

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 8905 of 2019**

1. Shivnarayan Jaiswal S/o Late Shri Sadha Sukh Jaiswal Aged About 69 Years Retired District Officer R/o S.M. 54 Padmanabhpur, Durg-491001, Tahsil And District Durg, Chhattisgarh. ---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Principal Secretary Excise Department Government Of Chhattisgarh Mahanadi Bhawan, Naya Raipur, Tahsil And District Raipur, Chhattisgarh.
2. The Excise Commissioner Government Of Chhattisgarh G.S.T. Bhawan, Sector- 19, Atal Nagar, Naya Raipur, Tahsil And District Raipur, Chhattisgarh.
3. Additional Commissioner (Excise) Government Of Chhattisgarh G.S.T. Bhawan, Sector- 19, Atal Nagar, Naya Raipur, Tahsil And District Raipur, Chhattisgarh. ---- **Respondents**

For Petitioner	:	Shri V. G. Tamaskar, Advocate.
For State	:	Shri Aditya Bhardwaj, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****04/03/2021**

1. The claim of the petitioner in the present writ petition is for issuance of a mandamus commanding the respondents to consider and release 50% of the gratuity payable to the petitioner within the stipulated period.
2. Counsel appearing for the petitioner submits that the petitioner herein stands retired from service w.e.f. 28.02.2011 from the post of District Assistant Excise Officer. According to the petitioner, now it is more than ten years that the petitioner stands retired from service and he has not been paid his gratuity which he badly needs at this juncture and the pension that the petitioner is receiving, is only the provisional pension on account of criminal case under the

provision of Prevention of Corruption Act that was pending against the petitioner.

3. Today when the matter is taken up on mentioning, the learned counsel for the petitioner submits that the petitioner is critically ill and is bedridden for last 3-4 years. That for his treatment, the petitioner is facing financial crises and that has led to filing of the present writ petition with a prayer for at-least releasing his gratuity part.
4. The State Counsel on the other hand opposing the petition submits that since the petitioner stands implicated in a criminal case involving Prevention of Corruption Act, the petitioner's gratuity has been withheld by the Department for being finalized after the outcome of the criminal case. According to the State Counsel, since the nature of allegation in criminal case is that of the petitioner being found more than 24% -25% in excess of his assets. The gravity of the offence does not permit the petitioner for releasing of gratuity at this juncture.
5. Having heard the contention put forth made by the counsel for the parties, it would be relevant at this juncture to take note of Rule 9 (4) and 64(1)(a) of Chhattisgarh Civil Service (pension) Rule 1976, which for ready reference are being reproduced here-in-under:-

9(4) In the case of a 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 and death-cum-retirement gratuity as provided in [Rule 64], as the case may be, shall be sanctioned :
 [Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of

such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount, of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43].

64(1) (a) In respect of Government servants refer to in sub-rule (4) of Rule 9 the Head of Office shall authorize the payment of provisional pension not exceeding the maximum pension and 50 % of gratuity taking into consideration the gravity of charges leveled against such Government servant, 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 of immediately preceding the date on which he was placed under suspension.

6. On the plain reading of the aforesaid provisions of law, it would clearly reveal that the State authorities cannot withhold an amount exceeding 50% of gratuity and pension unless the gravity of offence is so serious and severe. In the instant case, except for the allegations of the assets of petitioner being in excess by more than 24% -25%, there does not seem to be any other allegations or ground available with the respondents for not releasing the gratuity amount particularly when the petitioner has been granted the provisional pension.

7. This High Court in WP(S) No. 352/2014 and also in WP(S) No. 4006/2013 decided on 27.11.2015 and 04.01.2016 respectively have relied upon the aforementioned Rules/Provisions i.e. Rule 9(4) and 64 (1)(a) of the Chhattisgarh Civil Services Pension Rule have ordered that gratuity and pension are not to be treated as bounty, those are rights which has been approved in favour of employee who has worked with the department for long and on his retirement they are entitled for the same as a matter of right and the High Court had allowed both the writ petitions ordered for releasing of 50 % of the pension as also 50 % of the gratuity.
8. In the instant case also since the factual matrix of case being almost similar, this Court is inclined to follow the same verdict and hold that since the petitioner has been released with the provisional pension, the respondents should also ensure that in-terms of clause 64 (1) (a), the petitioner should be paid 50 % of gratuity and the remaining part of the gratuity shall be paid after the out-come of the criminal case pending against the petitioner.
9. Accordingly, It is ordered that the petitioner shall be entitled for payment of 50 % of the gratuity and the amount should be released to the petitioner forthwith within a period of 45 days from the date of receipt of copy of this order.
10. The writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge