* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) No.2424/2017**

% **20th March, 2017**

SH. PRABHU LAL ..... Petitioner

Through: Mr. Anuj Soni, Advocate.

versus

BSES YAMUNA POWER LIMITED AND ORS. .... Respondents

Through: Mr. Sandeep Prabhakar, Advocate for respondent No.1.
Mr. S.K. Sethi, Advocate for respondent No.2.
Mr. Sumeet Pushkarna, Advocate for respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing of the communication dated 22.2.2017 issued by the respondent no.1/employer refusing to release the gratuity amount payable to the petitioner on petitioner's superannuation. The impugned order dated 22.2.2107 reads as under:-

> "HR(D) EAST/2016-17/278 DATE 22-02-2017
> Sh. Prabhu Lal,
> A-88, Nathu Pura,
> Near MCD Primary School,
> Delhi-84

Sub: Request for releasing payment of entitled Gratuity Amount in favour of Sh. Prabhu Lal, Ex.S.O., E. No.40125088, superannuated from the services of BSES Yamuna Power Ltd on dt. 31.03.2016.

Sir,

With reference your request dated 20.12.2016 regarding releasing of Gratuity amount after retirement from BSES Yamuna Power Ltd on 31.03.2016.

In this connection, it is to bring to your kind notice that as per Rule 69(1)(c) of the CCS Pension Rules, 1972, which are applicable to Ex DVB Employees-"No Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon".

Thus your request for release the payment of gratuity cannot be acceded to as the case is still sub-judice.

Regards,

Sd/-
(Simrat Matharoo)
Dy. G.M.(HR) BYPL"

2. The impugned order shows that the respondent no.1/employer has relied upon Rule 69(1)(c) of the CCS Pension Rules, 1972 to deny payment of gratuity inasmuch as a criminal case is pending against the petitioner. The issue as to whether an employer can withhold pension or gratuity or both, even if there is no financial loss to the employer, and simply because a criminal case is pending, is no longer *res integra* and decided by the Supreme Court in the case of ***Union of India & Others Vs. B. Dev (1998) 7 SCC 691*** wherein the Supreme Court has held that for withholding pension or gratuity or both, it is not necessary that the same is done only where pecuniary loss is caused to the employer. This judgment of the Supreme Court has been referred to by a Division Bench of this Court in two

connected cases titled as ***Tulsi Ram Arya Vs. The Chairman Delhi Transco Limited & Ors.*** and ***BSES Yamuna Power Limited Vs. Tulsi Ram Arya and Ors.*** in LPA Nos. 219/2013 and 495/2013 respectively decided on 22.8.2013, and accordingly, the Division Bench held that even in case where there is no pecuniary loss, an employer can yet withhold the pension on account of pendency of a criminal case. *Mutatis Mutandis*, the aforesaid ratio will apply even with respect to payment of gratuity in view of language of Rule 9 of the CCS Pension Rules. The relevant paras of the judgment of the Division Bench in the cases of ***Tulsi Ram Arya (supra)*** and ***BSES Yamuna Power Limited (supra)*** are pars 11 to 15, and which paras read as under:-

> "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:-
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> "**Rule 9:- Right to President to withhold or withdraw pension**
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> (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:
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> 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.
>
> xxxxx
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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.

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 LPA Nos.219/2013 & 495/2013 Page 10 of 13 (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."

3. In view of the above, there is no illegality in the impugned order dated 22.2.2017 withholding payment of gratuity of the petitioner inasmuch as admittedly the criminal case of dowry is pending against the petitioner.

4. Dismissed.

MARCH 20, 2017 **VALMIKI J. MEHTA, J**

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