

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

Reserved on: 18.04.2016
Pronounced on: 03.06.2016

+ **WP(C) 11860/2015**

UNION OF INDIA & ANR.

..... Petitioner

Through: Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advs.

Versus

S.K. GUPTA

.... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. This writ petition impugns the order dated 20.02.2015 of the Principal Bench of the Central Administrative Tribunal in OA No. 3726/2013, which has, inter alia, observed that since the respondent on attaining the age of superannuation was allowed to retire without any objection, hence his earlier period of suspension got automatically revoked and the relationship of master and servant came to an end. Consequently, the petitioners (employer) would have no jurisdiction to pass any further orders, and therefore, the order dated 13.09.2013, which was passed after the superannuation was not sustainable. The Tribunal quashed the said order. The petitioner was directed to regulate payment of the respondent's pension

and other terminal benefits including full gratuity and leave encashment. It stands directed that the petitioners would:-

“..... consider paying him the composite transfer grant, transportation charges for personal effects and car and air tickets for setting at Godnia, Maharashtra in accordance with the rules. If the Respondents have withheld his salary for 1st and 2nd June, 2011 without any valid reason, it shall also be paid to him. Further the applicant is entitled to get interest at 9% on all the aforesaid benefits withheld by them from the respective dates they became due to the actual date of payment. They shall also apply the item-wise calculation sheets for all the payments to be made. Further, they shall pass appropriate orders in the matter under intimation to him. The aforesaid directions shall be complied with, within a period of 2 months from the date of receipt of a copy of this order.....”

2. The facts of the case are that while working as Deputy Director General in the Ministry of Statistics and Programme Implementation, a criminal case under the provisions of the Prevention of Corruption Act, 1988 was registered against the respondent. He was arrested and remanded to judicial custody for more than 48 hours, whereupon he was deemed to have been suspended from the date of his arrest i.e. 02.06.2012. He continued to remain under suspension until he superannuated on 31.05.2012. Terminal benefits under the head of CGEGIS, GPF and provisional pensions were released to him in view of Rule 69 of the CCS (Pension) Rules, 1972 (for short 1972 Rules). His request for gratuity and commutation of pension was declined on the ground that till the conclusion of the departmental or judicial proceedings were pending against him, the said benefits could not be released in view of Rule 4 of the Central Civil Services (Commutation of Pension) Rules, 1981 (for short 1981 Rules).

3. Resultantly, the respondent had approached the Tribunal in the aforesaid O.A. for payment of his post-retirement benefits, leave encashment and gratuity etc. which was denied to him at the time of his retirement since he was under suspension, on the ground that the leave account could not be closed and a view in the matter would be taken only upon conclusion of the criminal proceedings against him. The Tribunal has allowed the O.A. and passed the directions as mentioned hereinabove. During the pendency of the O.A., the leave encashment amount had been partly released for 254 days amounting to Rs. 8,68,375/-. However, the respondent was not paid the 92 days half pay leave, composite transfer grant, transportation charges for personal effects, care and air tickets for settling at Gondia, Maharashtra.

4. The Tribunal had relied upon the dictum of the Karnataka High Court in ***R.S. Naik vs. State of Karnataka & Ors.*** 1982 (1) KarLJ 156, which held that when a government servant was allowed to retire from service voluntarily, the service relationship of master and servant ceased to exist as there was severance of status. Therefore, any criminal prosecution already launched or which could be launched against the former employee would not alter his status, hence a subsequent order of revocation of suspension could not arise. In such circumstances, the period of suspension could only be treated as being on duty. The Tribunal further referred to the judgment of this Court in ***S.P. Jain vs. Punjab National Bank and Anr.*** 1993 (25) DRJ 40 which had referred to ***R.S. Naik*** (supra) and held that on attaining of age of superannuation, if the employer does not have any objection, the relationship of master and servant ceases to exist. Consequently, the earlier subsisting suspension order passed against the employee would cease to

operate upon the retirement from service of the employee. The aforesaid judgment also referred to the decision of the Supreme Court in ***H.L. Mehta vs. Union of India & Ors.*** 1974 S.L.R. 379, which held that when an order of suspension of an employee merges in the dismissal order and if subsequently the dismissal order itself is set aside, then the suspension order does not revive.

5. The Tribunal has also referred to the dictionary meaning of the term ‘suspension’ to connote “the action of debarring or state of being debarred, especially for a time from a function of privilege, temporary deprivation of one’s office or position”. It also referred to the ratio of the Supreme Court on the meaning of the term “suspension” in ***U.P. Rajya Krishi Utpadan Mandi Parishad vs Sanjiv Rajan*** 1993 Supp. (3) SCC 483. To elucidate of principle of ‘suspension’ reference was made to decisions of the Supreme Court in ***R.P. Kapur vs Union of India*** (1964) 5 SCR 431; ***Balvantray Ratilal Patel vs State of Maharashtra*** (1968) 2 SCR 577; ***V.P. Gindroniya vs State of Madhya Pradesh*** (1970) 3 SCR 448; and ***Union of India vs Rajiv Kumar*** (2003) 6 SCC 516 on the effect of suspension and the relationship of master and servant during the period of suspension.

6. Referring to Fundamental Rules 53(1) and 56 and the question whether an employee’s suspension period can be extended till he retires from service or whether the suspended employee can be retired from service, the Tribunal was of the view that an order of suspension gets automatically revoked from the date on which the government servant is dismissed or removed or compulsorily retired pursuant to departmental and/or court proceedings or when criminal proceedings against the employee stand

terminated with either an order of acquittal or discharge and the payment of allowance due to him during the period of suspension is governed by FR 53(1), which holds that every government servant shall retire from service on the date on which he attains the age of 60 years.

7. In order to examine and decide the contentions, we would like to begin by referring to the prayers made in the O.A. which read:-

“(i) Quash and set aside the impugned order dated 13.-09-2013;

(ii) The respondents be directed to release the leave encashment, and full gratuity amounts along with interest @ 18% (As per decision of Apex Court in case of Vijay L. Mehrotra v. State of U.P. & Ors: JT 2000 (5) SC 171).

(iii) The respondents be directed to pay composite transfer grant, transportation charges for personnel effects and car, and air tickets for settling at Gondia, Maharashtra along with children of applicant after retirement;

(iv) Pay withheld salary for 1st and 2nd June, 2011;

(v) Cost of litigation; and

(vi) Any such further order as this Hon’ble court may deem fit and proper be also passed in favour of applicant.

8. The first prayer made for quashing of letter dated 13th September, 2013 does not survive, as the said letter had disallowed and rejected the request for payment of leave encashment equivalent to earned leave credited

to the account of the respondent. As has been noticed in the impugned order itself, an amount of Rs.8,68,375/- towards leave encashment of 254 days of earned leave was paid to the respondent. The other reliefs relate to payment of full gratuity, composite transfer grant, transportation charges for personal effects and car, and air tickets for wife and children post retirement. The respondent has not been paid 92 days half pay leave. Prayer for payment of 1st and 2nd June, 2011 salary has also been made.

9. Sub-Rule (4) to Rule 9 of the Central Civil Services (Pension), Rules, 1972 (hereinafter referred to as '1972 Rules'), reads as follows:-

“(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.”

Sub-rule (6)(b) to Rule 9 of the 1972 Rules, stipulates that “judicial proceedings shall be deemed to be instituted”, for the purpose of this Rule, when:-

“

- (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.”*

10. A reading of the aforesaid sub-rule would show that on the date of superannuation the respondent was facing judicial proceedings, which was

instituted and pending. It is not the case of the respondent that the Court had not taken cognizance of the report filed by the police officer. In terms of the mandate of sub-rule (4) to Rule 9, we have to make reference to Rule 69 of the 1972 Rules, which reads:-

“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.”

11. Rule 69 specifically stipulates that the Accounts Officer shall authorize provisional pension equal to the maximum pension which would be admissible on the basis of qualifying service up to the date of retirement or, in case, the person was under suspension on the date of retirement, up-to the date immediately preceding the date on which he was placed under suspension. The Rule, therefore, states that if a person was under suspension on the date of retirement, the suspension period would not be included in the qualifying service. Clause (c) to sub-rule (1) of Rule 69 states that no gratuity will be payable to the government servant until conclusion of the departmental or judicial proceedings and issue of final orders. Under sub-rule (2), payment of provisional pension is subject to adjustment against final retirement benefits to be sanctioned upon conclusion of proceedings, but no recovery can be made where the pension initially sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

12. On the said aspect, we would also like to refer to Rule 23 on the question of counting of suspension period and determination of pension based upon emoluments. The said Rule reads as under:-

“...23. Counting of periods of suspension

Time passed by a Government Servant under suspension pending inquiry into conduct shall count as qualifying service

where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other case, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time it shall count to such extent as the Competent Authority may declare...”

13. A reading of Rule 23 would show that the suspension period can be counted as qualifying period where the government servant is fully exonerated on conclusion of inquiry or the suspension is held to be wholly unjustified. In other cases, the period of suspension shall not be counted unless and to the extent as the competent authority may declare.

14. When we harmoniously read the aforesaid provisions, it is crystal clear that the suspension period does not evaporate and is not erased when the government servant retires as in the present case. The respondent was facing criminal prosecution. The judicial proceedings stood instituted on or before the date of retirement. On the date of retirement, they were pending. In such circumstances, Rule 9(4) of the 1972 Rules would apply with full vigor and force. It will also mean that the period of suspension in terms of Rule 23 will not be counted unless the competent authority passes an order and declares the suspension period that shall be counted.

15. Retirement does put to an end the order of suspension for the reason that employer and employee relationship ceases and comes to an end. Once there is termination of the said relationship because the employee has attained the age of superannuation, the suspension order cannot continue, for suspension itself postulates existence of employer and employee relationship. Retirement would not affect the earlier order of suspension and the suspension order does not terminate the said employer-employee

relationship (See, Section 16 of General Clauses Act, 1897). Reliance placed on Rule 49(2) (a) and Rule 34 is inconsequential and not relevant for the purpose present adjudication, for what is payable and paid is provisional pension and not pension. Provisional pension/gratuity is provided in Rule 64 of the 1972 Rules. Payments have to be made as per Rule 69 read with Rule 64 of the 1972 Rules.

16. Fundamental Rule 54-B(1) makes a provision for the competent authority to pass orders on pay and allowance to a government servant for the period of suspension, upon being reinstated and not otherwise. Such reinstatement, when post-retirement, would also mandate an order under FR 54-B(1). It would equally apply to cases of reinstatement after premature retirement. In such cases, the competent authority should pass an order as to whether or not the suspension period shall be treated as a period spent on duty. The said rule reads as under:

“... FR 54-B(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order –

- (a) Regarding the pay and allowance to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) Whether or not the said period shall be treated as period spent on duty....”

17. This Rule would not have any application as the respondent has not been reinstated in service. The respondent, while on suspension, attained the

age of superannuation. He was still facing judicial proceedings. Retirement does not result in reinstatement; this is not the dicta of the Rule. The Tribunal has erroneously opined that since the present petitioner had allowed the respondent employee to retire on attaining the age of superannuation, their relationship of master and servant ceased to exist and that the Tribunal would resultantly have no jurisdiction to pass any consequent order. We have referred to the Rule position under the 1972, Rules.

18. We are of the view that the **S.P. Jain** (supra) case would not be an authority in the present case because of the nature of employment and the applicable rules governing the employment and the master-servant relationship in that case, and the present case are different. Reliance of the Tribunal upon **R.S. Naik** (supra) too is erroneous because that case related to a situation prior to the coming into force of Rule 4 of the CCS (Commutation of Pension) Rules, 1981. It was a case of an employee belonging to the State of Karnataka and the State Rules were applicable. Rule 4 of the 1981 Rules read as under:

“4. Restriction on commutation of pension.

No Government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.”

19. In **V.Vadivelu v. The Deputy Registrar, Central Administrative Tribunal Madras Bench, Chennai, The Union of India represented by**

Chief Post Master General, Tamil Nadu Circle, Chennai and The Superintendent of Post Offices, Arakkonam Divison, Arokkonam, Vellore District , Writ Petition No.12199 of 1999 pronounced on 14.02.2002, the Madras High Court has held:

“7. However, inequitable the rule may be, in respect of cases where a person against whom such departmental or judicial proceedings as contemplated under Rule 9 of the Pension Rules, have been instituted, and more so, in a case where like that of the petitioner against whom, the criminal proceedings came to be instituted just five days after his date of retirement, making it ineligible for the concerned pensioner to seek for commutation of even the provisional pension, having regard to the existence of the said rule, it will have to be held that respondents 2 and 3 cannot be directed to bypass the said rule and permit the petitioner to seek for commutation of pension as claimed by him. We are therefore unable to grant any relief to the petitioner, in so far as, it related to his prayer for commutation of provisional pension. To that extent, we decline to grant any relief.”

20. It would be extremely easy for a government servant to commit acts of impropriety, which may or may not cause financial or other loss to its employer, and consequently, being suspended on charge for such act and irrespective of the outcome of such departmental or judicial proceedings, he should comfortably walk into the sunset with full retirement benefits simply because he was allowed to retire or superannuate from his service without any objections. The aforesaid Rules deal with the delinquent employee being granted full pensionary benefits merely upon his superannuation, though he is facing disciplinary or judicial proceedings. 1981 Rules relating to computation of pension were brought into force. Rules 9(4) and 69 of the

1972 Rules are not under challenge. Its meaning and import is clear and unambiguous. They govern the circumstances such as the present case, where a government servant, against whom departmental or judicial proceedings have been instituted before the date of his retirement, and continue even after retirement. Indeed, the Rules clearly puts a restriction on the commutation of full pension, etc. The pension has to be re-worked and calculated on conclusion of the judicial proceedings.

21. In view of the above, we are of the opinion that the Tribunal had misdirected itself by relying upon the dictum in *R.S. Naik* (supra), *S.P. Jain* (supra) and *H.L. Mehta* (supra), each of which related to different facts and situations and are, therefore, distinguishable. In the circumstances, the impugned order cannot be sustained and is, accordingly, set aside. No orders as to costs.

NAJMI WAZIRI, J

SANJIV KHANNA, J

JUNE 03, 2016

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