

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/0116/2020

HYDERABAD, this the 22nd day of March, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



L. Rama Sudhakar,
S/o. late L. Venkatanarayana Rao,
Age 60 years, Retired Postmaster (Grade – I),
Ambajipeta SO,
R/o. H. No. 6-53, Punadipadu,
Kandipadu, Krishna District – 521 151.

...Applicant

(By Advocate : Mr. M. Venkanna)

Vs.

1. Union of India, Rep. by Secretary,
Government of India,
Department of Posts – India,
Ministry of Communications & IT,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
A.P. Circle, Vijayawada – 520 013.
3. The Postmaster General,
Visakhapatnam Region,
Visakhapatnam – 530 017.
4. The Superintendent of Post Offices,
Amalapuram Division,
Amalapuram – 533201.

....Respondents

(By Advocate : Mr. A. Ram Mohan, Addl. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

2. The OA is filed in regard to withholding of retiral benefits of the applicant based on the Execution petition filed by a Cooperative Society.



3. Brief facts of the case are that the applicant worked as Postal Assistant in the respondents organisation and retired on 31.8.2019. The Sale Officer from the Office of Dy. Cooperative Registrar, Amalapuram, sent a letter dated 7.8.2019 to the respondents informing that a sum of Rs.15,12,500/- is to be recovered from the applicant as judgment debtor. In view of this letter, respondents have not released the terminal benefits on retirement despite submitting a representation that Gratuity and Leave Encashment cannot be attached even as per court orders. Aggrieved, the OA is filed.

4. The contentions of the applicant are that Gratuity cannot be attached by a court order as per Section 60 of the Civil Procedure Code read with Section 11 of the Pensions Act, 1871. Applicant has cited the judgment of the superior Judicial fora in support of his contentions of non attachment of Gratuity. Even provisional pension was not paid on retirement.

5. Respondents stand is that the Dy. Registrar Coop. Societies, Amalapuram has issued a show cause notice to the applicant as principal debtor for recovery of Rs.15,12,500/- vide surcharge order dated 24.5.2012 with a copy to the respondents to withhold the retiral benefits to the extent indicated and remit the amount to the Postal Employees Coop. Credit Society Ltd., Ankapalli. The learned Sr. Central Govt. Standing Counsel, when approached, has advised to hold the retirement benefits in view of the

Surcharge Order referred to. The applicant was thus issued a show cause notice to clear the pending dues to the Department/ Employees Coop Credit Society and submit the ‘no due certificate’ to release the terminal benefits.

In response, the applicant issued a legal notice informing that an appeal is being heard in the A.P. Cooperative Tribunal in regard to the debt to be cleared. In the meanwhile, Pension Payment Order and Commutation of Pension as requested were released on 18.12.2019 & 19.2.2020 respectively. To proceed in the matter, applicant, Sale Officer etc were directed to produce court orders for disbursing/ withholding the terminal benefits in question for which there is no appropriate response.

6. Heard the learned counsel for the applicant and perused the pleadings on record.

7. I. The dispute is about the withholding the Gratuity and Leave Encashment of the applicant on his retirement in response to a notice received from the Dy. Registrar of Cooperative Society, Anakapalli on 24.5.2018 in regard to recovery of a sum of Rs 15,12,500 from the applicant as judgment debtor. The applicant has asserted that the gratuity and leave encashment cannot be recovered as per rules and law.

II. In this regard, we need to observe that Section 60 (g) of the Civil Procedure Code, extracted hereunder, does not permit attachment of Gratuity allowed to pensioners:

“60. Property liable to attachment and sale in execution of decree.-

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, in money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as



hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:-



- (a) xxx
- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx
- (f) xxx

(g) stipends and gratuities allowed to pensioners of the Government, or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;”

Further Section 11 of the Pension Act, 1871 extracted hereunder, makes it explicit that no attachment lies against the payment of pension & commutation thereof.

“11. Exemption of pension from attachment.- No Pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowances, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a Decree or Order of any such Court.”

In this context, the applicant has cited the Judgment of the Hon’ble High Court of A.P in ***T. Prabhakar Rao v Registrar of Cooperative Societies, 2003 (5) ALD 747*** wherein it was held as under:

“10. Under Section 60 of the Code of Civil Procedure, certain properties are liable to attachment and sale in execution of decrees, but certain properties are not liable

for attachment or sale. Section 60(1)(g) of the Code of Civil Procedure, speaks that the gratuity amount, payable to the employees, is not liable for attachment or sale.

11. Section 13 of the Payment of Gratuity Act, 1972, is to the effect that the gratuity payable under the Act, to an employee, in any establishment, shall not be liable to attachment in case of any decree by any Court.

12. Similarly, under Rule 14 of the Payment of Gratuity Rules, no gratuity payable under the Gratuity Act and the Rules made therein shall be liable to attachment in execution of any decree or order of any Court.



13. Therefore, there is complete protection in attachment or recovery of the gratuity amount payable to the retired employees, in any manner. The employees are protected from recovery of the gratuity amount by any office bearers or even by the employer.

14. In the instant case, merely because the petitioner has given consent by way of an undertaking, to keep his retirement benefits in the joint names of himself and the 3rd respondent and will take the interest every month, subject to the result in the Surcharge Proceedings, the respondents cannot withhold the gratuity amount also along with other retirement benefits, contrary to the Sections and Rules referred supra.

15. In the present case, insofar the gratuity amount is concerned, the respondents have no authority, whatsoever, to withhold or continue to deposit the same in FDR, and the writ petition is liable to be allowed.

16. Accordingly, the respondents are directed to release the gratuity amount payable to the petitioner from the said FDR, within four weeks from the date of receipt of a copy of this order.

17. If ultimately any orders are passed in the Surcharge Proceedings, making the petitioner liable to pay certain amounts to the respondent-bank, it is open for the respondents to recover the same from the petitioner by attachment or sale of immovable or movable properties, other than the gratuity, in accordance with law.”

Therefore, in view of the Section 60 (1) (g) of the CPC and the judgment of the Hon’ble High Court of A.P, the respondents cannot withhold gratuity amount.

III. In respect of leave encashment, it is paid on account of unutilized leave and hence, it attains the character of salary. Salary is a property in the hands of the State, which cannot be withheld except when orders are issued under a statute or law as stated under Article 300 –A of the Constitution as ordained by the Hon’ble Apex Court in a series of

judgments. Our above remarks are based on the observations of the Full Bench of the Hon'ble Punjab and Haryana at Chandigarh in **Punjab State Civil Supplies Corporation Ltd & ors vs Pyare Lal on 9 November, 2012** in Letters Patent Appeal No.113 of 2012 (O&M) on November 09, 2012 as under:



"25. Before we go into the legal sanctity of the circular, it must be remembered that the Leave Encashment is paid on account of unutilized leave and therefore, it partakes the character of salary. Pension is no longer considered as a bounty. The salary is a property given to the hands of the State which cannot be withheld except under the powers derived by a statute or law as contemplated under Article 300A of the Constitution of India as laid down by the Supreme Court in MANU/SC/0046/1988: AIR1988SC1407 [State of U.P. v. Haji Ismail Noor] and MANU/SC/0325/2003: [2003]3SCR779 [K.S.R.T.C. v. K.O. Varghese].

IV. In respect of General Provident Fund, Section 3 of the Provident Funds Act, 1925 states as under:

"3. Protection of compulsory deposits.

(1) A compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, (5 of 1920.) shall be entitled to, or have any claim on, any such compulsory deposit.

(2) Any sum standing to the credit of any subscriber to, or depositor in, any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor, or to such person as may be authorised by law to receive payment on his behalf, shall, subject to any deduction authorised by this Act and, save where the dependant is the widow or child of the subscriber or depositor, subject also to the rights of an assignee under an assignment made before the commencement of this Act, vest in the dependant, and shall, subject as afore- said, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor."

Section 4 of the Provident Funds Act, 1925, indicates the provisions for repayments as under:

"4. Provisions regarding re- payments.

(1) When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor, or the

balance thereof after the making of any deduction authorised by this Act, has become payable, the officer whose duty it is to make the payment shall pay the or balance, as the case may be, to the subscriber or depositor, or, if he is dead, shall--

(a) if the sum or balance, or any part thereof, vests in a dependant under the provisions of section 3, pay the same to the dependant or to such person as may be authorised by law to receive payment on his behalf; or

(b) if the whole sum or balance, as the case may be, does not exceed five thousand rupees, pay the same, or any part thereof, which is not payable under clause (a), to any person nominated to receive it under the rules of the Funds, or, if no person is so nominated, to any person appearing to him to be otherwise entitled to receive it; or

(c) in the case of any sum or balance, or any part thereof, which is not payable to any person under clause (a) or clause (b) pay the same,--

(i) to any person nominated to receive it under the rules of the Fund on production by such person of probate of letters of administration evidencing the grant to him of administration to the estate of the deceased or a certificate granted under the Succession Certificate Act, 1889¹, (7 of 1889.) or under the Bombay Regulation VIII of 1827, entitling the holder thereof to receive payment of such sum, balance or part, or

(ii) where no person is so nominated, to any person who produces such probate, letters or certificate: Provided that, where the whole or any part of any sum standing to the credit of the subscriber or depositor has been assigned to any other person before the commencement of this Act, and notice in writing of the assignment has been received by the officer from the assignee, the officer shall after making any deduction authorised by this Act and any payment due under clause (a) to or on behalf of the widow or children of the subscriber or depositor--

(i) if the subscriber or depositor or, if he is dead, the person to whom in the absence of any valid assignment the sum or balance would be payable under this sub- section gives his consent in writing, pay the sum or part or the balance thereof, as the case may be, to the assignee, or

(ii) if such consent is not forthcoming, withhold payment of the sum, part or balance, as the case may be, pending a decision of a competent Civil Court as to the person entitled to receive it.

(2) The making of any payment authorised by sub- section (1) shall be a full discharge to the Government or the railway administration, as the case may be, from all liability in respect of so much of the sum standing to the credit of the subscriber or depositor as is equivalent to the amount so paid."

Section 3 of the Provident Fund Act makes it abundantly clear that the GPF is not liable to be attached and Section 4 provides for the modes and methods of repayment of PF. The immunity from attachment is complete.



The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the attachment. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from attachments. Provident Fund amounts, pension and other compulsory deposit retain their character until they reach the hands of the employee, any other view cannot be taken considering the conditions in which such exemption provisions operate and the class of persons they were intended to benefit. In making the above observations, we are supported by the directions of the Hon'ble Madras High Court in **Sathiyabama And Ors. vs M. Palanisamy And Ors. on 20 October, 2003 : 2004 (2) CTC 129, (2004) IILLJ 403 Mad, (2004) 1 MLJ 43** as under :

6. xxxx

*Sections 3 and 4 of the **Provident Funds** Act protects the **provident fund** deposit from being assigned or charged and shall not be liable to attachment under any decree or order of any civil, revenue or criminal court. **Section 10(2)** of the Employees' **Provident Funds** & **Miscellaneous Provisions Act** is as follows:-*

(i) *In **Mettur Industries, Ltd., v. Velayutha Mudaliar** (1961 (1) LLJ 279)(Madras), it was held that, when under the terms of the **provident fund** amount standing to the credit of a member became payable on the expiry of six months from the date of discharge of the concerned member, the order of attachment made two days after the resignation of the employee, was illegal and prohibited by law, and that so long as the amount does not cease to have the character of **provident fund** either by payment of the same to the employee or by removing it from his credit in his **provident fund** ledger, the immunity against attachment continues.*

(ii) *In A. Subbian v. Thiruvenkataswami* (1971 LAB. I.C.1595 (V 4 C 393) it has held that so long as the amount regarding employees **provident fund** is in deposit with the employer and has not been paid over to the employee even after his retirement, it does not become the employee's property and is exempt from **attachment**. The learned Judge held that the **provident fund** amount is a compulsory deposit and will continue to be a deposit and not the property of the employee, until it is paid.



(iii) *In Pearly Andrew v. Official Assignee* the Division Bench of the Bombay High Court held that even when the employee has become an insolvent, the amount standing to his credit, so long as it is with the Regional Provident Fund Commissioner and has not been paid to the insolvent, does not vest in the Official Assignee and the Official Assignee cannot lay any claim to it.

9. It is therefore clear that these amounts which are payable to employees, so that they would not be left resourceless at the time of retirement are exempted for **attachment**, whether they are payable to the employee or to his legal representatives. The various decisions referred to above also indicate that whether the employee has retired, or has become insolvent or has died the character of these amounts do not change so long as they are in the hands of the employer. The immunity from **attachment** is complete. The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the **attachment**. The second respondent has rightly maintained its stand against the **attachment**. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from **attachments**. **Provident Fund** amounts, pension and other compulsory deposit retain their character until they reach the hands of the employee, any other view cannot be taken considering the conditions in which such exemption provisions operate and the class of persons they were intended to benefit. In one of the decisions, even the pay order had been made out but it had not left the hands of the employer, the plea of the person seeking **attachment** on the ground that, really nothing further was required, was in vain. It still had not reached the employee and as the learned Judge picturesquely put it, "A miss is as good as a mile."

Therefore, the respondents are not expected to attach the Provident Fund balance of the applicant as per Provident Fund Act and in accordance of the directions of the Hon'ble High Court as at above.

V. Similarly, in respect of amounts due to the applicant under CGEIS, it cannot be withheld during his life time as observed by the Hon'ble High Court of A.P in **Medavati Rama Krishna Reddy And ... vs Peddada Sitalatha And Ors. on 12 November, 1996 (4) ALT 774**,

as under:



4. The point for consideration is whether the amounts found due to the respondent representing Gratuity, Family Benefit Fund and Group Insurance amounts are not liable for attachment in view of the provisions of Section 60 C.P.C. and whether there are any valid reasons to interfere with the orders of the lower Court?

5. The amounts which were sought to be attached before judgment in both the revision petitions represent the amounts which were due to be paid to the deceased P. Amrutha Rao towards Gratuity, Family Benefit Fund and Group Insurance amounts. Section 60(1)(g) C.P.C. provides that stipend and gratuities allowed to pensioners of the Government are not liable for attachment. Similarly, under the provisions of Section 60(1)(kkk) which was introduced by way of amendment in our State in the year 1979, the amounts payable under the A.P. State Government Employees Family Benefit Fund Rules are also not liable for attachment. In view of such provisions, the learned counsel for the revision petitioners also admitted that such amounts representing Gratuity and Family Benefit Fund are not liable for attachment in case the attachment is sought for against the concerned Government servant when he is alive. The learned counsel for the petitioners, however, contends that Group Insurance amounts found due to the Government employee are not exempted under Section 60 C.P.C. as no specific provision is made under any of the clauses in sub-section (1) of Section 60 C.P.C, and as such, the amount due towards Group Insurance is liable for attachment even when the attachment is sought for during the life time of the concerned Government servant. But this contention cannot however be accepted. Till 31-10-1984 all Government Employees had to compulsorily contribute the specified amount every month from their salary towards Family Benefit Fund and the said scheme was changed into Group Insurance Scheme with effect from 1-11-1984 under G.O.Ms. No. 293 dated 8-10-1984 and in view of the same, from 1-11-1984 onwards, every Government employee is compulsorily made to contribute the specified amount towards Group Insurance Scheme and it is only a continuation of the earlier scheme under which contribution was being made towards Family Benefit Fund. Therefore, the provisions of Section 60 (1) (kkk) C.P.C. continue to apply even to the amount due under Group Insurance Scheme. Therefore, such amount due to a Government employee under Group Insurance Scheme is also not liable for attachment if such attachment is sought against such Government employee during his life time. Therefore, all the amounts found due towards Gratuity, Family

Benefit Fund and Group Insurance Scheme are not liable for attachment in case the attachment is sought for during the life time of the concerned government employee."



The case of the applicant is fully covered by the judgment of the Hon'ble High Court and hence, the respondents are not empowered to withhold the CGEIS amounts due to the applicant as per Section 60 (kb) of CPC extracted hereunder:

Section 60 (kb) of CPC --all moneys payable under a policy of insurance on the life of the judgment debtor;

VI. Coming to recovery of Govt. dues from the pensioners in respect of excess paid arrears of pay and allowances and 6th CPC arrears to the extent of Rs.1,44,138 /- as pointed out at para (xii) of the reply statement, we observe that no such recovery can be effected from pensions as per Rafiq Masih Case wherein, the Hon'ble Apex Court has observed as under:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred hereinabove, we may, as a ready reference summarise the following few situations, wherein recoveries by the employees would be impermissible in law:

- i) *Recovery from the employees belonging to Class-III & Class-IV service (or Group-C or Group-D service)*
- ii) *Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery*
- iii) *Recovery from the employees, when the excess payment has been made for a period in excess of five years before the order of recovery is issued*
- iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post*
- v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary, to such an extent as would far outweigh the equitable balance of the employer's right to recover."*

Therefore, the excess paid amount of around Rs.1.44 lakhs, if already recovered, has to be refunded to the applicant since the case of the applicant is covered by the above judgment.



VII. Respondents have granted pension and allowed commutation of pension but not Gratuity, leave encashment and CGEIS/GPF balance. Hence, in view of the above legal principles laid down by the superior judicial fora, the respondents are directed to release the following amounts due to the applicant:

- a. Gratuity amount payable to the applicant
- b. CGEIS amount due to be paid to the applicant
- c. GPF balance standing in the PF account of the applicant.
- d. No recovery of Rs.1,44,138/- from the pension of the applicant shall be effected towards excess amounts paid by the respondents as pay & allowances and 6th CPC arrears.
- e. In respect of leave encashment, the same shall be regulated as per the judgment cited at para III supra.

Time granted to implement the judgment is 3 months from the date of receipt of this judgment.

With the above directions the OA is disposed of with no order as to costs.

**(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)
JUDICIAL MEMBER**

/evr/