(2008) 07 DEL CK 0266

In the Delhi High Court

Case No : Writ Petition (C) No. 6465 of 2003

Union of India (UOI) and Another APPELLANT

Vs

Shri J.P. Sharma RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 10(1), 11, 16
Central Civil Services (Pension) Rules, 1972 — Rule 3, 69, 69(1), 69(2), 83
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 477, 477A
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 1 ILR Delhi 383

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Satpal, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner Union of India impugns the judgment 26.2.2003 passed in OA 2154/2002 by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) whereby the Tribunal partly allowed the aforesaid OA filed by the respondent and held that the respondent is entitled to leave encashment and gratuity, while upholding the grant of provisional pension (and not the full pension) to the respondent.

2. The respondent was working as Deputy Director with the Central Water Commission (CWC), a post under the purview of the Ministry of Water Resources. On 26.2.2001, the respondent was suspended by the President of India under Sub-rule (1)(b) of Rule 10 of the CCS(CCA) Rules 1965. This suspension of the respondent was on account of pendency of an investigation in respect of a criminal offence under 120-B, 420, 468, 477-A IPC and Sections 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act vide RC No. RC-DAI-2001-A-0016 dated 6.2.2001. While on suspension, the respondent superannuated on 31.3.2002. Vide communication dated 27.3.2002 Senior Accounts Officer to the

Under Secretary, Estt.IV CWC granted provisional pension of Rs. 6639/- per month to the respondent in terms of Rule 69 of the CCS(Pension) Rules 1972 (Pension Rules for short). This provisional pension was stated to be admissible 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 order are passed by the competent authority.

3. The respondent first preferred OA 3452/2001 challenging the order whereby he was placed under suspension. Since, in the meantime, the respondent had superannuated on 31.3.2002 he was allowed to withdraw the said original application. Thereafter he preferred the OA in question, inter alia, seeking the release of his gratuity, leave encashment, arrears of pay and full pension with interest.

4. The application was contested by the petitioner on the ground that the respondent was a party to a racket whereunder withdrawal of pay and allowances to the tune of Rs. 23,67,951/- had irregularly been made between July 1999 and March, 2000. There was large scale embezzlement of Government money in connivance with, inter alia, the respondent. The case was referred to CBI for investigation which had registered the aforesaid FIR, inter alia, against the respondent. The petitioner relied on rules 9 and 69 of the Pension Rules for sanctioning provisional pension. In respect of claim for gratuity, the petitioner asserted that it was a part of pension and could not be paid till the conclusion of the departmental or judicial proceedings.

5. The tribunal has, as aforesaid, granted partial relief to the respondent. It has upheld the grant of provisional pension as fixed vide communication dated 27.3.2002. However, it has allowed the respondents claim towards leave encashment and gratuity.

6. When this petition came up before the Court at the admission stage, on 17.10.2003 notice to show cause was issued to the respondent limited to the question of release of gratuity. Therefore, the question of release of leave encashment was not entertained by the Court and does not arise for our consideration at this stage. The operation of the impugned order, to the extent that it directed release of gratuity to the respondent was also stayed.

7. At this juncture, we think it appropriate to set out the relevant extracts of Rule 10 of CCS(CCA) Rules, 1965 and Rules 9 & 69 of the CCS(Pension) Rules for a proper understanding of the respective contentions of the parties:

Rule 10 : Suspension

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending; or (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial;

...

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

...

Rule 9: Right of President to withhold or withdraw pension

[(1) The President 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 the 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 pensions shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One thousand nine hundred and thirteen from 1.4.2004 - see GID Rule 49) per mensem.]

(2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service;

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i)shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government 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 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

Rule 69: 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 authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to 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.

8. It was contended by the respondent before the Tribunal that the suspension of the respondent was relatable to Rule 10(1)(b) and not to Rule 10(1)(a) of the CCS (CCA) Rules. This is also evident from the order of suspension itself. It was argued that in these circumstances, the provisions of Rule 9(6) had no application in the facts of the present case, inasmuch, though the respondent was suspended prior to his retirement, the disciplinary proceedings could not be deemed to continue.

9. Moreover, no disciplinary proceedings against the respondent were contemplated or pending. The criminal proceedings start after the filing of the chargesheet before the criminal court and no chargesheet had been filed till the matter was dealt before the Tribunal. The respondent also relies upon the decision of the Supreme Court in D.V. Kapoor Vs. Union of India and others, and Union of India Vs. K.V. Jankiraman, etc. etc., .

10. On the other hand, the petitioner had contended that the disciplinary proceedings are deemed to have commenced upon the suspension of the respondent while he was still in service and that the commencement of the proceedings is unconnected with the filings of the challan or commencement of trial.

11. The petitioner relied upon Rule 9(4) read with Rule 69 of the Pension Rules to submit that the respondent was entitled to provisional pension, and particularly relied on Rule 9(6) (a) of the Pension Rules which states that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been place under suspension from an earlier date, on such date. Since the respondent had ben suspended prior to the date of his retirement, the departmental proceedings as per the Rule 9(6)(a) of Pensions Rules were deemed to have been instituted with effect from 26.2.2001, i.e., the date when the respondent was placed under suspension. Accordingly, the petitioner justified fixing of the provisional pension vide order dated 27.3.2002. So far as the claim of gratuity made by the respondent was concerned, the submission of the petitioner was that as per the definition of the expression "Pension" as provided under Rule 3 of the Pensions rules, pensions includes gratuity. Rule 69(1)(c) of the Pensions Rules provide 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. Since the respondent had been placed under suspension while in service, the departmental proceedings are deemed to have been instituted on the date of suspension, which was prior to his date of superannuation. Therefore, the respondent was not entitled to payment of gratuity on the date of retirement as departmental/judicial proceedings had not been concluded and final orders had not been issued at that time. The petitioner also contended that the principle behind sanctioning of provisional pension to such officers is to ensure that till finalisation of the proceedings the retired officer is not left without any cover of pension. Under Rule 69 of the Pension Rules, payment of provisional pension is mandatory and the same is equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date immediately preceding the date on which the employee was placed under suspension. Rule 69(2) further provides protection to the pensioner, that in the event of any reduction of his pension, consequent upon the conclusion of the proceedings, the payment of provisional pension shall be adjusted against the final retirement benefit sanctioned to such Government servant but no recovery shall be made when the pension finally sanctioned is less than the provisional pension, or the pension is reduced or withheld either permanently or for a specific period.

12. The Tribunal in so far as the aspect of payment of gratuity is concerned observed in paragraphs 13 & 14 of the impugned order as follows:

13. So far as gratuity claimed by the applicant is concerned, it is true that in the case of D.V. Kapoor (supra), the Supreme Court held that there is no provision of law brought to their notice under which the President is empowered to withhold gratuity as well as a measure of punishment. These observations obviously came into being in the facts of the case in the case of D.V. Kapoor. In the case of D.V. Kapoor (supra) disciplinary proceedings had been initiated. Pending the same, he had sought voluntary retirement and was allowed to retire but was put on to notice that the disciplinary proceedings initiated against him would continue under Rule 9 of the Pension Rules. Enquiry had been conducted with respect of alleged charges and thereupon the President on consideration of the report agreed with the findings of the inquiry officer and in consultation with the Union Public Service Commission decided that entire gratuity and pension has to be withhold on permanent basis. The Supreme Court, therefore, held that gratuity could not be withheld as a measure of punishment.

14. Rule 3(o) of the Pension Rules defines the pension to include gratuity except when the term pension to include gratuity except when the term pension is used in contradistinction to gratuity. Here in the present case, the applicant had superannuated and in terms of Rule 9(4) of the Pension Rules, the departmental proceedings are deemed to be continuing, a provisional pension has to be sanctioned. When such is the situation, the term pension would be contradistinction to gratuity. Therefore, the applicant must be held entitled to the

gratuity.

13. Before us as well the parties have reiterated their respective submissions as made before the Tribunal.

14. Rule 10 of the CCS (CCA) Rules 1965 deals with the aspect of suspension of a serving Government servant. Suspension of a Government servant can be resorted to where disciplinary proceedings against a Government servant is contemplated or is pending under rule 10(1)(a). A Government servant can also be suspended where a case against him in respect of any criminal offence is under investigation, enquiry or trial under Rule 10(1)(b). From the aforesaid it would be seen that an order of suspension of a serving Government servant can be made at any time before the start of or during the pendency of a disciplinary proceedings. Similarly he can be suspended either at the stage of investigation or enquiry or at the stage of trial in respect of a case against him involving a criminal offence. In the present case, undoubtedly, the suspension of the respondent was under Rule 10(1)(b), i.e., when the case against him in respect of criminal offence under Sections 120B/420/468/477 IPC and Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act vide FIR No. RC-DAI-2001-A-0016 dated 6.2.2001 was under investigation by the CBI. While under suspension the respondent superannuated from service on 31.3.2002.

15. Upon superannuation a Government servant normally would become entitled to payment of his retirement dues including pension. The normal rule is that upon superannuation of an employee, the relationship of master and servant comes to end and in such a situation it is not open the employer to take any disciplinary action against the employee. However, the same is permissible provided the service rules applicable to the employee provide for such a contingency. To deal with cases where either departmental proceedings or judicial proceedings are pending, or in contemplation at the time of retirement of a government servant, Rules 9 and 69 of the Pensions Rules have been framed. Rule 9(1) preserves the right of the President to withhold the pension or gratuity or both either in full or in part, to withdraw the pension in full or in part, either permanently or a specific period, and to order recovery from the pension or gratuity of the whole or part of the any pecuniary loss caused to the Government, provided that the pensioner is found guilty of grave misconduct or negligence during the period of his service in any departmental or judicial proceedings. The two proviso to Rule 9(1) regulate and limit this power of the President. However, we are not concerned with that aspect in the present case.

16. Rule 9(2)(a) of the Pension Rules states that departmental proceedings against a Government servant, instituted while he was in service, shall after his final retirement, be continued and concluded in the same manner as if the Government servant had continued in service.

17. Rule 9(2)(b) goes a step further and, subject to various safeguards, empowers the Government to initiate departmental proceedings against the

retired Government servant even after he has retired. At this stage we may note that there is no similar provision with regard to initiation of judicial proceedings, since, the initiation of judicial proceedings be it criminal or civil proceedings, is not a departmental proceeding but instituted in a court of competent jurisdiction and there can be no impediment in the initiation of such proceedings at any stage, irrespective of the fact that the Government servant is in service or has retired, except, of course, with regard to law of limitation, or the obtaining of prior sanction, if so required under the law. Rule 9(4) prescribes that where a Government servant 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 under Rule 69 shall be sanctioned.

18. Sub-Rule (6)(a) of rule 9 states that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or the pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. Sub rule (6)(b) states that judicial proceedings are deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the magistrate takes cognizance, is made. That is the date on which the charge-sheet/challan or the police complaint is filed before the court, and in relation to civil proceedings the date on which the plaint is presented in Court.

19. A perusal of Rule 10 of the CCS (CCA) Rules and Rules 9 and 69 of the Pension Rule shows that a conscious distinction has been made with regard to departmental proceedings on the one hand, and judicial proceedings on the other hand. In the present case, admittedly the petitioner had neither contemplated the initiation of, nor in fact had initiated any departmental proceedings against the respondent. The suspension order dated 26.2.2001 issued under Rule 10(1)(b) of the CCS (CCA) Rules also shows that it was never the intention of the petitioner to suspend the respondent in contemplation of a disciplinary proceeding. In fact, the said order expressly invokes Rule 10(1)(b) of the CCS (CCA) Rules while making a reference to RC dated 6.2.2001 registered by the CBI. Even in their counter affidavit filed before the Tribunal, the petitioner in paragraph 3 stated "Since the investigation in this case, which was basically of a criminal nature, was not possible departmentally, the Central Water Commission, an attached office of the Ministry where the applicant was employed, had referred this case to the Special Police Establishment of the CBI, New Delhi for conducting detailed investigation as there was gross abuse of the official position by various officials of CWC, P&AO and Internal Audit in connivance with some unknown private persons as well as other Government officials who had allegedly committed criminal offences of fraudulent drawal of Government money with mala fide intentions." For our purpose, Rule 9(6)(a), which deals with "departmental proceedings" is therefore, not relevant. It is Rule 9(6)(a), which concerns us. This sub rule ,unlike Rule 9(6)(a), does not refer to the incidence of

suspension as the date of institution of judicial proceedings. Therefore, the suspension of the Respondent on 26.02.2001 cannot be treated as the date of institution of judicial proceedings against the respondent.

20. Admittedly, neither the charge sheet/challan/report nor the complaint was filed by the CBI before the magistrate even till the time when the matter was pending with the Tribunal against the respondent. Consequently, in our view it could not be said that judicial proceedings were instituted against the respondent in the light of Rule 9(6)(b)(i) of the Pension Rules. The upshot of our aforesaid conclusion is that it could not be said that judicial proceedings were instituted against the respondent for the purpose of Rule 9(4) of the Pension Rules. As aforesaid, there was no question of any departmental proceedings either being pending or being in contemplation at any stage in the present case. Rule 69(1)(a) begins with the words "In respect of a government servant referred to in Sub-rule(4) of Rule 9, the Accounts Officer shall authorise the provisional pension equal to...." Since the respondent cannot be said to be a government servant to whom Sub-rule(4) of Rule 9 applies, the necessary consequence that flows is that Rule 69(1)(a) is also not applicable to the case of the respondent. Consequently, the respondent could not be subjected to the grant of only a provisional pension as per Rule 69 of the Pension Rules.

21. Rule 69(1) (c) in no uncertain terms states 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, except, in cases where the departmental proceedings are for imposition of minor penalties specified in Clauses (i), (ii) & (iv) of the CCS (CCA) Rules. This means that where the departmental proceedings are for imposition of a major penalty or for imposition of minor penalties specified under Clauses (iii) and (iii)(a) of Rule 11 of the CCS (CCA) Rules, or the retired government servant is subjected to judicial proceedings, he would not be entitled to payment of gratuity until the conclusion of such proceedings and issue of final orders thereon. The reason for denying the payment of gratuity till the conclusion of such departmental or judicial proceedings is simple. As noted hereinabove, Rule 9(1) reserves to the President, the power to withhold pension or gratuity or both, either in full or in part, or to withdraw the pension in full or in part whether permanently or for a specified period, and to even order recovery from the pension or gratuity of the whole or part of any pecuniary loss caused to the government, in a case where the pensioner is found guilty of gross misconduct or negligence which has resulted in pecuniary loss to the government. Such a finding could be arrived at either in departmental or judicial proceedings. This Rule clearly shows that for purposes of the said Rule, the term ''Gratuity'' has been used in contradistinction with the term ''Pension''. Therefore, if gratuity has not been released to the retired Government servant to whom Rule 9 (4) of the Pension Rule applies, the same cannot be released, except, in accordance with Rules 69(1)(c) thereof. We may note that the provisions with regard to the fixation of provisional pension and withholding of gratuity are only in the nature of interim arrangements since the

final decision with regard to the payment of pension and gratuity would depend on the outcome of the departmental proceedings or judicial proceedings as the case may be.

22. This leads us to the question, as to what is the inter play of the rights of the Government and the retired Government servant with regard to the fixation of provisional pension and the withholding of the gratuity of the retired Government servant by the Government. Is it, that in every case where neither departmental proceedings nor judicial proceedings are instituted, as contemplated by Rule 9(6) as on the date of retirement of the Government servant, he immediately becomes entitled to receive full pension and gratuity? In such a situation, if departmental or judicial proceedings are instituted after the lapse of sometime from the date of the retirement of Government servant, but within the time permissible under Rule 9(2)(b)(ii) or otherwise within the period of limitation, would the Government not be entitled to fix the provisional pension and, in case by then the gratuity has not been paid to the retired Government servant would the Government not be entitled to withhold the gratuity in terms of Rule 9 (4) and Rule 69(1)(c) of the Pension Rules?

23. We may note that unlike for the initiation of departmental proceedings, for the initiation of judicial proceedings, there is no time limit prescribed under the Pension Rules within which the same can be initiated after the retirement of the government servant. However, judicial proceedings, be they civil or criminal, would be subject to the laws of limitation. A perusal of Rule 9(4) would show that the said Rule is applicable, inter alia, to every case where a departmental or judicial proceedings is instituted against the retired government servant. The said Sub-rule(4) does not say that the departmental or judicial proceedings have necessarily to be in existence on the date of superannuation of the government servant. This means that even when the departmental or judicial proceedings are validly instituted subsequent to the date of superannuation, a provisional pension as provided in Rule 69 would be sanctioned in favour of the government servant.

24. The pension of a government servant, who is due to retirement, is required to be fixed well in advance, so that there is no delay in payment of pension to him immediately upon his retirement. Reference may be made to the provisions contained in Chapter VIII and in Rules 83 & 85 of the Pension Rules. Consequently, it follows that in respect of a government servant to whom Rule 9(4) of the Pension Rule does not apply, the Government is obliged to fix and pay the full pension and continue to pay the same, until a situation arises (with the institution of valid proceedings) as contemplated in Rule 9(4). Once a situation covered by Rule 9(4) arises, the government would become entitled to henceforth fix the provisional pension and continue to pay the same until the conclusion of the proceedings, and subject to the final outcome of the proceedings. While the right to receive monthly pension accrues immediately upon retirement, and the same is to be paid vide Rule 85(2) "monthly on or after the last working day of the month to which the pension relates...", so far as

gratuity is concerned, there is no specific Rule with regard to disbursement thereof. Rule 85(1) states "Except as otherwise provided in these Rules, a gratuity shall be paid in lump sum". While in respect of pension a statutory right exists, to receive pension immediately upon retirement month by month. There is no time bound prescription with regard to release of gratuity to the retired government servant. This also appears to be the scheme as evident from Rule 9(1) of the Pension Rules. The question of withholding pension or gratuity or both either in full or in part by the President can arise only in a situation where the same has in fact not been paid to the retired government servant. From the aforesaid analysis of the Pension Rules, we draw the following conclusions:

(i) In a case where neither departmental proceedings nor judicial proceedings are instituted as contemplated by Rule 9(6) of the Pension Rules as on the date of retirement of the Government servant, he immediately becomes entitled to receive the full pension.

(ii) If departmental or judicial proceedings are instituted validly after the retirement of the Government servant, but within the time permissible under Rule 9(2)(b)(ii) or otherwise within the period of limitation, the government would become entitled to fix provisional pension to be paid henceforth till the conclusion of the proceedings and would abide by the final decision arrived at in the proceedings in relation to the payment of the pension.

(iii) While a Government servant does become entitled to receive gratuity upon retirement (when proceedings as contemplated by Rule 9(6) are not in existence on the date of his retirement), there is no rule that the same is payable immediately upon retirement. If proceedings are validly instituted after the date of retirement of the Government servant, but prior to the disbursement of the gratuity to him, the Government servant cannot claim release of gratuity till so long as the proceedings are not concluded, and the final decision with regard to disbursement of gratuity would abide by the outcome of the proceedings.

25. Does it mean that the gratuity of a retired government servant can be withheld for any length of time to await the institution of the departmental or judicial proceedings even after his retirement? In our view the answer to this question has to be in the negative. In case departmental proceedings are not instituted within the time granted by Rule 9(2)(b) against a retired government servant i.e. within four years of the commission of the misconduct, the same cannot be instituted at all. Similarly, judicial proceedings, would have to be initiated within the period of limitation. If no judicial proceedings are initiated against the retired Government servant within the period of limitation, it would be impermissible for the Government to institute them later, or even to withhold the full pension or gratuity of the retired government servant. The power to withhold the grant of gratuity in contemplation of disciplinary or judicial proceedings cannot be permitted to be misused or abused by the Government. The same cannot become an instrument of harassment of the retired government servant in the hands of the Government. At the same time, the

Government cannot lightly be divested of its right to withhold the gratuity in respect of a retired government servant in a deserving case. Therefore, in every case where the Government withholds gratuity in respect of a retiring/retired Government servant, the Government shall be obliged to pass an order disclosing the grounds with reference to the particular cases in respect of which Rule 9(4) and Rule 69 of the Pension Rules are sought to be invoked against the Government servant.

26. Coming to the facts of this case, we find that the RC/FIR in the present case was registered on 6.2.2001. Neither a complaint was lodged, nor a challan filed till even four years after the date of registration of the FIR against the respondent. Consequently, in our view the respondent could not be denied the gratuity due to him.

27. Having said that we may, however, clarify that the right of the President under Rule 9(1) is not in any way fettered by the mere fact that the government servant is released his gratuity and pension, since it is always open to the President to withdraw the pension in full or in part and to order recovery from the pension or gratuity of whole or any part of the pecuniary loss caused to the government, as may be established in the departmental or judicial proceedings. With these observations, we dismiss this petition leaving the parties to bear their respective costs.