

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/64/2019

Date of Order: 22.07.2019

Between:

K. Praphulla Rani
W/o Late K. Murali Krishna, Gr.C
Aged about 55 years
R/o Flat No.203, Annapurna Colony
Beerappagadda, Uppal,
Hyderabad – 500 039, Telangana

.... Applicant

AND

1. Union of India, Represented by it's
Secretary, Department of Posts
Ministry of Communications
Dak Bhavan, New Delhi – 110 001.

2. The Chief Post Master General
Department of Posts
Dak Bhavan Abids,
Hyderabad – 500 001-Telangana.

3. The Superintendent
RMS 'Z' Division
Department of Posts,
Hyderabad 500 001-Telangana.

4. The Director (Accounts)
O/o The Chief Post Master General
Department of Posts
Dak Bhavan, Abids,
Hyderabad – 500 001- Telangana. ... Respondents

Counsel for the Applicant ... Mr. N. Krishna Murthy

Counsel for the Respondents ... Mrs.M. Swarna, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed for non grant of Family Pension and terminal benefits to the applicant.

3. Brief facts of the case are that the husband of the applicant while working for the respondents organisation as Sorting Assistant, was found dead on 18.5.2018 tied to Engineering Board Goods loop as per FIR 225/2018 dated 18.5.2018 which was registered by Secunderabad Police Station consequent to filing of a Police complaint by the applicant. On a representation, Provisional Family Pension was released for a period of 6 months vide letter dated 26.6.2018 and after lapse of the said period disbursement of family pension was stopped and terminal benefits were also not released. Aggrieved over the same, OA has been filed.

4. The contentions of the applicant are that Rule 80-A of CCS (Pension) Rules, 1972 provides for release of Provisional Family Pension as an immediate relief and does not envisage stopping family pension after a period of 6 months. Pension and Gratuity are valuable rights of a Govt. Servant. Rules 77 to 80 of CCS (Pension) Rules, 1972 have not been followed. As a model employer, respondents should come to the rescue of the applicant who is a hapless widow and is legally entitled for the benefits due under the cited rules.

5. Respondents confirm that Provisional family pension was granted for a period of 6 months. A sum of Rs.98,525/- towards CGEGIS was released. Further, respondents wanted to ascertain from the police as to whether the wife of the deceased official is in the list of accused. In response, they were informed by the police that the case is under investigation. Besides respondents also pointed out that a decree has been passed by the Assistant Registrar of Cooperative Societies to recover an amount Rs.1,57,415/- together with future interest at the rate of 20% per annum from the salary of late employee towards dues to Agrasen Co-

operative Urban Bank Ltd.. The Cooperative Urban Bank Ltd. was informed that unless a court order is received, attachment is not permissible under Rule 222 (Volume I) of the P&T Financial Handbook). One another civil suit (OS 1203/2018) has been filed by Sh. P. Venkateshwarlu, who retired from the respondents organization, against the wife of the deceased employee/legal representatives in the competent court to repay a hand loan of Rs.6,00,000/- given to the late employee. In view of the above, respondents have not released pension and other terminal benefits.

6. Heard both the counsel and perused the pleadings on record, including the rejoinder and additional reply statement.

7. (I) Ex. employee of the respondents organization has died in suspicious circumstances and the police are investigating the matter. Keeping this in view, respondents have denied pension and pensionary benefits to the applicant. Respondents are emphasising the fact that the applicant died in suspicious circumstances and a case has been registered as per FIR No.225/2018 dated 18.05.2018. Therefore, it was necessary to ascertain as to whether the applicant was shown as an accused by the police. Respondents have cited sub-rule 11-C under Rule 54 of CCS (Pension) Rules, 1972, in support of their contention, which reads as under:

“(11-C) (a) If a person, who in the event of death of a Government servant while in service, is eligible to receive family pension under this rule, is charged with the offence of murdering the Government servant or for abetting in the commission of such an offence, the claim of such a person, including other eligible member or members of the family to receive the family pension, shall remain suspended till the conclusion of the criminal proceedings instituted against him.

(b) If on the conclusion of the criminal proceedings referred to in Clause (a), the person concerned –

(i) is convicted for the murder or abetting in the murder of the Government servant, such a person shall be

debarred from receiving the family pension which shall be payable to other eligible member of the family, from the date of death of the Government servant,

(ii) is acquitted of the charge of murder or abetting in the murder of the Government servant, the family pension shall be payable to such a person from the date of death of the Government servant.

(c) The provision of Clause (a) and Clause (b) shall also apply for the family pension becoming payable on the death of a Government servant after his retirement.”

Therefore, in view of the above provision, respondents are of the view that applicant would not be eligible to be granted family pension till the criminal proceedings are concluded.

(II) As can be seen from the provisions of CCS (Pension) Rules, 1972 cited above, the ineligibility would arise only if the person is charged with the offence. In the present case, the applicant has not been charged at all. Hence, application of the above cited Rule is inept to the present case. Therefore, the applicant is eligible for family pension.

(III) Further, in regard to Gratuity, proviso (g) of Section 60 of Civil Procedure Code, wherein it was ordained that Gratuity cannot be attached even by a court decree as specified hereunder:

“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, 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;”

Therefore, the action of the respondents is against Section 60 (g) of the CPC and hence untenable. The nature and character of Gratuity and the application of Section 60 (g) of CPC has been dealt at length by the Hon’ble Supreme Court in the case of **Secretary, ONGC Ltd. v. V.U. Warriar, (2005) 5 SCC 245**, as under:-

“20. It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer (vide Garment Cleaning Works v. Workmen).

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21. In Jarnail Singh v. Secy., Ministry of Home Affairs, this Court had occasion to consider the provisions of the Central Civil Services (Pension) Rules, 1972. The definition of “pension” included gratuity under Rule 3.”

In **Radhey Shyam Gupta v. Punjab National Bank, (2009) 1 SCC 376**, the Hon’ble Apex Court has held as under:-

"22. Ms Shobha’s submission finds support in the decision of this Court in Calcutta Dock Labour Board v. Sandhya Mitra wherein it was reaffirmed that gratuity payable to dock workers under a scheme in

absence of a notification under Section 5 of the Payment of Gratuity Act, 1972, would not be liable to attachment for satisfaction of a court's decree. The same principle was reiterated by this Court in *Union of India v. Wing Commander R.R. Hingorani* and *Gorakhpur University v. Dr. Shitla Prasad Nagendra*.

23. However, in all fairness, Ms Shobha also cited the decision of this Court in *Union of India v. Jyoti Chit Fund and Finance*, where while dealing with the provisions of Sections 3 and 4 of the Provident Funds Act, 1925, prohibiting attachment of sums held by the Government, as well as proviso (g) to Section 60(1) of the Code, this Court held that till such time as amounts payable by way of provident fund, compulsory deposits and pensionary benefits did not reach the hands of the employee they retained their character as such and could not, therefore, be attached. However, once the amounts were received by the employee they ceased to retain their original character and, were, therefore, capable of being attached. Ms Shobha urged that the aforesaid decision had been rendered long before the other decisions cited by her and the subsequent decisions would prevail over the earlier decision.

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27. On behalf of the Bank, Mr Dhruv Mehta submitted that despite several attempts having been made to locate the Matador, the same could not be traced and the Bank, therefore, had no alternative but to proceed against the appellant in his capacity as the guarantor for recovery of its dues. Mr Mehta urged that the provision of proviso (g) to Section 60(1) of the Code would apply only to the source of the amounts received by way of retiral benefits, such as pension and gratuity, but not to payments made in respect thereof. On the other hand, once such payments were made, their character stood altered as they became mixed with the other assets of the employee concerned.

28. In support of his submission, Mr Mehta also relied on *Wing Commander R.R. Hingorani* which had been referred to by Ms Shobha, wherein in the context of Section 11 of the Pensions Act, 1871, which provided for exemption of pension from attachment, this Court referred to the decision in *Jyoti Chit Fund case*⁷ where Krishna Iyer, J., speaking for the Bench, had indicated that once the monies covered by the provisions of the proviso to Section 60(1) of the Code had been paid to the employee concerned, they no longer retained their original character and were, therefore, amenable to attachment.

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33. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. the High Court erred in altering the decree of the trial court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in *Jyoti Chit Fund case* has been considerably watered down by later decisions which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for

satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code."

Respondents referred to a claim made by Agrasen Cooperative Urban Bank Ltd. In this regard, there is no E.P. on record for attaching the gratuity. Nevertheless, attachment of gratuity is against the legal principle laid by the Hon'ble Supreme Court, as stated in Judgement cited supra.

(IV) Similarly, when it comes to payment of GPF due to the applicant, there is protection provided from attachment under Section 10 of the Provident Fund Act 1952 as under:

"10. Protection against attachment.-

- (1) The amount standing to the credit of any member in the Fund or of any exempted employee in a 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 Court in respect of any debt or liability incurred by the member or the exempted employee, and neither the officer assignee appointed under the Presidency Towns Insolvency Act, 1909 (3 of 1909) nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to or have any claim on, any such amount.
- (2) Any amount standing to the credit of a member in the fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of exempted employee and shall also not be liable to attachment under any decree or order of any court.
- (3) The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the pension or any other amount payable under the pension Scheme and also in relation to any amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the Fund."

(V) Thus, in regard to the claim of the Agrasen Cooperative Urban Bank Ltd., the observations of the Supreme Court in the case cited above enable the respondents to give an appropriate response. Besides, in the suit filed by a colleague of late employee, to recover a loan given to the late employee, a decree has not yet been passed by the competent Court. Hence, the question of withholding of benefits at this juncture of time by the respondent does not arise.

(VI) It is not out of place to mention that it was the wife of the late employee who lodged the police complaint. As it is, she is grieved over the loss of her husband. On top of it, denying her family pension stating that unless the police investigation is completed, pension and pensionary benefits shall not be released, is nothing but adding more woes to her grievance. The respondent as a model employee need to act as per rules and law. In the present case, as has been brought out, family pension, gratuity, provident fund, are to be released to the applicant since relevant provisions of law permit the same. Similarly, leave encashment, which has been earned by the late employee needs to be disbursed. Without grant of family pension it is not understood as to how the applicant can survive in the evening of her life and particularly when the bread winner is no more.

(VII) Thus as seen from the above, the action of the respondents is against the rules, arbitrary as well as the legal principles laid down by the Hon'ble Apex Court cited supra. Consequently, the respondents are directed to consider as under:

a) to grant eligible family pension and release the arrears or family pension due.

b) to release other terminal benefits like gratuity, provident fund and leave encashment.

c) The time calendared to implement the judgement is 3 months from the date of receipt of a certified copy of this order.

d) There shall be no order as to costs.

With the above directions, the OA is allowed.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 22nd day of July, 2019

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