

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 291/2012**This, the 24th day of October, 2013****Hon'ble Sri Navneet Kumar, Member (J)**

Shiv Shanker Yadav aged about 60 years son of late Shri Tek Chand Yadav, resident of Gayatripuram, Near Rama Hospital Kursi Road, Lucknow (lastly posted as Daftry in the office of Regional Director, Central Ground Water Board, Lucknow Region, Bhujal Bhawan, Sector 'B' Sitapur Road Yojana, Lucknow).

Applicant.

By Advocate: Sri Prashant Kumar Singh

Versus

1. Union of India through the Secretary, Ministry of Water Resources, New Dehi-110001.
2. Central Ground Water Board, Govt. of India, Ministry of Water Resources, Bhujal Bhawan, NH-IV, Faridabad (Haryana) through the Director (Administration).
3. Pay and Accounts Officer, Central Ground Water Board, Govt. of India, Ministry of Water Resources, Bhujal Bhawan, NH-IV, Faridabad, Haryana.
4. Regional Director, Central Ground Water Board, Lucknow Region, Bhujal Bhawan, Sector 'B' Sitapur Road, Yojana, Lucknow.

Respondents.

By Advocate: Sri Rajendra Singh

(Reserved on 15.10.2013)

ORDER**By Hon'ble Sri Navneet Kumar, Member (J)**

The present Original Application is preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i) issuing /passing of an order or direction to the respondents setting aside the impugned order dated 30.5.2012 passed by the respondent No.4 (as contained in Annexure No. A-1 to this application) after summoning of the original records.
- ii) issuing/passing of an order or direction to the respondents to make payment of his retiral dues viz. pension with effect from 1.9.2011, retirement gratuity , leave encashment and amount of



Group Insurance along with interest at the market rate of 12% per annum within a specified period of two months.

iii) issuing/ passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

iv) allowing this Original Application with cost.

2. The brief facts of the case are that the applicant who was in the respondents' organization, superannuated on 31.8.2011 and after the retirement, he was paid leave encashment, GPF and CGEGIS and has also been paid the provisional pension. But he has not been paid the Gratuity and Final pension, for which he has made a representation to the authorities and has also filed O.A. No. 82/2012 and in pursuance of the decision of O.A, the respondents have taken a decision on the applicant's representation and pointed out that as per the averment of the applicant, Smt. Kusum Yadav is no more his wife and Smt. Sharda Yadav is his wife. But the applicant has not submitted any documentary proof and his statement given at the different stages are found contradictory, vague and not as per the queries asked for. Apart from this, it is also pointed out by the respondents that the pension of any Govt. servant is linked with his wife and family and the pension paper is processed with the detailed information of his wife and family members and the rule does not allow for a Govt. servant to have two wives at a time. Apart from this, it is also pointed out by the respondents that the applicant failed to provide valid documents which shows that Smt. Sharda Yadav is his legally wedded wife and he has given divorce to Smt. Kusum Yadav before declaring Smt. Sharda Yadav as his wife, as such pension benefits were withheld.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it was pointed out by the respondents that as per available record, no such documents were



submitted by the applicant which shows that Smt. Sharda Yadav is his legally wedded wife, this was mentioned as per family details submitted by the applicant on 8.12.1999. The respondents have also taken the ground that applicant has not submitted any divorce documents pertaining to his earlier wife Smt. Kusum Yadav and the applicant has also enjoyed the benefits such as LTC, Medical and tuition fee reimbursement in the name of Smt. Sharda Yadav and other dependents. Once again in the reply, it is reiterated by the respondents that the applicant vide letter dated 11.7.2011 had admitted that Smt. Kusum Yadav is his first wife but failed to produce any documentary proof in support of dissolution of marriage or submitted any divorce decree. However, he has submitted that a civil Suit No. 742 of 2008 is pending between the applicant and Smt. Kusum Yadav before family court. It is also pointed out that without obtaining divorce from his first wife Smt. Kusum Yadav, the applicant declared Smt. Sharda Yadav as his wife. That Smt. Kusum Yadav has also filed a case for maintenance being case No. 155 of 2007 before family court which was subsequently allowed by awarding Rs. 5000/- per month as maintenance. The only ground which is taken by the respondents for not sanctioning the amount of gratuity and final pension is that the applicant without giving valid divorce to his earlier wife, declared the name of some other person as his wife.

4. Learned counsel for the applicant has filed Rejoinder Reply and through the Rejoinder Reply, mostly the averments made in the O.A. are reiterated. Apart from this, it is also pointed out by the applicant that the impugned order dated 30.5.2012 was passed by the respondents without proper application of mind, and also keeping the provision of Central Civil Services (Pension) Rules, 1972. Apart from this, the learned counsel for the applicant pointed out that applicant's earlier wife Smt. Kusum Yadav after



her divorce with the applicant as per the custom of the community, had married to one Sri Jagdish Prasad on 15.2.1986 and her marriage with her second husband has still not been dissolved or annulled by any custom or order of the competent court. As such, there is no illegality or impediment in the marriage of Smt. Sharda Yadav with the applicant and declaring her name as his wife. Learned counsel for applicant has also relied upon the two decisions of the Principal Bench passed in O.A. No. 264/2009 as well as O.A. No. 2517/2010 on the similar issue.

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

6. The admitted position is clear to the extent that the applicant superannuated on 31.8.2011 and after retirement of the applicant, leave encashment, GPF and CGEGIS has been paid to him. Apart from this, the applicant was also paid the provisional pension. The applicant is now claiming the payment of gratuity and pension. The learned counsel for the applicant pointed out that under Rule 69 of the CCS (Pension) Rules read with Rule 9, the pension relating dues of the applicant could be withheld only if the judicial proceedings related to matters in the discharge of his official duties is pending. For ready reference, **Rule 69 (9) of CCS(Pension) Rules** reads as under:-

“9. 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 authorized the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Govt.



servant, or if he was under suspension on the date of retirement of the Govt. servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

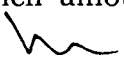
(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(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.

Decision 23 of the Government of India under Rule 3 of the CCS (Conduct) Rules, 1964 gives a list of acts and conducts which amount to misconduct. This has been



reproduced in Swamy's Compilation of Conduct Rules. Thirty Seventh Edition, 2007 , pages 33 to 34 . It is, inter-alia states thus: The following acts and omission amount to misconduct.

(9) conviction by a criminal court.”

7. **“Rule 9 of the CCS (Pension) Rules is extracted below:-**

(1) The present 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 passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy five.”

8. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The right to gratuity is also a statutory right. The applicant was not charged with nor was given



an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which the gratuity can be withheld after his retirement as a measure of punishment. Therefore, the order of withholding the gratuity as a measure of punishment is illegal and is devoid of jurisdiction. The relevant provision of **Sub Section 1 of Section 4 of Payment of Gratuity Act, 1972** reads as under:-

“Payment of gratuity (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation , or on his retirement or resignation , or on his death of disablement due to accident or disease.

The Sub-Section 6 is the non obstante section:

(6) Notwithstanding anything contained in sub section (1) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer , shall be forfeited to the extent of the damage or loss so caused;

the gratuity payable to an employee [may be wholly or partially forfeited]-

if the services of such employee have been terminated for his riotous or disorderly conduct of any other act of violence on his part, or

if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude , provided that such offence is committed by him in the course of his employment.”



9. In the instant case, there is no criminal or disciplinary proceedings are pending against the applicant. In the light of the above, it would be apparently clear that only on the basis of no case pending against the applicant, pension cannot be withheld under Rule 8 of CCS (Pension) Rules, 1972. In the light of the analysis, the OA. succeeds. The respondents are directed to release the regular pension as well as gratuity to the applicant @ 6% simple interest per annum from the date of payment was due till the date of actual payment. The said exercise shall be done within a period of three month from the date of receipt of copy of this order.

10. With the above observations, O.A. is allowed. No order as to costs.


(NAVNEET KUMAR)
MEMBER (J)

HLS/-