

(2024) 03 CAL CK 0069
In the Calcutta High Court
Case No : WP.CT No. 154 Of 2023

Md. Farid

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 21-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 300A
Central Civil Services (Pension) Rules, 1972 — Rule 69(1)(c)
Railway Services (Pension) Rules, 1993 — Rule 9, 9(3), 9(5), 10, 10(1)(c)
Central Civil Services (Pension) Rules, 2021 — Rule 62
Indian Penal Code, 1860 — Section 302, 307, 380, 452
Administrative Tribunal Act, 1985 — Section 19
Payment of Gratuity Act, 1972 — Section 4(1), 4(2), 4(3), 4(4), 4(6), 7(3A), 14

Citation : (2024) 03 CAL CK 0069

Hon'ble Judges : Tapabrata Chakraborty, J;Uday Kumar, J

Bench : Division Bench

Advocate : Asim Kumar Niyogi, A.K. Pal, Vaskar Pal, Ajit Kumar Mishra,
Ayanabha Raha, Abhishek Dey, Suprovat Banerjee

Final Decision : Disposed Of

Judgement

Uday Kumar J

1. A legal tussle has spiraled up to this Court seeking a quietus to the primary issues as to whether an employee is entitled to interest on the withheld amount of gratuity upon acquittal in the criminal proceedings pending against him on the date of his retirement and as to whether the provisions of the Payment of Gratuity Act 1972, (hereinafter referred to as the 1972 Act) would override the provisions of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as 1993 Rules).

2. The order dated 23.09.2022 of the learned Central Administrative Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as learned Tribunal) passed in connection with the Original Application 350/461/2020, is the subject matter of challenge in the present writ petition. By the said order the learned Tribunal

refused the petitioner's prayer to direct the respondents to pay interest for delayed payment of the gratuity, which was withheld for about 13 years from the date of his retirement i.e., 31.12.2006.

3. The brief facts are that the petitioner was a Carpenter under the Railways. He joined his services on 06.03.1983 and was superannuated on 31.12.2006 from the post of Technician/Gr.II/ Carpenter under the Senior Sectional Engineer /N.F. Railways/ Barsoi. On his retirement, all payable retiral benefits were disbursed to him except the gratuity amount and the commutation value, which was withheld on account of pendency of a criminal proceeding being ST Case no.303/365 of 2001 under section 302/ 307/ 380 /452 of IPC before the learned ADJ (FTC) 3rd Court at Katihar. By a memo no. DRM(P) dated 07.05.2007 it was communicated that the eventual release of withheld gratuity amount would depend on the outcome of the pending criminal proceeding. Consequent upon acquittal of the petitioner from the criminal charges by the judgment delivered by the learned ADJ, FTC 3rd, Katihar on 30th June 2018, the respondents released the gratuity amount of ₹ 1,00,926/- but without any interest and the said amount was credited to the petitioner's account on 19.04.2019. The petitioner thereafter by a letter dated 20th January, 2020 to the G.M /NF /RLY Maligaon (Assam), CPO / MLG /NF Railways, DRM /Katihar /NF Railways claimed cumulative compound interest @12% on the gratuity amount, to be calculated from the date of his retirement and paid within 2 months after deducting the amount from the salary of the officer responsible, who illegally withheld the interest despite 'No Dues Certificate', issued by Senior Sectional Engineer/ North Frontier Railway/ Barsoi to the General Manager (Personal), Katihar.

4. Unresponsiveness of the respondents to petitioner's prayer, triggered him to knock the door of the learned Tribunal, Kolkata by filing an application under section 19 of Administrative Tribunal Act, 1985 being OA/ 350/ 461/ 2020 for a direction upon the respondents to pay him cumulative compound interest at the rate of 12% over the withheld gratuity amount of ₹ 1,00,926/-payable from the date of his retirement and to pay compensation of ₹ 5,00,000 for his mental pain and sufferings and financial loss.

5. The learned Tribunal decided the matter on 23.09.2022 placing reliance upon the Rule 69 (1)(c) of CCS Pension Rules 1972 and the application was dismissed observing inter alia that the action of the respondents in withholding the gratuity amount cannot particularly be said to be on account of lapses on the part of the respondents.

6. Being aggrieved by and dissatisfied with the said order, the petitioner challenged it on the grounds that the learned Tribunal failed to consider that a 'No Dues Certificate' issued revealing that nothing was due to department and that no disciplinary proceeding was pending against him at the time of his retirement. The respondents withheld his gratuity ignoring that gratuity can only be withheld to adjust the government dues payable by the employee. Thus, the respondents illegally withheld the gratuity amount and are liable to pay interest.

In the said conspectus, the learned Tribunal erred in law in dismissing the original application. Hence, this writ petition.

7. In the backdrop of the above facts and circumstances, Mr. Asim Kumar Niyogi, the learned counsel appearing for the appellant vehemently contended that as per the Section 7(3A) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 1972 Act), the appellant would be entitled to interest from the date of his retirement. His gratuity was released on 19.07.2019, while he retired from service on 31.12.2006 and he was absolved from the criminal charges by the judgment dated 30.06.2018 of the learned ADJ (FTC) 3rd Court Katihar. Acquittal of the appellant proves his innocence, despite that his gratuity and commutation value was withheld by the respondents citing the provisions of rule 10 (1) (c) of the 1993 Rules unilaterally, without giving him an opportunity to be heard and it was withheld arbitrarily in spite of the 'No Dues Certificate' of the controlling officer. The denial of disbursement of gratuity is in violation of mandate of Article 14, Article 300 A of Constitution of India and the delay in payment of gratuity is attributable to the respondents. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

8. Drawing our attention to the contents of the representations submitted by the appellant, Mr. Niyogi submits that a co-accused in the criminal proceeding, namely, Enamul Haque, was paid the gratuity amount during pendency of the criminal proceeding, however, a different yardstick was applied in case of the appellant and such act stands out to be an instance of blatant discrimination practised by the respondents. As a model employer the State must conduct itself with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole particularly when the claim pertains to pensionary benefits. In support of the arguments advanced, reliance has been placed upon the judgments delivered in the cases of D.V. Kapoor -vs- Union of India and Others, reported in (1990) 4 SCC 314, Y.K. Singla -vs- Punjab National Bank, reported in (2013) 3 SCC 472 and Jyotirmay Ray -vs- The Field General Manager, Punjab National Bank and Ors (unreported).

9. Per contra, Mr. Ajit Kumar Mishra, learned counsel appearing for the respondents contends that the respondents had acted in strict consonance with the 1993 Rules and the claim of the appellant needs to be considered in terms of the said Rules. The denial of payment of gratuity was valid and justified under Rule 10 (1) (c) of the 1993 Rules. Furthermore, it was pointed out, that under the 1993 Rules, there is no provision towards award of interest in case of delayed payment of gratuity. Therefore, since gratuity had legitimately been withheld, under the provisions of the 1993 Rules, question of payment of interest does not occasion, moreso when the instructions contained in OM dated 23rd February 2022 clearly speaks that payment of interest would occur only when the delay is attributable to administrative reasons or lapses. The appellant's gratuity had been withheld during the pendency of criminal proceedings initiated against him

and his entitlement to gratuity stood extended to such time as the said criminal proceedings were eventually disposed of. Thus viewed, the entitlement to gratuity stood extended to 30.06.2018 (i.e., the date of the disposal of the proceedings pending in Court against him). The respondents thereafter released the appellant's gratuity and the same was credited in his account on 19.07.2019 on his prayer made on 10.07.2018, after conclusion of the criminal proceeding.

10. Drawing our attention to an order dated 27.07.2017 of Central Administrative Tribunal at Patna passed in connection with OA 50/449/2016 preferred by the appellant, he argues that the learned Tribunal denied to pass any order in respect of disbursement of gratuity or commutation in view of the provisions of Rule 10 (1) (c) of the 1993 Rules and as question of commutation would arise only from the final pension and not from the provisional pension. In view thereof, the same issue could not have been agitated in the present application and the same is not maintainable being barred by the principles of *res judicata*.

11. According to him the argument that the respondents had acted discriminatorily was rightly discounted by the learned Tribunal in OA 50/449/2016 observing inter alia that in case the respondents 'have erroneously paid this to another similarly situated employee that cannot become a precedent and cannot confer a right on the applicant contrary to the Rules'. In support of the arguments advanced, reliance has been placed upon the judgments delivered in the cases of *R. Veeranbhadram -vs-Government of A.P.*, reported in (1999) 9 SCC 43, *Shivagopal -vs- State of U.P.*, reported in (2019) 1 SCC Online All 2239 and *Chairman -cum-Managing Director, Mahanadi Coalfields Limited -vs- Rabindranath Choubey*, reported in (2020) 18 SCC 71 and *Ashfaq Ahmad vs Union of India & Ors.* (unreported).

12. Indeed, the pension and gratuity of an employee is his vested right, regulated by statutes, rules, regulations and circulars. Under Rule 9 of the 1993 Rules 1993, 'the President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either 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 Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement'. Rule 9(3) of the 1993 Rules provides that in the case of a railway 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 10 shall be sanctioned. Rule 9(5) of the 1993 Rules defines the term of departmental and judicial proceedings. Rule 10 of the 1993 Rules provides for a provisional pension to an employee where departmental or judicial proceedings may be pending against him. It is provided in Rule (10) (1) (c) of the 1993 Rules that 'No gratuity shall be paid to the Railway Servant until the conclusion of the departmental or

judicial proceedings and issue of final orders thereon; provided'.

13. The provisions of the 1972 Act are extendable to the petitioner in view of Section 14 of the 1972 Act. By the said provision a superior status has been vested in the provisions of the 1972 Act vis-a-vis any other enactment inconsistent therewith. In so far as the issue relating to entitlement of an authority to withhold or forfeit the gratuity of an employee on his retirement is concerned, reference needs to be made to Section 4 (6) of 1972 Act.

Section 4 (6) is being extracted hereunder: -

'Notwithstanding anything contained in sub-section (1), -

(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'.

14. Since the entitlement of the appellant to get the gratuity on the date of his retirement on attaining the age of superannuation on 31.12.2006 is not in dispute, so sub sections (1) to (4) of section 4 of the Gratuity Act may not be relevant for consideration. Only sub-section (6) of section 4 is relevant in so far as the present case is concerned, because it deals with the conditions when an authority can forfeit the gratuity of an employee. The said statutory intent was also incorporated in the CCS Pension Rules 1972 and the 1993 Rules.

15. For determination of the claim towards payment of interest, the provisions of Section 7 (3A) and Section 14 of the 1972 Act would be relevant, which are being extracted hereunder: -

'7. Determination of the amount of gratuity. -

(1) (2) (3) ***

(3A) If the amount of gratuity payable under sub-Section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due

to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

Section 14 of the 1972 Act runs as follows-

'The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.'

16. Conversely, the Office Memorandum dated 23rd February 2022 states that in case of delay in payment of provisional pension and gratuity under rule 62 of Central Civil Service Pension Rules 2021, employees are entitled to simple interest for the period of administrative delay.

17. The argument of Mishra, to the effect that the original application being OA 350/461/2020 was not maintainable since the petitioner approached the learned Tribunal, Patna Bench earlier praying for disbursement of gratuity needs to be discounted since on the date the said application was disposed of, the fault ingredient of the employee was unascertainable since the criminal proceeding was still pending and moreso when no such point of maintainability was urged by the respondents at the inception.

18. The issue as to whether the petitioner was at fault was determined after disposal of the criminal proceeding on 30th June, 2018. The right to claim interest remained dormant during pendency of the criminal proceeding and such entitlement revived upon acquittal in the proceeding. It would thus be erroneous to conclude that the gratuity payable to the petitioner on attaining the age of superannuation was withheld 'on account of some fault' of the petitioner. So, the gratuity payable to the appellant on attaining the age of superannuation i.e., on 31.12.2006, was withheld though there was no fault of the appellant and as such he is entitled to get interest.

19. In almost similar facts and circumstances, the Hon'ble Supreme Court has decided in the case of Y.K Singla (Supra) that employees are entitled to get interest on the delayed payment of gratuity as per section 7(3A) of the 1972 Act, even in the absence of any explicit provisions in the Rule to that effect. It was held that 'We, therefore, have no hesitation in concluding, that even though the provisions of the 1995, Regulations, are silent on the issue of payment of interest, the least that the appellant would be entitled to, are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest, on account of delayed payment of gratuity (as has already been concluded above). We therefore hold, that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-Section (3A) of Section 7 of the Gratuity Act...'

20. This view of the Hon'ble Supreme Court in the case of Y.K Singla (Supra) caused paradigm shift on the issue of payment of interest on withheld pension

and gratuity of employees after his retirement due to pending departmental or judicial proceedings. The said proposition has been followed subsequently in the case of Jyotirmay Ray (Supra).

21. The proposition of law that could be culled out from the judgment delivered in the case of Y.K. Singla (Supra) is that from the mandate of Section 14 of the 1972 Act, it is imperative to conclude that the provisions of the 1972 Act would have overriding effect with reference to any inconsistency therewith in any other provision or instrument. The benefit of interest enuring to an employee as has been contemplated under Section 7 (3A) of the 1972 Act cannot be denied to the employee whose gratuity is regulated by some provision/instrument other than the 1972 Act even though the alternative instrument is silent on the issue of payment of interest. When the employee has been acquitted in the criminal proceeding which was pending against him at the time of superannuation, he cannot be held to be at fault disentitling him to the interest over the gratuity amount on and from the date of his superannuation till the date of his acquittal in the concerned criminal proceeding. The 'fault' ingredient of the employee for denial of gratuity when it becomes due, remains unsubstantiated when none of the salient ingredients of the proviso under Section 7 (3A) of the 1972 Act is satisfied.

22. It is well-known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make it a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not the observations made in the facts of any particular case. Plentitude of pronouncement leaves cleavage in the opinion formed in the respective cases. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed by Mr. Mishra, However, the same are distinguishable on the facts. In the case of Chairman-Cum-Managing Director, Mahanadi Coalfields Limited Versus Rabinranath Choubey reported in (2020) 18 SCC 71 (Supra), the Court was dealing with the issues as to whether it was permissible in law for the employer to withhold the payment of gratuity even after the employee attained superannuation because of the pendency of disciplinary proceedings which ultimately culminated in an order of dismissal and as to whether the penalty of dismissal could be imposed after the employee stood retired. The judgment in the case of R.Veerabhadram Versus Govt. of A.P. reported in (1999) 9 SCC 43 was delivered prior to the decision in Y.K. Singla (Supra). In the case Ashfaqu Ahmed (Supra) payment of gratuity was denied since the petitioner therein was not acquitted in the criminal case and the appeal was pending challenging the order of conviction. In the case of Shivagopal (Supra) the provisions of the 1972 Act, were not considered and the question discussed was as to whether the pensioner can seek intervention at a stage when disciplinary proceeding was still pending.

23. It is not a case that payment of gratuity was delayed because of some fault

of the employee himself. The respondents, at their own risk, withheld the payment of gratuity during pendency of the criminal proceeding knowing fully well that the issue as to the whether the petitioner had any fault or not can only be ascertained after the criminal proceedings are concluded. The petitioner was ultimately acquitted. During the period from superannuation till acquittal, gratuity was withheld on the basis of a mere assumption that the petitioner may be found guilty after conclusion of the criminal proceedings. In view thereof, the respondents cannot wriggle out of the rigours of the 1972 Act and deny payment of interest to the petitioner over the gratuity amount for the period from the date of superannuation till the date of acquittal.

24. For the reasons discussed above, the order impugned in the present writ petition is not sustainable and the same is, accordingly, set aside and the respondents are directed to pay simple interest to appellant at the rate of 10% from the date of retirement of appellant till actual realisation of the withheld amount of ₹ 1,00,926/- within eight weeks from the date of communication of this order.

25. With the above observations and directions, the writ petition and all connected applications, if any, are disposed of. There shall, however, be no order as to costs.

26. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.