

Jarnail Singh

Vs

Secretary, Ministry of Home Affairs and Others

Civil Appeal No. 5158 of 1992

(P.B. Sawant, N. Venkatachala JJ)

(J.S. Verma, Yogeswar Dayal, N. Venkatachala JJ)

03.12.1992

JUDGEMENT

VERMA, J.:-

1. Leave granted.

2. The appellant, Jarnail Singh, retired from the post of Under Secretary in the Ministry of Home Affairs, Government of India on 31st March, 1986. By the Order dated 26-5-1988, the President of India directed that the full monthly pension and the entire amount of death-cum-retirement gratuity, otherwise admissible to the appellant, be withheld on a permanent basis. This direction was given on account of serious irregularities found to have been committed by the appellant in an inquiry held for the purpose and in consultation with the Union Public Service Commission. The appellant challenged this Order before the Central Administrative Tribunal which has rejected the appellant's contention and dismissed the application made for quashing this Order. Hence this appeal against the Tribunal's Order by special leave.

3. Notice on the petitioner's special leave petition was confined only to the question, whether, by way of punishment, the payment of gratuity also could be withheld, for recovery of loss sustained by the Government. This appeal is, therefore, confined to this question only.

4. The contention of learned counsel for the appellant is that the expression 'pension' in R. 9 of the Central Civil Services (Pension) Rules, 1972 did not include 'gratuity' to enable withholding of payment of gratuity in addition to withholding the pension amount. In support of this argument, the amendment, made in these Rules in 1991 to expressly include 'gratuity' also in R. 9, in addition to 'pension', is relied on. It is submitted that, prior to the 1991 Amendment, Rule 9 could not be construed to confer that power in respect of 'gratuity' also in addition to 'pension'. In reply, the learned Additional Solicitor General contended that the amendment made in 1991 is merely clarificatory which is evident from the fact that the word 'pension' as defined in R. 3(1)(o) of these Rules includes 'gratuity'. Reference is also made to Art. 366(17) of the Constitution of India to indicate that conceptually pension includes gratuity. In our opinion, the contention of learned counsel for the appellant cannot be accepted.

5. Rule 3 of the C.C.S. (Pension) Rules, 1972 contains the definitions. Clause (o) in sub-rule (1) of R. 3 is as under :-

" 'pension' includes gratuity except when the term pension is used in contradistinction to gratuity;"

From this definition of the word 'pension', is clear that ordinarily the word 'pension' wherever used in these Rules includes gratuity except when the term 'Pension' is used in contradistinction to gratuity.

6. Rule 9, to the extent it is relevant for our purpose, is as under :-

"9. Right of President to withhold or withdraw pension.- (1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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 his 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 :

xxx xxx xxx" Bearing in mind the definition of the term 'pension' in R. 3(1)(o), the term 'pension' used in R. 9(1) must be construed to include gratuity since the term 'pension', in the context, is not used in contradistinction to gratuity. Learned counsel for the appellant, however, referred to the amendment made in R. 9(1) by the Central Civil Services (Pension) Third Amendment Rules, 1991, whereby the term 'pension' has been substituted by the expression 'pension or gratuity, or both' and consequential amendments made in that sub-rule. The question is : whether this amendment made in 1991 indicates, as contended by learned counsel for the appellant, that 'pension' alone could be withheld under R. 9(1) and not also the gratuity prior to the amendment of R.9(1) in 1991? In our opinion definition of 'pension' in R. 3(1)(o) quoted above negatives the appellant's Contention and clearly indicates that the 1991 Amendment is merely clarificatory and makes explicit that which was clearly implicit prior to that Amendment by virtue of the definition of term 'pension' in R. 3(1)(o). This clarification appears to have been made only to remove the doubt created by the decisions relied on by counsel for the appellant which are considered hereafter.

7. Learned counsel for the appellant placed strong reliance on the decision in D. V. Kapoor v. Union of India (1990) 4 SCC 314 : (AIR 1990 SC 1923). It was held in that case that the exercise of power by the President under R. 9 is hedged with the condition that a finding should be recorded either in the departmental inquiry or a judicial proceeding that the person had committed grave misconduct etc. in the discharge of his duty while in office; and in the absence of such a finding, the President has no authority to impose the penalty of withholding the pension or to order recovery of the pecuniary loss. There was no such clear finding recorded in that case. That decision was based primarily on this point which was sufficient to sustain the conclusion reached. However, in para 10 (SCC) of that judgment, it was further said that no provision of law was shown to indicate that the President is empowered to withhold gratuity as well. It is, therefore, clear that the definition of the term 'pension' in R. 3(1)(o) was not brought to the notice of the Bench deciding D. V. Kapoor's case, which omission led to the making of this further observation after holding that the condition

precedent for exercise of the power was absent. We are, therefore, with respect, unable to agree with this further observation in D. V. Kapoor to the effect that the power of the President in R. 9 prior to its amendment in 1991, was confined only to withholding pension and it did not extend to gratuity as well.

8. Another decision relied on by learned counsel for the appellant is F. R. Jesuratnam V. Union of India, 1990 (Supp) SCC 640. In that case, there is no discussion and the conclusion alone is stated. For the reasons we have already given, we cannot persuade ourselves to concur with the view that prior to the 1991 Amendment there was no legal provision empowering the authorities to forfeit the gratuity payable to an employee. In both these decisions, this conclusion was reached without any reference to, and consideration of, the definition of the term 'pension' in R. 3(1)(o) quoted above. Accordingly, we regret our inability to concur with that view. Obviously, it is these decisions which led to the aforesaid clarificatory amendment of R. 9(1) in 1991.

9. Reference to some other provisions in the Central Civil Services (Pension) Rules, 1972 supports the view we have taken. Rule 69(1)(c) 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. This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceeding against the Government servant, Rules 71 a 73 relating to recovery and adjustment of Government dues and the express provision in R. 73(3) for adjustment of dues against the amount of death-cum-retirement gratuity payable to the Government servant also reinforce this conclusion. Article 366 of the Constitution of India contains the definitions for the purpose of the Constitution and there in clause (17) is defined 'pension' to include gratuity as well. This definition of 'pension' in the Constitution also indicates that conceptually the term 'pension' includes gratuity. In Rule 3(1)(o) of the Central Civil Services (Pension) Rules, 1972, the term 'pension' is defined to include gratuity except when the term 'pension' is used in contradiction to gratuity, in consonance with the basic concept. The contention of the appellant was, therefore, rightly rejected by the Tribunal.

10. Consequently, the appeal is dismissed. In the circumstances of the case, there will be no order as to costs. Appeal dismissed.

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