21 **01.02.2023**

<u>Ct. No. 04</u>

Ab

WP.CT 92 of 2022

Union of India and others
Vs.
Sri Sukhram Purty.

Mr. Anirban Mitra.
... for the petitioners.

Mr. Phatick Chandra Das,
Mr. S. K. Ganguly.
... for the respondent.

It is no longer *res integra* when the substantive provisions in the parent Act if pitted against the provisions contained in the sub-ordinate legislation, the provisions of the parent statute would prevail over the provisions contained in the sub-ordinate legislation. The source of giving birth to a sub-ordinate legislation originates from the provisions contained in the parent statute and in case of any inconsistencies and/or contradictions between the provisions of the parent statute and the sub-ordinate legislation, the provisions of the parent statute would prevail.

A piquant situation has arisen in the instant writ petition, more particularly, when the Tribunal after noticing the various provisions has acted contrary thereto and even overlooked the provisions contained in the parent Act.

Shorn of unnecessary details, the undisputed facts are adumbrated herein below:

The respondent was the Railway employee and attained superannuation on the last date of the month of February 2014. Prior to the retirement, a disciplinary proceeding was contemplated on 24th January 2014 raising allegations against the respondent, which continued until the Presidential Order is passed on 22nd February 2022 imposing penalty of withholding ten percent of the pension for the period of one year. It is clearly stipulated in the said Presidential Order that the gratuity shall be paid without any restrictions and/or deductions to the delinquent i.e. the respondent.

On the conspectus of the undisputed facts as narrated above, a point is sought to be taken that Rule 87 of the Railway Services (Pension) Rules, 1993 postulates the payment of interest over the delayed payment of gratuity, if not paid within the specified time, provided it is established that such delay is attributable to the administrative lapses on the part of the Railway Administration. The said provision is reproduced as under:

> "87. **Interest in delayed payment of gratuity**.-(1) if the payment of gratuity has been authorised after three months from the date when its payment became due on superannuation and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be specified from time to time by the Central Government in this behalf on the amount of gratuity in respect of the period beyond three months shall be paid:
>
> Provided that the delay in the payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down in this Chapter.
>
> (2) Every case of delayed payment of gratuity shall be considered by the General Manager or Administrative Head of the Railway Unit, as the case may be, and where the said General Manager or Administrative Head is satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, he shall order for arranging the payment of interest. The powers to pass order for payment of interest on delayed payment of death-cum-retirement gratuity shall rest with General Manager or Administrative Head of the Railway Unit and shall not be delegated to any lower authority.
>
> (3) In all cases where the payment of interest has been ordered, the Railways shall fix the responsibility and take disciplinary action against the railway servant or servants concerned who are

> found responsible for the delay in the payment of gratuity.
>
> (4) If as a result of Government's decision taken subsequent to the retirement of a railway servant, the amount of gratuity already paid on his retirement is enhanced on account of-
>
> (a) grant of emoluments higher than the emolument on which gratuity already paid was determined, or
>
> (b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the railway servant concerned, no interest on the arrears of gratuity shall be paid.
>
> (5) Gratuity becomes due immediately on retirement and in case of a railway servant dying in service, action for finalising his pension and death-cum-retirement gratuity shall be taken in accordance with the provisions of Chapter IX."

Taking a clue from the aforesaid provision, it is sought to be contended by the respondent that the gratuity, which is payable on the date of superannuation, if not paid, the employee is entitled to the interest as may be prescribed by the Central Government from time to time to be reckoned from the date of superannuation till the actual payment. The aforesaid provision is general in nature and does not conceive of any special circumstances that may be relevant factor in applying and/or activating the aforesaid provision.

Our attention is drawn to Section 10 of Railways Act, 1989, which runs thus:

> "**Provisional Pension where departmental or judicial proceedings may be pending**.-(1) (a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorise they provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the railway 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 authorised by 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 proceeding, final orders are passed by the competent authority.
>
> (c) No gratuity shall be paid to the railway 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 the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968, for imposing any of the penalties specified in clause (i), (ii), (iiia) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant.
>
> (2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such railway 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."

On bare perusal of the aforesaid provision it is manifestly clear from sub-clause (c) of sub-section (1) of Section 10 that the gratuity shall not be paid to the railway servant until conclusion of the departmental or judicial proceedings and issue final orders thereon. There is an embargo created in the aforesaid provision relating to the gratuity, not to be paid in the event there is a departmental or judicial proceeding against the employee. However, an exception is carved out therefrom relating to the initiation of a departmental proceeding under the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 contemplating to impose any of the penalties specified in clause (i), (ii), (iiia) and (iv) of Rule 6 thereof and in such event the gratuity shall be paid to the railway servant. The aforesaid provision can be segregated into two parts; firstly, there is an embargo in payment of gratuity to the railway servant until the conclusion of the departmental or judicial proceeding and the final order to be passed thereon; secondly, even if the departmental proceeding is initiated and/or instituted under the relevant Rules for imposing any of the penalties specified therein, the gratuity should not be withheld but to be paid to the railway servant.

Our endeavour has failed to find out from the nature of the penalty imposed by the disciplinary authority, as reflected in the Presidential Order dated 22nd February 2022, that the respondent comes within the peripheral of the exceptions laid down in the said provision. The statute has to be read as a whole and not in a piecemeal. The moment the statutory provision creates an embargo in payment of gratuity with an exception, unless the exception is satisfied, it does not confer inchoate right into the delinquent to have the gratuity or interest on the delayed payment of gratuity under the aforesaid Rule.

Admittedly, the departmental proceeding was initiated during the currency of the service and achieved the logical end upon issuance of the Presidential Order dated 22nd February 2022. We may hasten to add that the nature of penalty imposed upon the respondent does not come within the four corners of Rule 6 of the disciplinary Rules yet we can safely proceeded on the basis that it neither comes within the ambit of the specified clause creating an exception.

The respondent did not challenge the order of the disciplinary authority, more particularly, the Presidential Order dated 22nd February 2022. The Tribunal was approached simplicitor for the relief that the gratuity, which is required to be paid on the date of superannuation, having not paid, the awarding interest on delayed payment of gratuity is inevitable and recognized in the statutory provision.

On harmonious reading of both the provisions contained in Section 10 of the Act and Rule 87 of the Pension Rules would leave no ambiguity in our mind that in the event there is no departmental or judicial proceeding pending against the railway servant, any delayed payment of gratuity would attract the interest thereupon but converse is not true. In the event the disciplinary proceeding or judicial proceeding is pending against the railway servant, the gratuity would not be paid unless such departmental proceeding is initiated contemplating the penalty specified in clause (i), (ii), (iiia) and (iv) of the disciplinary Rules.

The Tribunal appears to have been relied upon a circular being Estt. Srl. No. 101/91 dated 17.05.1991 enclosing RBE No. 76/1991 issued subsequently in relation to the payment of gratuity and the interest thereupon. The extract of the said circular has been depicted in the said order and it appears from clause (c) thereof that in the event the railway servant is not fully exonerated on conclusion of disciplinary/judicial proceeding and where the competent authority decided to allow the payment of gratuity, the payment of gratuity shall be deemed to have fallen due on the date of issuance of order by the competent authority.

What can be reasonably inferred from the aforesaid clause that even in case where the delinquent is fully exonerated from the charges or the penalty has been imposed, which obviously is not a major penalty, in such event the competent authority may direct the payment of gratuity. The right to get the gratuity accrued from the date of an order and not from the date prior thereto. The payment of gratuity from anterior date i.e. the date of superannuation was put at halt by virtue of the provisions contained in Section 10 of the Railways Act and embargo was lifted on issuance of the Presidential Order dated 22nd February, 2022. The said clause is explicit to the extent that in the event the gratuity is not paid from the date of the order and there appears to be a delay because of the administrative lapses, it would attract the interest thereupon, as the Railway Administration cannot be exonerated from their statutory responsibilities for payment of interest on delayed payment of gratuity.

There is no incongruity between Section 10 of the Railways Act, Rule 87 of the Pension Rules and the clause (c) of the aforesaid circular as we find that the legislative intend is laudable and can be harmonized in specific circumstances. As a gasping resort, the respondent sought to contend that the aforesaid penalty is not contemplated in the disciplinary Rules, which we do not find to be available to the respondent, as the Tribunal was approached for a singular relief in the form of interest to be granted over the delayed payment of the gratuity. The respondent may waive or acquiesce the right known to him and the moment the penalty is accepted, it is not permissible to take a rebound and seek something, which has not been sought for before the Tribunal.

It has been brought to our notice that the gratuity had already been disbursed to the respondent before the date of the Presidential Order. The justification is sought to be made that such payment was made under the mistaken advise or on non-disclosure of the relevant facts, but we do not think that the aforesaid facts would deter us in upholding the law and harmonizing the various provisions. Even the Presidential Order exposes the intention of the competent authority in directing the payment of gratuity to the respondent and in view of clause (c) of the said circular, the right accrues from the date of the said order. If the payment is made prior thereto, it does not confer any right on the delinquent to get the gratuity, which accrued on the date of the said order.

Even those facts are taken into account, it does not countenance the factor that the interest is not payable to the respondent and, therefore, the Tribunal has acted in excess of jurisdiction conferred upon it by ignoring the statutory provisions.

The impugned order is, thus, set aside; consequently, the Tribunal application filed by the respondent stands dismissed.

The writ petition is, thus, disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)