

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 30.04.2012

+ **W.P.(C) 2495/2012**

G.N.C.T.D. OF DELHI & ANR.

... **Petitioners**

versus

K.SRIVATSAN

... **Respondent**

Advocates who appeared in this case:

For the Petitioners : Mr V.K.Tandon

For the Respondent : Ms Latika Choudhary

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

W.P.(C) 2495/2012 & CM 5338/2012(stay)

1. The petitioners have filed this writ petition being aggrieved by the order dated 15.11.2011 in O.A. No.1188/2011. The Principal Bench of the Central Administrative Tribunal, in passing the impugned order, had allowed the respondent's said OA by directing that retiral benefits be granted to the respondent who retired on 30.06.2008.

2. The learned counsel for the petitioners submitted that the Tribunal has misread the provisions of Rule 69(1)(c) of the CCS (Pension) Rules, 1972 while

allowing the respondent's Original Application. He pointed out that the respondent was an employee of the Government of NCT of Delhi and while he was on deputation with the MCD, a CBI case had been registered against him under the Prevention of Corruption Act, 1988. Subsequently, the respondent was placed under suspension and while investigation was going on and during the period of suspension, the respondent had been sent back to his parent organization, namely, the Government of NCT of Delhi.

3. After investigation of the criminal case, the CBI submitted a closure report on 28.01.2010, however, the respondent had already retired by then. He had superannuated on 30.06.2008. The learned counsel for the petitioners drew our attention to Rule 9(6) of the said Rules to submit that the departmental proceedings would be deemed to have been initiated on the date on which he was suspended. He submitted that, since the respondent had already been placed under suspension prior to his retirement, Rule 69(1)(c) would come into play inasmuch as according to the learned counsel for the petitioner on the date on which the respondent retired, it would be deemed that departmental proceedings were pending.

4. We do not agree with the submissions made by the petitioners. Rule 69(1)(c) of the said Rules reads as under:-

“69. Provisional pension where departmental or judicial proceedings may be pending

(1)(a) xxxx xxxx xxxx xxxx

(b) xxxx xxxx xxxx xxxx

(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) xxxx xxxx xxxx xxxx”

5. A plain reading of the said Rule would indicate that no gratuity is to be paid to the Government Servant until the conclusion of departmental or judicial proceedings and the issuance of final orders thereon. What this contemplates is that the date on which the Government servant superannuates, there should be a departmental or judicial proceedings pending so as to enable the Government to withhold his gratuity.

6. Rule 9 of the said Rules of which sub-Rule (6) is a part thereof reads as under:-

“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 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 pensions shall not be reduced below the amount of rupees three hundred and seventy-five

(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.”

7. Rule 9(6)(a) clearly prescribes that departmental proceedings shall be deemed to be instituted on the date on which statement of charges are issued to the Government servant or pensioner or if the Government servant has been placed under suspension on an earlier date, on such date. What this provision

contemplates is that there could be three possibilities. The first being, where a statement of charges is issued to the Government servant without any suspension order preceeding or following the said issuance of statement of charges; the second being, where the suspension precedes the issuance of the statement of charges and the third being where the suspension follows the issuance of the statement of charges.

8. In the present case, we are not concerned with the first instance inasmuch as there is an order of suspension. In the other two eventualities, we find that the common feature is that there must be a statement of charges which is issued to the Government servant or pensioner. Unless and until the statement of charges is issued, the deeming provision that the departmental proceedings shall be deemed to have been instituted on the date on which the Government servant had been placed under suspension on the date prior to the date of the issuance of the statement of charges would not at all be invoked. In the present case, we find that no statement of charges has been issued to the respondent till date. We may also point out that, as more than four years have elapsed since the date on which the event took place, there cannot now be any institution of departmental proceedings itself. This is because of the provisions of Rule 9(2)(b)(ii) of the said Rules mentioned above.

9. Apart from this, there is another difficulty which faces the petitioners. We may point out that Rule 9(6) gives a meaning to the expression as to when “departmental proceedings shall be deemed to be instituted” but, that is only in the context of Rule 9 itself. It does not extend to the expression “departmental proceedings” used in Rule 69(1)(c) of the said Rules. Therefore, the deeming provision encapsulated in Rule 9(b) cannot be read into Rule 69(1)(c) of the said

Rules.

10. Going back to Rule 69(1)(c), we find that the petitioner cannot withhold the gratuity inasmuch as there was no departmental or judicial proceeding pending on the date on which the respondent retired, i.e. on 30.06.2008. That being the position, the Tribunal has rightly concluded in favour of the respondent. The writ petition is devoid of any merit and the same is dismissed without any order as to costs. However, we grant two weeks time to the petitioners to comply with the orders passed by the Tribunal.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 30, 2012
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