

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No.332/00112/2018

ORDER RESERVED ON 31.01.2020

ORDER PRONOUNCED ON 16th March, 2020

HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER (A)

Fauzia Shaheen, aged 60 years, W/o Z.U. Khan, R/o D-2/500, Sector-F, Jankipuram, Lucknow-226021.

.....Applicant

By Advocate :Shri Raj Singh/Shri D. K. Srivastava

Versus

1. Union of India through its Secretary, Ministry of Culture, New Delhi.
2. Director General, National Research Laboratory for Conservation of Cultural Property, E/3 Aliganj, Lucknow.
3. Pay & Accounts Officer, Pay & Accounts Office, Ministry of Culture, New Delhi.
4. Shri B.V. Kharbade, Director General, National Research Laboratory for Conservation of Cultural Property, E/3 Alinganj Lucknow.

...Respondents

By Advocate :Shri Rajesh Katiyar

ORDER (ORAL)

Delivered By Hon'ble Mr. Devendra Chaudhry-M-A

The current Original Application (O.A.) has challenged the delay in the process of making payment of retiral dues namely

Pension, Gratuity, Commutation of Pension, Leave Encashment, General Provident Fund (GPF) and Central Government Employees Group Insurance Scheme (CGEGIS) and prayed for their payment forthwith with an interest of 18% per annum from the date due to the date of payment to the applicant.

2. Accordingly, following relief is prayed for:

"1. This Hon'ble Tribunal may kindly be pleased to direct the respondents to make payment of Pension along with arrears thereof from the date of superannuation i.e. 31.01.2018, Commutation of Pension, Retiral Gratuity, Leave Encashment, payment towards Central Government Employees Group Insurance Scheme (CGEGIS) along-with interest @ 18% per annum from the date it was due till the date of payment."

3. Briefly, the facts of the case as per applicant are that, she was appointed on the post of Senior Scientific Assistant in the National Research Laboratory for Conservation of Cultural Property (hereinafter referred to in short as 'NRLC') Lucknow, in the Ministry of Culture, Government of India. Subsequently, the applicant was promoted and retired on 31.01.2018. That the applicant was provided pension papers on 26.10.2017, though it was required to be supplied to her by 31.5.2017 (at least 6 months from the date of retirement). The applicant submitted duly filled forms in the NRLC office which were thereafter processed for verification (Annexure-4). That following the retirement on 30.1.2018, since no pension and retiral dues were paid. therefore, the applicant preferred representation dated 01.02.2018 followed by another vide 26.03.2018 (Annexure A-5). That the applicant obtained no dues certificate (Annexure -7) and was also issued last pay certificate (LPC) but with delay vide 13.04.2018 (Annexure -8). That despite close follow up, the pension and retiral dues have not yet been released including provisional pension nor any order passed in this regard as provided in the CCS (Pension) Rules 1972 (hereinafter referred to in short as 'Pension Rules'). That this action of the respondents is malafide, arbitrary, illegal and also prejudiced on account of her having earlier worked as Member of

the Internal Complaint Committee for Prevention of Sexual Harassment of Woman at Workplace (ICC) constituted by Respondent Nos. 2 and 4 through office order No. F.8-4/2014-NRLC dated 3rd March 2015 on some cases connected while functioning in the above Committee. That the action of respondents is violative of Rules 64 and 68 and in light of various pronouncements of the Hon'ble Apex Court, it is prayed that the retiral dues be directed to be paid by the respondent Nos. 2 / 4 along with interest @ 18 % per annum form the date of due till the date of payment.

4. *Per contra*, the respondents have submitted that the applicant on first appointment in 1985 applied for CGHS Card furnishing the name of her parents two brothers and two sisters including the name of Km. Anjum Parveen, but the competent authority deleted the name of brothers and sisters and allowed only the name of parents along with applicant and issued a CGHS Card bearing No. 015834 dated 5.2.1986 (Annexure 1 of CA). That expiry of the above card, a new card bearing No. 051178 dated 1.5.1995 was issued to the applicant again having only three names, viz., the applicant, her father and mother (Annexure A-2 of CA). That, the applicant, later got the name of her husband endorsed by the then Project Officer, but relevant papers concerning the same are not found in her service record. That later when the manual cards were changed to Plastic Card in 2015, the applicant submitted an application for adding the name of her sister Anjum Parveen which the applicant allegedly got added after manipulation and thereupon got heavy medical advance from NRLC for cancer treatment of her sister, Km. Anjum Parveen.

5. That this act of applicant is fraudulent and therefore, vide office OM No. 26-6-2014-NRLC dated 17.01.2018 clarification was sought from the applicant w.r.t the above facts (Annexure-4). That

the applicant replied to the said OM vide 1st February 2018 (Annexure A-5) which was not found satisfactory on the grounds that her sister could not be considered becoming dependent after the death of her father even though she was not considered being before his death dependent and hence not included in 1986 issued CGHS Card. That this amounts to sub-dependency which is not permissible as per CGHS card issuance provisions. Accordingly, an FIR was sought to be lodged vide letter dated 27.04.2018/18.05.2018 to Senior Superintendent of Police, Lucknow (Annexure 6). That since, the applicant has committed fraud qua entry of the name of applicant's sister in the CGHS Card and claimed medical benefits with regards to her sister, therefore, the O.A. prayer for release of pension and retiral dues is liable to be dismissed.

6. The applicant has filed Rejoinder Affidavit in which, the facts of the O.A. have been reiterated and the documents pertaining to the addition of the name of the husband of the applicant, Shri Z. U. Khan and Sister Anjum Parveen are enclosed (Annexure 3 of RA) along with a copy of the representation dated 23.01.2017 (Annexure A-5 of RA) stating in Para-4 of the said Annexure that a CGHS Card Bearing No. 461850 and Bar Code (8018) 890327300041685060 was issued on the basis of which the applicant took medical advance of Rs. 97000/- for the cancer treatment of her sister Km. Anjum Parveen at SGPGIMS Lko for which a sanction order bearing No. 27-1/2005 NRLC dated 19th May 2015 was also issued. It is further submitted that now the deceased unmarried sister Km. Anjum Parveen who was residing with the applicant after the death of her father late Mohd Yaqub has herself demised on 26th June 2016 and that she remained unemployed till her death. Further, no fraud has been committed which is also proven from the fact that the said FIR lodged by respondent 2/4 has not resulted in any charge sheet, much less

conviction. Also there are no disciplinary proceedings initiated or pending under CCS (CCA) Rules, 1965 and none have been initiated post retirement under CCS (Pension) Rules 1972 and since Pension Rules do not provide for withholding of pension and retiral dues without any formal order, hence, the relief sought in the prayer should be granted by the Tribunal forthwith.

7. Heard the arguments on behalf of the Learned Counsel of both the parties and perused the material on record.

8. The key issue which falls for consideration is that whether the respondents, can withhold pension including provisional pension, Gratuity, CGEGIS dues, and other retiral dues of the applicant under the CCS Pension Rules 1972 (Pension Rules). In order to decide this, it would be just and proper to quote the Pension Rules-9, 68, 69, 71, 72 (1) and 73 in this connection. The relevant abstracts are reproduced herein below:

Rule-9

"Rule 9. Right of President to withhold or withdraw pension

(1) *The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:*

Provided that the Union Public Service Commission shall be consulted before any final orders are passé:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of Rupees Three thousand five hundred per mensem.

2 (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President 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 Government servant during his service.

(3) omitted

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

- (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and
- (ii) in the case of civil proceedings, on the date the plaint is presented in the court.

Rule-68

"68. Interest on delayed payment of gratuity

(1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to General Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.]

(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate offices and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of ^[administrative reasons or lapse], the Secretary of the Ministry or the Department shall sanction payment of interest.

(3) The Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity ^[on account of administrative lapses].

(5) Deleted"

Rule-69

69. Provisional pension where departmental or judicial proceedings may be pending.

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such 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.

Rule-71

71. Recovery and adjustment of Government dues

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable.

(3) The expression 'Government dues' includes -

(a) dues pertaining to Government accommodation including arrears of licence fee as well as damages for the occupation of the Government accommodation beyond the permissible period after the date of retirement of the allottee, if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

Rule-72

Rule 72: Adjustment and recovery of dues pertaining to Government accommodation:

(1) The Directorate of Estates on receipt of intimation from the Head of Office under sub-rule (1) of Rule 57 regarding the issue of No Demand Certificate shall scrutinize its records and inform the Head of Office within two months, if any licence fee was recoverable from him in respect of the period to eight months of his retirement. If no intimation in regard to recovery of outstanding licence free is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement."

Rule-73

Rule 73: Adjustment and recovery of dues other than dues pertaining to Government accommodation:

(1) For the dues other than the dues pertaining to occupation of Government accommodation as referred to in Clause (b) of sub-rule (3) of Rule 71, the Head of Office shall take steps to assess the dues one year before the date on which a Government servant is due to retire on super-annuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

(2) The such assessment of Government dues referred to in sub-rule (1) shall be completed by Head of Office eight months prior to the date of the retirement of the Government servant.

(3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the retirement gratuity becoming payable to the Government servant on his retirement.

Further it would be crucial to also reproduce vide circular No. O.M. No. 20/16/1998-P&PW(F.) dated 11th July, 2013, which also provides that:

"4. It is, therefore, clear that there is no provision for withholding any part of

gratuity at the time of retirement for the purpose of recovery of outstanding Government dues other than those pertaining to Government accommodation and the onus of timely collection of licence fee is on the Directorate of Estates. If the Directorate of Estate does not specifically inform the Administrative Department of the outstanding dues and requests for withholding of 10% gratuity for the outstanding licence fee, Gratuity cannot be withheld on this account. The only other circumstance under which gratuity can be withheld is in case of ongoing disciplinary proceedings against the Government servant. Thus the Pay and Accounts Officer shall not withhold any gratuity unless the Head of Office-

- (a) Encloses instructions received from Directorate of Estate for withholding of 10% gratuity for outstanding licence fee or
- (b) Informs of ongoing disciplinary proceedings.

These instructions are for strict compliance of all Administrative Ministries /Departments.

5. A revised FORM 8- form of letter to the Accounts Officer forwarding the pension papers of Government servant is also enclosed (Refer Form 8 in Page 271). Formal amendment in the CCS (Pension) Rules for revised Form 8 will be notified later."

9. Following position emerges after examination of the above Rules:-

- (i) Rule 9(1) as seen above, provides for withholding of the Pension and Gratuity or recovery from pension or gratuity with regards to any pecuniary loss caused to the Government, **if, in any departmental or judicial proceedings, the pensioner is found guilty** (emphasis supplied). That is to say, that, on finding an employee **finally** guilty of misconduct on the Disciplinary authority/Competent Authority, Gratuity and Pension can be withheld or recovery from Pension and Gratuity made.
- (ii) Rule 9 (2) (b) states that disciplinary proceedings (DP) in case of a retired employee can be initiated only with the approval of the President of India for an incident not earlier than four years from the date of institution of such DP

- (iii) Rule 69 (c) provides that no gratuity shall be paid to the Government Servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Provided that where departmental proceedings have been instituted under Rule 16 of the CCS (CCA) Rules, 1965 for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the CCS (CCA) Rules, 1965, the payment of gratuity shall be authorized to be paid to the Government servant.
- (iv) Rule 71 (i) provides that Head of Office shall assess Government dues payable by a Government servant due for retirement.
- (v) Rule 71(ii) provides that Government dues outstanding till the date of retirement, shall be adjusted against the amount of the retirement gratuity becoming payable.
- (vi) Rule 72 provides for adjustment and recovery of dues pertaining to Government accommodation.
- (vii) Rule 73 provides for adjustment and recovery of dues other than dues pertaining to Government accommodation
- (viii) Under Rule 73, it is incumbent that Head of Office shall take steps to assess the dues one year before the date on which a Government servant is due to retire and such assessment shall be completed 8 months prior to the date of the retirement of the Government servant and such dues while remain outstanding thereupon shall be adjusted against the amount of the retirement gratuity becoming payable to the Government servant on his retirement.

10. Now, further vide circular No. O.M. No. 20/16/1998-P&PW(F.) dated 11th July, 2013, which is also provided that

“4. It is, therefore, clear that there is no provision for withholding any part of gratuity at the time of retirement for the purpose of recovery of outstanding Government dues other than those pertaining to Government accommodation and

the onus of timely collection of licence fee is on the Directorate of Estates. If the Directorate of Estate does not specifically inform the Administrative Department of the outstanding dues and requests for withholding of 10% gratuity for the outstanding licence fee, Gratuity cannot be withheld on this account. The only other circumstance under which gratuity can be withheld is in case of ongoing disciplinary proceedings against the Government servant. Thus the Pay and Accounts Officer shall not withhold any gratuity unless the Head of Office-

(c) Encloses instructions received from Directorate of Estate for withholding of 10% gratuity for outstanding licence fee or

(d) Informs of ongoing disciplinary proceedings.

These instructions are for strict compliance of all Administrative Ministries /Departments.

5. A revised FORM 8- form of letter to the Accounts Officer forwarding the pension papers of Government servant is also enclosed (Refer Form 8 in Page 271). Formal amendment in the CCS (Pension) Rules for revised Form 8 will be notified later."

11. As regards delayed payments of Retiral dues, the Rule provides for interest on delayed payment of gratuity only as per Rule 68. Under this Rule, **if it is clearly laid down that if there is delay in payment of gratuity and the delay is attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to General Provident Fund amount in accordance with the instructions issued from time to time (emphasis supplied)**, provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers. Further, that Rule 68 (2) also provides that every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on the account of administrative reasons or lapse, the Secretary of the Ministry or the Department shall sanction payment of interest. Rule 68 (3) provides that the Administrative Ministry or the

➤ Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2) of Rule 68. Rule 68 (4) also provides that in all cases where the payment of interest has been sanctioned by the Secretary or Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant who are found responsible for the delay in the payment of gratuity on account of administrative lapses.

12. An analysis of all the above Rule-68 reveals the following points:-

- (i) That, the Gratuity can be withheld under Rule 9(1) only after the pensioner has been finally found guilty of grave misconduct.
- (ii) This means that the Gratuity cannot be withheld or any recovery made in part for any pecuniary loss without the charges of grave mis-conduct being proved after conclusion of disciplinary inquiry.
- (iii) That, Rule 69 (c) lays down that Gratuity need not be paid until the conclusion of departmental proceeding and issue a final order thereon.

In the present case, the Applicant retired on 31.01.2018 and there is (a) no judicial or disciplinary proceeding against the applicant, nor any (b) charge sheet is issued following the alleged FIR letter sent to the SSP Lucknow by the respondents and (c) there is no charge memo issued till date by the respondents /competent authority under the CCS (CCA) Rules 1965. Also, there is no (d) formal order stopping pension including provisional pension, commutation of pension, gratuity, GPF, CGEGIS dues as prayed for in the relief clause and still (e) none of the aforesaid dues are paid till date.

13. The specious plea of the respondents that the retiral dues have been withheld on account of alleged fraudulence in obtaining

undue CGHS card facility to husband or sister Km Anjum Praveen and the medical advance for treatment of the now demised sister are not yet substantiated in any competent inquiry under judicial or departmental proceeding. The issuance of CGHS Card No. 461850 with Bar Code (8018) 890327300041685060 has not been denied. The addition of names of the husband of the applicant and the stated unmarried dependent sister are not controverted with any evidence in any definitive manner or proof. The respondents cannot therefore cover-up their action on mere unproven allegations by empty assertions. **It is in fact height of administrative tyranny.**

14. The fact is, that, all the retirement dues and amounts related thereto were payable immediately after the date of retirement notified under Rule 74 of the Pension Rules. That, once the retirement is effected, and Retiral Dues are not paid then vide provisions of Rules 68, the penal interest clause is triggered against the Government/ Administrative Officer liable for timely release of Gratuity Dues. This has been done to prevent any malafide or arbitrary delay w.r.t. release of Gratuity Dues of an employee immediately post-retirement. **Further that** the luxury of delay is not allowed because the government is to initiate assessment of retiral dues one year before the due date of retirement as per Rule-58 of the Pension Rules. Under Rule 64(3), where the amount of pension/gratuity cannot be determined for reasons other than DP, the Head of Office (HOO) shall issue a letter of sanction addressed to the retiring Government servant endorsing a copy to the Accounts Officer authorizing 100% of pension as provisional pension for a period not exceeding six months from the date of retirement and sanction of 100% gratuity evenwhile withholding 10% of gratuity. That no such orders have been issued by the HOO in the present case, the interest clause got triggered as from 01.02.2018 as the applicant retired on 31.01.2018. **The point to be driven home is that the respondents did not have the luxury to postpone release of pension and gratuity without having any DP against the applicant on the date of retirement. They have made**

► this unpardonable legal mistake as the facts clearly establish.

15. There are enough rulings apart from those cited by the applicant wherein the Courts have been very clear about penalizing such irresponsible and illegal acts pertaining to withholding of retiral dues of pensioners.

16. The die is cast and there is no going back. The Rubicon has been crossed and wages of illegal action will have to be paid by the respondents. The prayer of the applicant has passed the test of fire and emerged unblemished. "*hemnahsamlakshyatehyagnauvishuddhihshyaamkapiva*" - ***the purity or otherwise of gold can be tested only when it is put through fire.*** The relief sought by the applicant has been put to the test of the fire of justice and has come out unscathed as per above detailed analysis.

17. In conclusion, therefore, the OA is liable to be allowed and the respondents are liable to pay and **shall pay the retiral dues as per below:**

A. (i) the full Pension every month, (ii) the full payment of pension not paid so far, (iii) the full Gratuity, (iv) the full GPF, (v) full Commuted Pension as per request to the limit of 40% set under the CCS (Commutation) Rules, 1981, (vi) full Central Government Employees General Insurance Rules, 1980;

B. Payment of Penal interest as per Rule-68 of the CCS Pension Rules, 1972 on gratuity withheld from the date of retirement till the date of payment to the applicant in the stated bank account.

C. Payment of penal interest at the rate at which penal interest is paid on delayed GPF payment from the date due to date paid to the applicant's stated bank accounts for:

- (a) pension amounts not paid**
- (b) commuted pension amount not paid**
- (c) CGEGIS dues not paid**

D. Any other retiral due to be paid forthwith.

Further all the above payments shall be made within four weeks of the receipt of this order. The OA is allowed accordingly.

18. Let a copy of this order be served on the Respondent-1: Secretary Ministry of Culture, Union of India, Government of India by the Registry through Registered Post, so as to take stock of such similar arbitrary cases of withholding of pension in the larger interest of justice and avoidable litigation. No costs.

(Devendra Chaudhry)

Member -A

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