

19.02.2024
SI No.1
Court No.8
(gc)

MAT 773 of 2023
CAN 1 of 2023

Dr. Tarkeshwar Prasad
Vs.
Union of India & Ors.

Mr. Subhabrata Datta,
Mr. Aranya Saha
.....for the Appellant.

Mr. D.N. Ray,
Mr. Debopriya Gupta,
Mr. Rajesh Kr. Shah
...for the U.O.I.

1. Leave is given to correct the cause title of the affidavit filed on behalf of the Union of India in Court today.
2. The affidavit filed on behalf of the Union of India shows that there has been a delay of almost two to three months in releasing the provisional pension. The grievance of the petitioner/appellant, that he has been receiving provisional pension in time, is clearly evident from the disclosure made in the said affidavit. However, the submission made with regard to the release of gratuity amount based on a claim of Rule 69(c) of C.C.S. Rules, 1972 may not be payable in view of the amended provision of Rule 69 as it stands in the year 2021. The Rule 69 as produced by Mr. Ray does not contain the following

proviso to Rule 69(1)(c) after the amendment of 1972 Act:

“69.(1)(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.”

3. It is submitted that the said Rule of 1972 has been repealed and replaced by 2021 Rules.
4. In view of the aforesaid submission and having regard to the fact that we have not been shown that the said proviso is still surviving after the amended of Rule 69, we feel that the learned Single Judge was justified in not granting gratuity at this stage. However, we make it clear that in the event it is found that the said proviso has been retained and not amended, it is needless to mention that the gratuity amount shall be paid to the appellant

having regard to the nature of the penalty proposed.

5. We direct the authority concerned to release the provisional pension month by month without any delay.
6. Leave encashment, if applied in the meantime, shall be released as per the service rules within a period of four weeks from the date of making such application.
7. Accordingly, the appeal and the application stand disposed of.
8. However, there shall be no order as to costs.
9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)