

(2016) 08 CHH CK 0019
In the Chhattisgarh High Court
Case No : WPS No. 3703 of 2013.

**Bhola Prasad Chandrakar, S/o Lt Dev Prasad Chandrakar Aged About 64 Years R/o B-38, Vidyut Nagar, Near Shiv Mandir, Durg, Distt Durg, Cg -
Petitioner @HASH Chhattisgarh State Co-Operative Marketing Federation
Ltd. Through Secretary, C.G. State Cooperative**

Date of Decision : 17-08-2016

Acts Referred:

Chhattisgarh Co-operative Societies Act, 1960 — Section 55
Constitution of India, 1950 — Article 226

Citation : (2016) LIC 4433

Hon'ble Judges : Shri Prashant Kumar Mishra, J.

Bench : Single Bench

Advocate : Shri Chandresh Shrivastava, Advocate, for the Petitioners; Shri Prafull N. Bharat, Advocate, for the Respondent/Federation; Shri Shashank Thakur, Govt. Advocate, for the Respondent/State

Final Decision : Dismissed

Judgement

Shri Prashant Kumar Mishra, J. - In the present batch of writ petitions, the petitioners, who are retired employees of the Chhattisgarh State Cooperative Marketing Federation Limited (henceforth "MARKFED"), a registered cooperative society, have assailed the legality and validity of the order whereby the MARKFED has rejected their claim for releasing the amount of gratuity, group insurance, salary for the period of suspension, leave encashment etc. for the reason that departmental enquiry against them has not yet been finalized. The petitioners have also prayed for a direction to the respondent authorities to pass final order in the pending departmental enquiry against the petitioner.

2. Facts of the case being more or less undisputed to the extent that the petitioners are retired employees of the MARKFED and at the time of their retirement, departmental enquiry was pending against each one of them, the seminal question falling for decision making is ? whether the MARKFED can withhold the above stated benefits under any statutory provision or any rule or regulations having force of law?

3. The MARKFED is a cooperative society registered under the CG Cooperative Societies Act, 1960 (henceforth "the Act, 1960"). The conditions of service are governed under the CG State Cooperative Federation Service Rules, 2007 (henceforth "the Rules, 2007"). It has not been disputed before this Court that the Rules, 2007 have been framed by the Registrar, Cooperative Society, Chhattisgarh under Section 55(1) of the Act, 1960.

4. It is the contention of the petitioners that their request for releasing the benefits has been rejected by the impugned order of the MARKFED without there being any authority of law. It is further argued that withholding of the benefits on the basis of executive instructions is not permissible unless the statute confers such power. Reference has been made to the judgment rendered by the Supreme Court in the matter of State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another, (2013) 12 SCC 210.

5. Per contra, learned counsel appearing for the MARKFED would refer to the Rules, 2007, particularly sub-rule (23) of Rule 25 to argue that the said rule prescribes that if any departmental enquiry is initiated during the period when the employee is in service, the same has to be continued and the MARKFED can withhold payment of the retiral benefits so that in case of any recovery to be made from the employee, the same can be adjusted. It has also been urged on behalf of the MARKFED that each of the petitioners has been found guilty of serious lapses causing loss to the MARKFED to the tune of lakhs or crores of rupees.

6. In the matter of Jitendra Kumar Srivastava (Supra), the Supreme Court was considering Bihar Pension Rules, 1950 wherein there was no power for withholding of pension/gratuity when the departmental proceedings or judicial proceedings are pending on the date of superannuation of a Government servant. In this context of the matter, the Supreme Court held in paras-13 & 16 thus :-

13. A reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the

beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

(Emphasis Supplied)

7. In an earlier decision in the matter of *Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Others*, (2007) 1 SCC 663, the Supreme Court, while considering rule 34.3 of the Coal India Executives' Conduct, Discipline and Appeal Rules, 1978, held that the same has to be read subject to the provisions contained under Section 4(6) of the Payment of Gratuity Act, therefore, gratuity can be withheld only on satisfaction of requirement of Section 4 (6). The Supreme Court held in paras-8, 9, 10, 11 & 12 thus:-

8. The Act was enacted with a view to provide for a scheme for payment of gratuity to the employees engaged inter alia in mines. Section 3 of the Act provides for appointment of an officer to be the controlling authority. The controlling authority is to be responsible for administration of the Act. Different authorities, however, may be appointed for different areas. Section 4 of the Act entitles an employee to gratuity after he has rendered continuous service for not less than five years inter alia on his superannuation. Sub-section (6) of Section 4 contains a non obstante clause stating:

"4. (6)(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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;

(b) the gratuity payable to an employee may be wholly or partially forfeited-

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

(ii) 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. The Rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of Respondent 1.

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major

penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

11. Power to withhold penalty (sic gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefor is rendition of five years" continuous service.

12. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent 1 or its holding company are not statutory in nature. The Rules in any event do not provide for withholding of retiral benefits or gratuity."

8. The issue concerning interpretation of Coal India Executives" Conduct, Discipline & Appeal Rules, 1978 again fell for consideration before the Supreme Court in the matter of Chairman-cum-Managing Director Mahanadi Coalfield Limited v. Rabindranath Choubey, (2013) 16 SCC 411 wherein the Supreme Court doubted the correctness of the judgment rendered in the matter of Jaswant Singh Gill (supra) and SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249 and referred the same for consideration by a larger Bench. While passing the reference order, the Supreme Court held in paras-21 & 22 thus:-

21. It is thus clear that the question as to whether penalty of dismissal could be imposed after retirement was not categorically raised or dealt with in Ram Lal case. No doubt, penalty of dismissal was inflicted upon the employee in that case. But it was not specifically or in clear terms contended that such a penalty could not be imposed on an employee who is already permitted to retire. At the same time, innuendo, the judgment gives a semblance of indication that such a penalty is permissible because of the reason that as per the rules, for the purposes of enquiry, the employee shall be deemed to be in service. As a sequitur, one can deduce the principle that when the Rules, by creating fiction, treat the officer still in service, albeit for the limited purpose of the continuance and conclusion of such proceedings, then any of the prescribed penalties, including dismissal, can be imposed. However, as we have pointed out above, the issue of permissibility of penalty of dismissal on such a retired official was neither raised nor any direct discussion followed thereupon. At the same time, the fact remains that penalty of dismissal, even after the retirement, was upheld. This goes contrary to the dicta laid down in Jaswant Singh Gill which took the view that no major penalty is permissible after retirement and was not even referred to.

22. The issue which confronts us in the instant appeal is as to whether gratuity can be withheld in the wake of Rule 34 of the CDA Rules when examined in

juxtaposition with the provisions of the Gratuity Act. To put it otherwise, whether in the scheme of the Gratuity Act, gratuity has to be necessarily released to the employee concerned on his retirement even if departmental proceedings are pending against him. We find that Jaswant Singh Gill case directly answers this question, that too in the context of these very CDA Rules. However, it is because of the reason that the said judgment proceeds on the basis that after the retirement of an employee, penalty of dismissal cannot be imposed upon the retired employee. If this view is not correct and the imposition of penalty of dismissal is still permissible, the employer will get the right to forfeit the gratuity of such an employee in the eventualities provided under Sections 4(1) and 4(6) of the Payment of Gratuity Act which read as under:

xxx xxx xxx

Thus for invoking clause (a) or (b) of sub-section 6 of Section 4, the necessary precondition is the termination of service on the basis of departmental enquiry or conviction in a criminal case. This provision would not get triggered if there is no termination of service."

9. In Jaswant Singh Gill (Supra), already referred to a larger Bench, the Supreme Court proceeded on the basis that the rules framed by Bharat Coking Coal Limited or its holding companies are not statutory in nature and further that if the employer has been conferred with the statutory power to withhold gratuity or any other retiral benefits, requirement of Section 4(6) of the Payment of Gratuity Act, 1972 (for short "the Act, 1972") may be fulfilled.

10. In the case in hand, conditions of service of employees are governed under the Rules, 2007 which has been framed by the Registrar under Section 55 of the Act, 1960. The said provision reads as under:-

"55. Registrar's power to determine conditions of employment in societies --(1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf: Provided that in the case of co-operative credit structure, the Registrar may frame rules governing the terms and conditions of employment on the basis of the guidelines specified by the National Bank."

11. In the matter of Hemant Kumar Ganga Prasad Gupta v. President, District Co-operative Central Bank Ltd., Ambikapur, Dist. Surguja and Others, 1983 MPLJ 461, it has been held by the Madhya Pradesh High Court that the rule making power conferred on the Registrar under Section 55 of the Act, 1960 is in the nature of legislative power. Once again in the matter of Sevaram Totaram Pargir v. Board of Revenue, M.P., Gwalior and another, 1983 MPLJ 645, the Full Bench of the Madhya Pradesh High Court after relying on judgment of the Supreme Court in the matter of Co-operative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others, AIR 1970 SC 245

held that where a statute authorizes either the Government or any other authority to frame rules and the rules are so framed, the rules would have the force of statute. Such rules cannot be equated with bye-laws of the society which are framed only for internal management and working of the society which do not have the force of law.

12. It is thus fairly well settled that the rule making power conferred on the Registrar under Section 55 of the Act, 1960 is legislative in nature and the rules so framed have statutory force.

13. The point to be appreciated now is when the Rules, 2007 are statutory in nature, whether there is any such provision which authorizes or empowers to withhold gratuity or any other retiral benefits and impose any major punishment on the employee even after his retirement.

14. Rule 25 (23) of the Rules, 2007 provides that if an employee ceases to remain in service during the pendency of the departmental enquiry either on account of attainment of age of superannuation or for any other reason, even then pending departmental enquiry shall continue wherein the competent authority may pass appropriate orders even after retirement/removal. It also confers power to impose minor punishment within 2 years of such superannuation or removal if during this period it comes to the notice of the employer that while in service the employee has committed such act or omission which attracts minor penalty or recovery of loss suffered by the MARKFED. This can be done by constituting departmental enquiry within 2 years from the date of superannuation/removal. This sub rule further provides that all retiral dues payable to the employee on attaining the age of superannuation shall be kept pending for the purpose of making recovery by adjusting the amount, if such eventuality arises while departmental enquiry is finalized. It is thus apparent that the rules confer power on the MARKFED to withhold payment of gratuity and other retiral benefits of a retired employee if the departmental enquiry was pending on the date of superannuation.

15. For the foregoing, since Rule, 2007 has statutory force, the respondent-MARKFED is empowered to impose major or minor penalty and withhold payment of retiral dues and the conditions prescribed in Section 4(6) of the Act, 1972 having been satisfied, the petitioners are not benefited by the judgment of the Supreme Court in *Jaswant Singh Gill* (supra), which has otherwise been referred to a larger Bench in subsequent judgment in the matter of *Rabindranath Choubey* (supra).

16. In view of the afore-stated discussion, all the Writ Petitions are dismissed. However, it is directed that the respondent-Federation shall expedite departmental enquiry and conclude the same at the earliest, preferably within a period of 6 months from today.