

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.08.2013

+ **LPA 219/2013**

TULSI RAM ARYA

....Appellant

versus

THE CHAIRMAN DELHI TRANSCO LIMITED & ORS.

.... Respondents

Advocates who appeared in this case:

For the Appellant : Mr H. D. Sharma & Mr Dev P. Bhardwaj.
For the Respondents : Mr Anupam Varma & Mr Nikhil Sharma
for R-3/BYPL.
Mr Sumeet Pushkarna for R-4/Pension
Trust.

AND

+ **LPA 495/2013**

BSES YAMUNA POWER LIMITED

.... Appellant

versus

TULSI RAM ARYA AND ORS.

.... Respondents

Advocates who appeared in this case:

For the Appellant : Sandeep Sethi, Sr. Advocate with Mr
Anupam Varma & Mr Nikhil Sharma.
For the Respondents : Mr H.D. Sharma & Mr Dev P.
Bhardwaj for R-1.
Mr Sumeet Pushkarna for R-4/Pension
Trust.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These cross appeals are directed against the judgment dated 31.01.2013 passed by a learned Single Judge of this Court in W.P.(C) No. 618/2001. The appellant in LPA No. 219/2013 (hereinafter referred to as the “writ petitioner”) had preferred the Writ Petition No.618/2001, *inter-alia*, challenging the action of the respondent in withholding the retirement benefits payable to him and had made the following prayers:-

- “a) issue a writ/order or direction in the nature of mandamus to release the gratuity with pendentelite and future interest.
- b) issue a writ/order or direction in the nature of mandamus to award full pension alongwith commuted value of pension with pendentelite with future interest.
- c) Issue a writ/order or direction for adding one increment in basic pay-scale withheld during the period of suspension.
- d) Issue a writ/order or direction to provide any other retirement and incidental benefit payable lawfully to the petitioner.
- e) Any other relief or orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The aforesaid writ petition was allowed by the judgment dated 31.01.2013 which is impugned in the present appeals. By the impugned judgment, the appellant in LPA No. 495/2013, BSES Yamuna Power Limited was directed to release the service dues including dues towards

terminal benefits payable to the writ petitioner. BSES Yamuna Power Limited was further directed to pay simple interest @ 9% per annum on the amount payable from the date of filing the writ petition till the date of payment. It was further directed that in the event the amount due was not paid within a period of four months from the date of the judgment then the writ petitioner would be entitled to interest @ 12% per annum thereafter. The writ petitioner is aggrieved by the impugned judgment in respect of the quantum of interest as directed to be paid by the learned Single Judge and is seeking both enhancement of the rate of interest as well as the period for which interest is payable. It is contended that the interest should be payable from the date when the retirement benefits became due and not from the date of the filing of the writ petition as directed by the learned Single Judge.

3. The appellant in LPA 495/2013 (BSES Yamuna Power Limited) was impleaded as respondent no. 3 in the writ petition. It is contended on behalf of the BSES Yamuna Power Limited that in terms of the CCS (Pension) Rules, the writ petitioner is not entitled to gratuity or pension till the conclusion of the judicial proceedings pending against him. The writ petitioner superannuated prior to the unbundling of the erstwhile Delhi Vidyut Board (DVB). It is further contended that the obligation to pay terminal benefits payable to the employees of DVB who superannuated prior to the unbundling of DVB would lie with the Delhi Vidyut Board Employees Terminal Benefits Fund, 2002 and BSES Yamuna Power Limited has no role to play with regard to the payment of pension or terminal benefits to the writ petitioner.

4. The principal controversy that arises in the present appeals revolves around the question whether the retirement benefits by way of pension and gratuity can be withheld from the writ petitioner in terms of Rule 9 read with Rule 69 of the CCS (Pension) Rules.

5. The writ petitioner joined Delhi Vidyut Board (then known as the Delhi Electric Supply Undertaking) as a Mazdoor w.e.f. 09.05.1975. While the writ petitioner was in service, the daughter-in-law of the writ petitioner made a criminal complaint against the writ petitioner and other members of his family and a criminal case under Section 498A of the Indian Penal Code, 1860 and under Sections 3 & 4 of the Dowry Prohibition Act, 1961 was registered against the writ petitioner. Pursuant to the criminal case, the writ petitioner was also arrested by the U.P. Police on 02.01.1997. As the writ petitioner was remanded to custody for a period exceeding 48 hours, he was placed under suspension by the DVB by an order dated 07.04.1997 w.e.f. 02.01.1997 (the date of his detention). The suspension of the writ petitioner from services on account of the criminal case was revoked on 11.12.1997. On attaining the age of superannuation, the writ petitioner retired from the services of DVB on 31.05.1999 and the following terminal benefits were released to him:-

- (a) Provisional pension @ Z1726 plus DA per month.
- (b) Accumulated credit with GPF.
- (c) Leave Encashment.

However, the gratuity and commuted pension were withheld as per Rule 69 of the CCS (Pension) Rules.

6. Since the writ petitioner was not paid the entire retirement benefits allegedly due to him, he filed a writ petition against the DVB. After unbundling of the DVB, the writ petitioner filed an application seeking to implead Delhi Transco and Delhi Power Limited. Subsequently, an affidavit was filed on behalf of the Delhi Vidyut Board Employees Terminal Benefits Fund, 2002 (respondent no. 4), wherein it was stated that the assets and liabilities of the erstwhile DVB have been transferred to the transferee companies including BSES Yamuna Power Limited and as per the transfer scheme, the obligation to discharge the liability of the erstwhile DVB was the responsibility of the transferee companies and as the writ petitioner was working as an Assistant Line Manager at Yojna Vihar an area which fell within the jurisdiction of BSES Yamuna Power Limited, the liability to pay the retirement benefits to the writ petitioner also devolved on BSES Yamuna Power Limited. Thereafter, the writ petitioner impleaded BSES Yamuna Power Limited (the appellant in LPA 495/2013 and the respondent no. 3 in LPA 219/2013) as respondent no. 3 in the writ petition.

7. The Single Judge examined the question whether gratuity and other retirement benefits could be withheld from the writ petitioner on account of the criminal case which had been instituted and was pending against the writ petitioner. The learned single judge considered Rule 9 of the CCS (Pension) Rules and held as under:-

"4. When we read sub Rule 1 of Rule 9 it becomes clear that entitlement to withhold pensionary benefits or other terminal benefits as stated in Rule 9 only arises if "pecuniary loss is caused to the Government", and that too on account of "the pensioner is found guilty of grave misconduct or negligence

during the period of service". A reading of this sub-Rule 1 of Rule 9 makes it clear that object of withholding of pensionary benefit is for adjusting the pecuniary loss caused to the employer on account of grave misconduct or negligence of the employee while performing his service. Therefore, the departmental proceedings or judicial proceedings which are talked of under Rules 9 and 69 are such departmental proceedings or judicial proceedings wherein after adjudication against the employee, if he is found guilty of grave misconduct or negligence which causes pecuniary loss to the employer, only then the employer would be entitled to adjust the same from the pensionary benefits to the employee.

5. Admittedly in the present case, there is no charge of misconduct or negligence of the petitioner in the performance of his service with the employer. The criminal case which is pending against the petitioner is under Section 498A IPC and therefore nothing to do with any misconduct of the petitioner performing service as an employee of the employer. Therefore, there does not arise any issue of pecuniary loss to the employer/DVB/BYPL 011 account of the judicial proceedings/criminal case going on against the petitioner."

8. With regard to the question whether BSES Yamuna Power Limited would be liable for discharge of the dues of the erstwhile DVB, the learned Single Judge following the decision of the Supreme Court in **North Delhi Power Limited v. Government of National Capital Territory of Delhi and Ors.**: AIR 2010 SC 2302 held that BSES Yamuna Power Limited being the relevant transferee company would be liable to pay the dues payable to the writ petitioner.

9. Mr Sethi, the learned senior counsel appearing on behalf of BSES Yamuna Power Limited contended that Rule 9(1) of the CCS (Pension) Rules cannot be interpreted to be applicable only in those cases where the

act of misconduct or negligence on the part of the erstwhile employee results in a pecuniary loss to the Government. It is contended that the power to withhold pension would also be available in cases where an employee is guilty of grave misconduct or negligence even though a pecuniary loss cannot be attributed to such misconduct or negligence on the part of the erstwhile employee during the course of his employment. He has placed reliance on the decision of the Supreme Court in the case of Union of India & Ors. v. B. Dev: 1998 (7) SCC 691, in support of his contention. Mr Sethi has further placed reliance on Rule 13A of the CCS (Conduct) Rules which prohibits any government servant from taking or abetting, giving or taking of any dowry. The relevant Rule 13A of CCS (Conduct) Rules is quoted below:-

"13-A. Dowry

No Government servant shall-

- (i) give or take or abet the giving or taking of dowry; or
- (ii) demand directly or indirectly, from the parent or guardian of a bride or bridegroom, as the case may be, any dowry.

EXPLANATION.- For the purposes of this rule, 'dowry' has the same meaning as in the Dowry Prohibition Act, 1961 (28 of 1961)."

10. We have heard the learned counsel for the parties.

11. Rule 9 & Rule 69 of the CCS (Pension) Rules are relevant for considering the present controversy. The relevant provisions of Rule 9 & Rule 69 are quoted below:-

“Rule 9:- Right to 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 (Rupees Three thousand five hundred from 1-1-2006-see GID below Rule 49) per mensem.

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(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.

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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 not 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.”

12. In our view, sub-rule (1) of Rule 9 of the CCS (Pension) Rules would not be applicable to the facts of the present case. A plain reading of sub-rule (1) of Rule 9 indicates that it is applicable only in cases where a pensioner has been found guilty of grave misconduct or negligence in any departmental or judicial proceedings. Indisputably, the criminal case filed against the petitioner would fall within the scope of the expression judicial proceedings. In the present case, the criminal case against the writ petitioner is still pending and the said judicial proceedings have not culminated in any finding against the writ petitioner. No court or authority has found the writ petitioner guilty of "grave misconduct or negligence". However, sub-rule (4) of Rule 9 of the CCS (Pension) Rules would be applicable inasmuch as the same provides that in cases where judicial proceedings are instituted against a government servant who had retired on attaining the age of superannuation, provisional pension as provided in Rule 69 would be sanctioned. Thus, in the present case, Rule 69 of the CCS (Pension) Rules would be relevant and in particular Rule 69 (1)(a) which provides that in cases mentioned under sub-rule (4) of Rule 9 of the CCS

(Pension) Rules, the Accounts Officer would authorize payment of provisional pension. In the present case, admittedly provisional pension as per Rule 69(1)(a) is being paid to the writ petitioner. Rule 69(1)(c) of the CCS (Pension) Rules expressly provides 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. Admittedly, in the present case, the criminal case filed against the writ petitioner is still pending and, thus, in terms of Rule 69(1)(c), no gratuity would be payable to the writ petitioner.

13. In our view, the learned Single Judge has erred in proceeding on the basis that Rule 9(1) is applicable on the facts of this case. Further, the interpretation placed by the learned Single Judge on Rule 9(1) is also erroneous. The power under Rule 9(1) to withhold the pension due where a pensioner is found guilty of grave misconduct or negligence cannot be limited to only those cases where the Government has suffered any pecuniary loss. This has been explained by the Supreme Court in the case of Union of India v. B. Dev (*supra*) as under:-

“11. Rule 9 gives to the President the right of - (1) withholding or withdrawing a pension or part thereof, (2) either permanently or for a specified period, and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. This power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore, can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service. One of the powers of the President is to recover from pension, in a

case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable.”

14. We are also not in agreement with the view of the learned Single Judge that a criminal case pending against the writ petitioner under Section 498A of IPC has nothing to do with misconduct as an employee. Rule 13A of the CCS (Conduct) Rules which is quoted hereinbefore, inter-alia, proscribes a government servant from taking or demanding directly or indirectly any dowry from a parent or a guardian of a bride. The allegation against the writ petitioner is of an offence under Section 498A of IPC which relates to subjecting a woman to cruelty and in terms of explanation (b) to Section 498A of IPC, the expression cruelty includes harassment of a woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or where the harassment is on account of failure by her or any of her relatives to meet such demand. Thus, harassment of a woman on account of a demand of dowry would undoubtedly constitute misconduct as per CCS (Conduct) Rules. In the event the writ petitioner is found guilty of harassing his daughter-in-law on account of demand of dowry, he would indisputably be guilty of misconduct as per the relevant conduct rules. It is also admitted that the criminal case against the writ petitioner had been filed during the period when he was employed with the DVB.

15. Having held that the pension and gratuity of the writ petitioner can be withheld under Rule 9(4) read with Rule 69 of the CCS (Pension) Rules, it is not necessary for us to examine the question whether BSES Yamuna Power Limited is liable to discharge the dues of the erstwhile DVB with respect to the retirement benefits payable to employees who have superannuated prior to the unbundling of DVB.

16. In view of the above discussion, the impugned judgment dated 31.01.2013 is set aside. LPA No.219/2013 is dismissed and LPA No.495/2013 is allowed as above. The writ petitioner would be at liberty to approach this court in the event he is entitled to the other retirement benefits and the same are not paid to him in case the criminal case is decided in his favour.

17. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

AUGUST 22, 2013
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