

A JARNAIL SINGH
v.
SECRETARY, MINISTRY OF HOME AFFAIRS AND ORS.

DECEMBER 3, 1992

B [J.S. VERMA, YOGESHWAR DAYAL AND
N. VENKATACHALA, JJ.]

C *Central Civil Services (Pension) Rules 1972—Rule 9 r/w Rule 3(1)(o)—Whether prior to 1991 Amendment payment of gratuity could be withheld as punishment for recovery of loss sustained to government—Held, ‘pension’ ordinarily includes gratuity except when used in contradistinction to gratuity—1991 Amendment including gratuity only clarificatory—Constitution of India, Article 366 (17)—Central Civil Services (Pension) Rules, 1972, Rr.69(1)(c), 71 and 73.*

D **The appellant retired as Under Secretary in the Ministry of Home Affairs on 31.3.86. An inquiry was held in consultation with the Union Public Service Commission and the appellant was found to have committed serious irregularities. By order dated 26.5.88, the President of India directed that full monthly pension and the entire amount of death-cum-retirement gratuity otherwise admissible to the appellant be withheld on a permanent basis.**

E

The Central Administrative Tribunal rejected the appellant’s challenge to the order.

F **In the Supreme Court, notice was confined to the question whether, by way of punishment, the payment of gratuity also could be withheld for recovery of loss sustained by the government.**

G **The appellant contended that ‘pension’ in Rule 9 of the Central Civil Services (Pension) Rules 1972 did not include gratuity. He relied on the amendment made to Rule 9 in 1991 wherein gratuity was expressly included in Rule 9, and submitted that prior to the amendment Rule 9 could not be construed to confer the power of withholding gratuity in addition to pension.**

H **In reply it was contended that the 1991 amendment was merely**

clarificatory as was evident from the definition of 'pension' in Rule 3(1)(o) of the Rules. Reference was also made to Article 366(17) of the Constitution. A

Dismissing the appeal, the Supreme Court,

HELD: 1. From the definition of 'pension' in Rule 3(1)(o) of the Rules it is clear that ordinarily the word 'pension' wherever used in the Rules includes gratuity except where it is used in contradistinction to gratuity. [321-A] B

'Pension' as used in Rule 9(1) read with Rule 3(1)(o) includes gratuity, since it is not used in contradistinction to gratuity. [321-E] C

2. The amendment to Rule 9(1) by the Central Civil Services (Pension) Third Amendment Rules 1991 wherein the term 'pension' has been substituted by the expression 'pension or gratuity, or both' is merely clarificatory. [321-G] D

Rule 3(1)(o) was not brought to the notice of the court in *D.V. Kapoor's case*. [322-D]

D.V. Kapoor v. Union of India & Ors., [1990] 4 SCC 314 differed from *F.R. Jesuratnam v. Union of India*, [1990] Supp SCC 640, referred to. E

3. Rr. 69(1)(c), 71 and 73 of the Rules, and Article 366(17) of the Constitution also supports this view.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.5158 of 1992. F

From the Judgment and Order dated 31.7.1989 of the Central Administrative Tribunal, Delhi in Règn. No. O.A. 1326 of 1988.

S.S. Rana for the the Appellant.

Altaf Ahmad, Addl. Solicitor General, C.V.C. Rao and Hemant Sharma for the Respondents. G

The Judgment of the Court was delivered by

VERMA, J. Leave granted. H

A 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
 B
 C against the Tribunal's Order by special leave.

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
 D appeal is, therefore, confined to this question only.

The contention of learned counsel for the appellant is that the expression 'pension' in Rule 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,
 E the amendment made in these Rules in 1991 to expressly include 'gratuity' also in Rule 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,
 F the learned Additional Solicitor General contended that the amendment made in 1991 is merely clarificatory which is evident from the fact that the the word 'pension' as defined in Rule 3(1)(o) of these Rules includes 'gratuity'. Reference is also made to Article 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
 G accepted.

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

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

From this definition of the word 'pension', it 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.

Rule 9, to the extent it is relevant for our purpose, is an 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 xxx xxx"

Bearing in mind the definition of the term 'pension' in Rule 3(1)(o), the term 'pension' used in Rule 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 Rule 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 Rule 9(1) and not also the gratuity prior to the amendment of Rule 9(1) in 1991? In our opinion, the definition of 'pension' in Rule 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 Rule 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.

A Learned counsel for the appellant placed strong reliance on the decision in *D.V. Kapoor v. Union of India and Others*, [1990] 4 SCC 314. It was held in that case that the exercise of power by the President under Rule 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 Rule 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 Rule 9 prior to its amendment in 1991, was confined only to withholding pension and it did not extend to gratuity as well.

E Another decision relied on by learned counsel for the appellant is *F.R. Jesuratnam v. Union of India and Others*, [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 Rule 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 Rule 9(1) in 1991.

G 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 and 73 relating to recovery and adjustment of Government dues and the express provision in Rule 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 contradistinction to gratuity, in consonance with the basic concept. The contention of the appellant was, therefore, rightly rejected by the Tribunal.

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

U.R.

Appeal dismissed.