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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 439/2011

Tuesday, this the 14th August, 2012.

CORAM

HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

1 Treasa Jose, W/o late C.V. Jose, R/o Cheruvattoor
House, Boat Jetty, Vaduthala, Kochi-682023,

2 Ancy C.J, D/o late C.V.Jose, R/o Cheruvattoor
House, Boat Jetty, Vaduthala, Kochi-682023,

Applicants

(By Advocate Mr P.A.Kumaran)

Vs.

1. Union of India represented by Secretary
to the Government of India, Department of
Communications, New Delhi-110 001.
2. The Chairman & Managing Director, Bharath Sanchar
Nigam Ltd, Sanchar Bhavan, New Delhi.
3. The Principal General Manager, Bharath Sanchar Nigam Ltd,
Ernakulam SSA, Kochi-682016.
4. The Controller of Communication Accounts, Department
Telecom, Kerala Circle, Thiruvananthapuram - 695033.

...Respondents

(By Advocate Mr Thomas Mathew Nellimoottil for R1 to 4)

This application having been finally heard on 09.08.2012, the Tribunal
delivered the following:

ORDER

HON'BLE Mrs K.NOORJEHAN, ADMINISTRATIVE MEMBE

The applicants are aggrieved by the non-payment of Death Gratuity
due to the deceased C.V.Jose.

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2. Brief facts of the case as stated by the applicants are that they are the legal heirs of deceased C.V.Jose, Sr.TOA, CDTMX, Telephone Exchange, Ernakulam, who died while in service on 1.10.2006. According to the nomination of the deceased employee both the applicants are entitled to receive gratuity in equal shares in the event of his death as per CCS (Pension) Rules, 1972. They have submitted the legal heir certificate issued by the Tehsildar, Kanayannur Taluk. The pension of the deceased is the only source of income of the family. The family consists of the widowed wife, unmarried daughter and widowed daughter with her two children. It is submitted that the respondents issued family pension order, Annx.A2 granting family pension Rs.13051/- . The Gratuity amount calculated Rs.350000/- has not been disbursed to the applicants. The denial of payment of Gratuity to the applicants is against the provisions of the CCS (Pension) Rules. Therefore this OA.

3 The respondents have contested the O.A by filing reply. It is submitted that the Death Gratuity of the deceased calculated as Rs.4,30,683/- withheld due to judicial proceedings pending before Munsif Court in the Affidavits filed by Manickanamparambil Chitties against the applicant. The issue of final orders thereon is awaited. Therefore the delay in payment of Gratuity was occurred.

4 Heard the learned counsel for the parties and perused the record.

5 Counsel for the applicant submitted that recovery from the DCRG amount of a Central Government employee is prohibited unless it is Government dues. In this case the deceased employee, happened to be the guarantor for the loans availed, according to the counsel. The respondents have been informed by Manickanamparambil Chitties that the Munsif Court will be issuing an order. As such the respondents are not in receipt of any attachment order from the Munsif Court till now.

6 I had an occasion to consider an identical case in the Division Bench. It is seen that after an elaborate discussion in OA 1017/2011, the same was

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allowed by this Tribunal. This OA is squarely covered by the order in the OA above. The relevant portion of the order is extracted below:

"8 Encroachment upon the DCRG money of a Central Government employee is prohibited by the statutory rules vide the CCS (Pension) Rules. These Rules provide as under:-

"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, 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)."

9 In addition, certain dues such as dues payable to local bodies and cooperative societies have been held to be not Government dues. (Ministry of Finance U.O. No. 2896-ETA/60 dated 31-08-1960 in File No. 10(14)E V/60. And, the expression 'Government dues' does not include dues while on deputation save when the Central Government Servant gives in writing admitting the dues and for adjustment for such recovery from the DCRG, vide Ministry of Finance OM No. F 14(9)-E V/66 dated 02-09-1967. Agreeing for such adjustment when the applicant herein was not a deputationist to KSFE would not give any lever to the respondents to recover or adjust the dues by the applicant to KSFE from the DCRG payable to the applicant.

10 Expressions "Government" and "government dues" referred to in Rule 71 and 73 are defined in Rule 3 of the CCS(Pension) Rules, 1972 as under:-

(i) Government means the Central Government

(ii) Government dues means dues as defined in sub rule (3) of Rule 71

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11 In fact, even in respect of Central Government dues, if there be a dispute and the government servant refuses to admit the dues as payable, or refuses to agree for adjustment of such dues from his gratuity, such dues could be recovered either by persuading him to agree for such adjustment or else only by seeking recourse to courts of law. (Ministry of Finance letter No. F 7(28) E V/53 dated 25-08-1958.)

12. As regards following the precedents, Jyoti Chit Fund (supra) case refers to the Gratuity payable under the Payment of Gratuity Act, which Act does not govern the applicant, as his case is covered only under the CCS(Pension) Act, 1972. Again, in so far as the decision in the case of Radhey Shyam Gupta (supra) is concerned, the same too relates to a nationalized bank which is not governed by the CCS(Pension) Rules, 1972. We may, of course, follow the ratio therein, subject to the conditions that the same is not inconsistent with the statutory provisions. For, as held by the Apex Court in the case of State of Madhya Pradesh vs Devendra (2009) 14 SCC 80,

"14. Needless to say, the directions are subject to provisions of the Act, the Regulations and the Code. In case of conflict statute itself prevails.

13 In so far as the decision of Radhey Shyam Gupta (supra) relied upon by the counsel for the applicant, the ratio could be applied to the facts of the case as the Pension Rules, as stated above give some immunity to the Gratuity from attachment or recovery/adjustment save certain government dues.

14. In so far as DCRG governed by the CCS (Pension) Rules, 1972, the Apex Court has dealt with the same in the case of Jarnail Singh vs Secy, Ministry of Home Affairs (1993 (1) SCC 47, wherein the Apex Court has inter alia held as under:-

"Rule 69(1)(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. This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceeding against the Government servant. Rules 71 and 73 relating to recovery and adjustment of Government dues and the express provision in Rule 73(3) for adjustment of dues against the amount of death-cum-retirement gratuity payable to the Government servant also reinforce this conclusion. Article 366 of the Constitution of India contains the definitions for the purpose

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of the Constitution and there in clause (17) is defined 'pension' to include gratuity as well. This definition of 'pension' in the Constitution also indicates that conceptually the term 'pension' includes gratuity. In Rule 3(1)(o) of the Central Civil Services (Pension) Rules, 1972, the term 'pension' is defined to include gratuity except when the term 'pension' is used in contradistinction to gratuity, in consonance with the basic concept."

15 The dues in respect of which the prohibitory orders for withholding of DCRG have been passed do not come within the above definition.

16 The only point left to be considered is that the agreement executed between KSFE and the applicant provides for recovery of the dues by KSFE from the DCRG. The question is whether the same could be stultified by the applicant taking shelter under the protection available under the Pension Rules and whether the Tribunal could be a party for breach of such contract. Answer to this question is not far to seek. As discussed above, the CCS (Pension) Rules do not provide for adjustment from the DCRG of dues other than Government dues. As such, any term in the agreement or contract agreeing for such adjustment is contrary to the provisions of the Rules. In the case of *Union of India vs A.K. Pandey (2009) 10 SCC 552* the Apex Court has held as under:-

"20. It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim a pactis privatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. (See Melliss v. Shirley Local Board (1885) 16 QBD 446.) What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action."

17 Thus, even if the applicant has consented for such a recovery, since there is a statutory prohibition for such adjustment (save government dues), that part of the contract is not capable of execution.

18 Now a word about the obligation on the part of the employer, i.e. the Postal Authorities to execute the provisions of the Pension Rules governing the government servants with intent and spirit. They can act upon such prohibitory orders or other directions issued on the strength of the Statutes of the State Government only if these are not inconsistent with the Central Statutes. Otherwise, they are not

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under any legal obligation to the authorities to act contrary to the statutory provisions. This point is stressed here, as in many cases, the KSFE on the basis of the decision in Manni (supra) may, in all expectation, be getting agreement executed from the Central Government employees for such adjustment as they do in the case of State Government Employees. The marked difference being that whereas the State Government rules provide for such adjustment, while the CCS(Pension) Rules, 1972 do not so provide, such an agreement cannot be entered into and even if the employee agrees, the Respondents cannot execute that part of the agreement as the same is contrary to the rules.

19 As such, the OA succeeds. It is declared that the direction given by the Senior Superintendent of Post Offices to the Senior Post Master, Calicut HO vide order dated 14-07-2011 is without jurisdiction and is violative of the provisions relating protection of gratuity available under the CCS(Pension) Rules, 1972. Accordingly the same is quashed and set aside. As such, the applicant is entitled to the release of the withheld DCR Gratuity or other terminal benefits. Respondent No. 2 and 3 are directed to release the withheld terminal benefits of the applicant within a period of 2 months from the date of communication of this order. Failure to release the same within the aforesaid period would entail the liability of payment of interest @ 9% from the 01-01-2012 (one month after the date of retirement of the applicant) till the date of payment. In case such delay is caused due to negligence or the recalcitrant attitude of any of the authorities in the Respondents' organization, as held in the case of Lucknow Development Authority vs M.K. Gupta (1994) 1 SCC 243 wherein the Apex Court has held that direction may be given to the department concerned to *pay the amount from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.*"

7 In view of the above, I follow the decision dated 21.3.2012 in OA 1017/2011, C.Gopalan Vs. UOI & Ors. As such, the OA succeeds. It is declared that the withholding of Gratuity amount of Rs.430683/- admissible to the applicant is without jurisdiction and is violative of the provisions relating protection of gratuity available under the CCS(Pension) Rules, 1972. As such, the applicant is entitled to the release of the withheld DCR

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Gratuity or other terminal benefits excepting overpaid pay and allowances. It is for the respondents to bring to the notice of the Civil Court, the judgment of the Hon'ble Supreme Court in the cases supra, for necessary action.

8 In the result, Respondent No. 3 and 4 are directed to release the withheld terminal benefits of the applicant within a period of 2 months from the date of communication of this order. Failure to release the same within the aforesaid period would entail the liability of payment of interest @ 9% from the 01-11-2006 (one month after the date of death of the deceased C.V.Jose) till the date of payment. No costs.

Dated : 14th August 2012.


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER

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