, while the petitions are disposed of with the observation that since the proceedings could not have been sustained against the petitioner under the Classification, Disciplinary, Control and Appeal Regulations and the only provision under which the respondent could have proceeded against the petitioner was under the Pension Regulations, they shall initiate such proceedings for recovery of the quantified loss that has occasioned and recover from the pension due to the petitioner a sum of money not exceeding one-third of the pension, taking into consideration the date of retirement of the petitioner. This process shall be completed by the respondent within a period of three months, if not earlier, from the date of receipt of the present order.*

*15. Incidentally, it is noticed that the charge sheet alleges that the petitioner was*



*answerable both for the excess of materials as well shortage of materials. It would stand to reason if the respondent-Corporation restricts the recovery to the alleged shortage and not the excess, since going by the amounts indicated the respondent-Corporation stands to gain by the excess shown."*

15. The KPTCL, again did not comply with the order passed by this Court and straightaway ordered for recovery. The petitioner again, filed a writ petition in W.P.No.27423/2011, which was also allowed by this Court by the following order:

*"6. For the reasons stated above, the following:*

**ORDER**

- a) The writ petition is hereby allowed.*
- b) The impugned order dated 22.06.2011 Annexure-D is hereby quashed.*
- c) Respondents are hereby directed to pass appropriate orders strictly in compliance of the directions issued by this Court in W.P.No.23411/2004 and connected matters and the Rules and as expeditiously as possible and in any event not later than*

*three months from the date of receipt of copy of this order."*

In terms of the afore extracted direction, the enquiry ought to have been held in strict consonance with the earlier orders.

16. For the third time, without holding enquiry in terms of the regulation, recovery of amount due to material shortage of Rs.11,21,632.27 was imposed, which was again challenged by the petitioner by filing a fourth writ petition in W.P.No.17440/2012. This Court, again allowed the writ petition by imposing cost of Rs.10,000/- upon the KPTCL for having driven the petitioner to this Court time and again and remanded the matter back to the KPTCL to hold enquiry in terms of the regulations. The operative portion of the order dated 03.04.2013 passed in W.P.No.17440/2012 reads as follows:

*"18. When it is not very definite, the procedure has been followed strictly in terms of pension regulations, it will not be possible to*

*accept submissions of learned counsel for respondents.*

*19. It is only for this reason, this writ petition has to be allowed, impugned order is set aside and the matter remanded to the respondent to hold an enquiry strictly in conformity with the pension regulations, give proper opportunity, indicate that it is being held under these regulations and then proceed to orders on merits of the matter. The enquiry should be completed expeditiously.*

*20. In view of the fact petitioner is driven time and again to approach this court, first respondent is mulcted with cost of Rs.10,000/- to be paid to the petitioner."*

17. After all the aforesaid proceedings, the Disciplinary Authority took a conscious decision to drop the entire proceedings against the petitioner on 02.05.2015 pursuant to which, the petitioner gave a representation on 25.05.2016 seeking release of his entire terminal benefits. In answer to the representation, the Competent Authority issued an official memorandum that the petitioner was

entitled to full pension from the date of his retirement and the same be granted at 100% but did not speak of other terminal benefits. In answer to the aforesaid official memorandum dated 01.09.2016 the Disciplinary Authority directed that pension, DCRG and other benefits be released on account of closure of all proceedings against the petitioner. Even then, the KPTCL did not release the terminal benefits.

18. The petitioner gave a detailed representation on 25.07.2017 clearly indicating that he has grown old and is aged 77 years and had no money to fall back upon and sought immediate release of terminal benefits. The relevant paragraphs of the representation read as follows:

*"2. Now I am 76 years old, with my adverse health family conditions, I am struggling to get my pending terminal benefits.*

*4. Since then I am running from pillar to post to get my terminal benefits, though I am relentlessly per sued the matter for the last*

*four years from the date I am exonerated from all the charges, after struggling for 14 years.*

*11. Presently it is pending with GM (A & HRD) of Corporate Office, and Superintending Engineer. East Circle and Executive Engineer, Indiranagar Division, of Bescom."*

The aforesaid representation went unheeded and the petitioner had to again represent on 19.01.2018 reiterating the aforesaid plea, which reads as follows:

*"I am old aged about 77 years, my eye sight is not visible properly and I am also suffering from age old ailments I am wondering from pillar to post for remedy and relief. But till now no action is taken to release the amount as per the orders of the authority and also Hon'ble Courts.*

*Hence, I once again request to release all the withhold amount during my life time alone and get me remedy in the interest of justice and equity."*

The aforesaid representation did not merit even a reply. With no hope of release of terminal benefits from the

hands of KPTCL, the petitioner has filed this fifth writ petition.

19. It is not in dispute that disciplinary proceedings ended in favour of the petitioner by a conscious decision of its closure at the hands of the Disciplinary Authority. The criminal case that was pending against the petitioner on allegations of theft had ended in acquittal of the petitioner long ago, which acquittal has become final. Having closed the proceedings and the criminal case ending in its acquittal, there was no legally justifiable impediment for release of terminal benefits which are a legitimate right of the petitioner. After its closure, the petitioner has given two representations seeking its release. Despite the same, there is no order for release of terminal benefits of the petitioner who retired 21 years ago. The KPTCL has procrastinated beyond imagination to release terminal benefits of the petitioner without any justifiable reason. Payment of 100% pension from the year 2016 to the petitioner can hardly be any justification for withholding the release of other terminal benefits all along.

20. KPTCL, is a State under Article 12 of the Constitution of India. The aforesaid act of leaving its employee in the lurch does not behove its status of being a State under Article 12 of the Constitution of India. Therefore, it is imperative to issue a mandamus for release of all the terminal benefits that are accrued in favour of the petitioner along with interest and also mulct the KPTCL with exemplary costs for harassing and driving its employee to this Court time and again and now for release of terminal benefits. Therefore, the petitioner would be entitled to release of all terminal benefits along with interest at 9% p.a. from the date it fell due i.e., 01.08.1999 till the date of its payment.

21. Before parting with the judgment it is necessary to remind the KPTCL that pension payable to its employees upon superannuation is a property under Article 300-A of the Constitution of India and it constitutes a fundamental right to livelihood under Article 21 of the Constitution of India. The deprivation of even a part of this amount

cannot be accepted, except in accordance with law, as pension is neither a bounty, charity or a gratuitous payment but an indefeasible right of an employee in terms of the Rules. Terminal benefits will enable a retired employee to live a life free from want, with decency, independence and self-respect. Depriving such right to livelihood, will leave a pensioner ***fall on the thorns of life and bleed.***

22. For the aforesaid reasons, the following:

**ORDER**

- (i) Writ petition is allowed.
- (ii) Mandamus is issued to the respondent-KPTCL to release the terminal benefits accrued to the petitioner from the date of his retirement i.e., 30.06.1999 along with interest at 9% p.a. from the date it fell due till its satisfaction by the KPTCL within two weeks from the date of receipt of copy of this order.



- (iii) The KPTCL shall also pay costs quantified at Rs.50,000/- to the petitioner within two weeks from the date of receipt of copy of this order.

**Sd/-  
JUDGE**

bkp  
CT:MJ