

A GOVERNMENT OF NCT (DELHI) AND ANOTHER

v.

K. SRIVATSAN

(Civil Appeal No. 8854 OF 2014)

B SEPTEMBER 16, 2014

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

*Central Civil Services (Pension) Rules, 1972: rr.9(2)(b)(ii), 9(6)(a) - Withholding of gratuity pending departmental proceedings - Held: r.9(2)(b)(ii) mandates that no departmental proceedings can be initiated after the retirement of an employee, unless a charge sheet has been issued within four years of the event of delinquency - r.9(6)(a), by a deeming fiction of law mandates that departmental proceedings will be deemed to have been initiated against an employee who has been placed under suspension - In the instant case, respondent was placed under suspension, for the first time, on 3.12.2007 - Although suspension order was revoked on 5.5.2008, he was again placed under suspension on 29.2.2008 - The said suspension order subsisted till the date of the respondent's superannuation, i.e., till 30.06.2008 - In view of that, the date of initiation of the departmental proceedings against the respondent, by a deeming fiction of law, would be the date when he was placed under suspension - Since the respondent was placed under suspension whilst he was still in service, r.9(2)(b)(ii) will have no applicability to the facts and circumstances of the case - The orders passed by the Tribunal and the High Court granting gratuity are set aside - Since the respondent had already been released his gratuity, rather than requiring him to refund the entire amount of gratuity, it is just and appropriate to require him to furnish a bank guarantee to the appellants which would be encashable, if he is found guilty of the charges levelled against him, on the culmination of the departmental proceedings.*

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The respondent-employee was charged of financial dereliction and favoritism and suspended by the appellant on 03.12.2007. However, the suspension order was revoked on 05.02.2008. He was again placed under suspension by order dated 29.02.2008. On 30.09.2008, the respondent attained the age of superannuation. On 27.06.2008, the appellant lodged a complaint to the CBI for initiating action against the respondent. After investigation, the CBI gave closure report on 28.1.2010 which was accepted on 15.10.2012. On 19.04.2012, the CBI recommended departmental action against the respondent and charge sheet was served on him on 07.05.2012.

The grievance of the respondent was that he was not paid gratuity after his superannuation. Aggrieved he successfully filed OA before the CAT. The appellant filed writ petition which was dismissed. Hence the appeal.

Allowing the appeal, the Court

HELD: 1. The issue of release of gratuity is regulated by Rule 9 of the Central Civil Services (Pension) Rules, 1972. A perusal of Rule 9(1) of the Pension Rules reveals, that gratuity can be withheld if "departmental or judicial proceedings" are pending against the concerned employee. Rule 9(2)(b)(ii) mandates, that no departmental proceedings can be initiated after the retirement of an employee, unless a charge sheet has been issued within four years of the event of delinquency. The determination rendered by the High Court led to the conclusion, that since no charge sheet was issued to the respondent, after his superannuation within the period contemplated by Rule 9(2)(b)(ii), it was no longer competent for the authorities to take departmental action against him, since more than four years had lapsed. [Paras 8 & 9] [839-D; 841-F-H; 842-A]

- A 2. Rule 9(6)(a) states that initiation of departmental proceedings will be assumed when the statement of charges is issued to an employee. In the instant case, it is not a matter of dispute that the charge sheet was issued on 19.04.2012. That being the position, it was asserted on behalf of the respondent, that the allegation of delinquency having occurred much before the period of four years from the date of issuance of the charge sheet, no departmental proceedings could have been initiated against the respondent within the meaning of Rule 9(2)(b)(ii) of the Pension Rules. Rule 9(6)(a), by a deeming fiction of law also mandates, that departmental proceedings will be deemed to have been initiated against an employee who has been placed under suspension. The respondent was placed under suspension, for the first time, on 3.12.2007. Event though the suspension order was revoked on 5.5.2008, the respondent was again placed under suspension, by a subsequent order dated 29.2.2008. The said suspension order subsisted till the date of the respondent's superannuation, i.e., till 30.06.2008. In view of that, the date of initiation of the departmental proceedings against the respondent, by a deeming fiction of law, would be the date when he was placed under suspension. Since the respondent was placed under suspension whilst he was still in service, it is apparent that Rule 9(2)(b)(ii) will have no applicability to the facts and circumstances of the present case. The orders passed by the Tribunal and the order passed by the High Court are set aside. [Paras 10, 11 & 13] [842-B-H; 843-A]
- G 3. Since the respondent had admittedly retired on attaining the age of superannuation on 30.06.2008, and has already been released his gratuity, rather than requiring the respondent to refund the entire amount of gratuity, it is just and appropriate to require him to furnish a bank guarantee to the appellants. If in addition to the
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gratuity, the respondent was paid any interest thereon, the same shall be refunded forthwith. The bank guarantee will be encashable, if the respondent is found guilty of the charges levelled against him, on the culmination of the departmental proceedings. If the respondent is found innocent, the bank guarantee shall be cancelled. [Para 14] [843-B-D]

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From the Judgment and Order dated 30.04.2012 of the High Court of Delhi at New Delhi in W.P.(C) No.2495/2012.

S.P. Singh, Kiran Bhardwaj, P.K. Dey (for B.V.Balaram Das) for the Appellants.

Mohan Parasaran, D.L. Chidananda (For Gaurav Dhingra) for the Respondent.

The Judgement of the Court was delivered by

**J.S.KHEHAR, J. 1.** Leave granted.

2. K.Srivatsan, the respondent in this instant appeal came to be inducted into the Delhi Administration Subordinate Service. The instant employment, for all intents and purposes, may be considered as his parent cadre. On 23.9.2003, he was transferred by way of deputation, to the Municipal Corporation of Delhi. In the Municipal Corporation of Delhi, he was appointed as an Administrative Officer, Land and Estate Department. In addition to the aforesaid responsibilities, the respondent was vested with the charge of Dealing Assistant in the Land and Estate Department.

3. Whilst the respondent was on deputation, charges of financial dereliction and favoritism came to be levelled against him. The Municipal Corporation of Delhi was of the view, that as a consequence of unauthorised decisions of the

A respondent, it had to suffer extensive financial loss running into crores of rupees. It is for the aforesaid reason, that the respondent came to be suspended by the Municipal Corporation of Delhi on 3.12.2007. The above order of suspension was, however, revoked on 5.2.2008.

B 4. The Municipal Corporation of Delhi, again placed the respondent under suspension by an order dated 29.2.2008. It thereupon passed an order dated 26.3.2008, ordering repatriation of the respondent to his parent cadre. On C 19.5.2008, the respondent's parent department, i.e., the Delhi Administration, informed the Municipal Corporation of Delhi, that the respondent could not be repatriated, as he had been placed under suspension. It is in the aforesaid circumstances, that the respondent remained with the Municipal Corporation of Delhi. He also remained under suspension. On D 30.06.2008, the respondent attained the age of superannuation. On that very day, his repatriation to the parent department was accepted.

E 5. On 27.06.2008, the Municipal Corporation of Delhi lodged a complaint to the Central Bureau of Investigation making allegations, inter alia, against the respondent, and recommended the initiation of action under the provisions of the Prevention of Corruption Act, 1988. The CBI registered the first information report, on the basis of the above complaint on F 30.06.2008. Having investigated into the matter, the CBI submitted its closure report on 28.1.2010. The aforesaid closure report was accepted on 15.10.2012. On 19.04.2012, the CBI recommended departmental action against the respondent. After the recommendations of departmental action G by the CBI, a charge sheet was issued to the respondent on 19.4.2012. The respondent received the aforesaid charge sheet on 7.5.2012.

H 6. The controversy in the present case hinges on the entitlement of the respondent to gratuity immediately after his superannuation on 30.06.2008. Since gratuity was not paid to him, he approached the Central Administrative Tribunal, New

Delhi (hereinafter referred to as the 'Tribunal') by filing Original Application No.1188 of 2011. The above original application came to be allowed by the Tribunal on 15.11.2011. A

7. Dissatisfied with the order passed by the Tribunal, the appellants before this Court preferred Writ Petition No.2495 of 2012 before the High Court of Delhi (hereinafter referred to as the 'High Court'). During the pendency of the aforesaid writ petition, the respondent filed Contempt Petition No.138 of 2012. It is not a matter of dispute, that consequent upon initiation of the above contempt petition, the respondent was released his gratuity. Writ Petition No. 2495 of 2012 was dismissed by a Division Bench of the High Court on 30.04.2012. The order dated 30.04.2012 has been impugned by the appellants before this Court. B C

8. Insofar as the issue of release of gratuity is concerned, it is not a matter of dispute that the same is regulated by Rule 9 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'Pension Rules'). Rule 9 is being extracted hereunder: D

9. Right of President to withhold or withdraw pension E

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity 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 service, including service rendered upon re-employment after retirement: F G

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld H

A or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

(2)(a)

B The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be  
C continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

D Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

E (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

F (ii) shall not be in respect of any event which took place more than four years before such institution, and

G (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted

H (4) In the case of 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 as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court."

9. A perusal of Rule 9(1) of the Pension Rules reveals, that gratuity can be withheld if "departmental or judicial proceedings" are pending against the concerned employee. Rule 9(2)(b)(ii) mandates, that no departmental proceedings can be initiated after the retirement of an employee, unless a charge sheet has been issued within four years of the event of delinquency. The determination rendered by the High Court leads to the conclusion, that since no charge sheet had been issued to the respondent, after his superannuation within the

A period contemplated by Rule 9(2)(b)(ii), it was no longer competent for the authorities to take departmental action against him, since more than four years had lapsed.

10. Insofar as the institution of the departmental proceedings are concerned, which would determine whether or not the concerned employee would be entitled to gratuity, reference may be made to Rule 9(6) of the Pension Rules. Rule 9(6)(a) leaves no room for any doubt, that initiation of departmental proceedings will be assumed when the statement of charges is issued to an employee. In the present case, it is not a matter of dispute that the charge sheet was issued on 19.04.2012. That being the position, it was asserted on behalf of the respondent, that the allegation of delinquency having occurred much before the period of four years from the date of issuance of the charge sheet, no departmental proceedings could have been initiated against the respondent within the meaning of Rule 9(2)(b)(ii) of the Pension Rules.

11. It is pertinent to mention that Rule 9 (6)(a), by a deeming fiction of law also mandates, that departmental proceedings will be deemed to have been initiated against an employee who has been placed under suspension.

12. Insofar as the present controversy is concerned, it is apparent that the respondent was placed under suspension, for the first time, on 3.12.2007. Event though the above suspension order was revoked on 5.5.2008, the respondent was again placed under suspension, by a subsequent order dated 29.2.2008. The said suspension order subsisted till the date of the respondent's superannuation, i.e., till 30.06.2008. In the above view of the matter, the date of initiation of the departmental proceedings against the respondent, by a deeming fiction of law, would be the date when he was placed under suspension. Since the respondent was placed under suspension whilst he was still in service, it is apparent that Rule 9(2)(b)(ii) will have no applicability to the facts and circumstances of the present case.

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13. In view of the above, the instant appeal is allowed, the orders dated 15.11.2011 passed by the Tribunal in Original Application NO. 1188 of 2011 and the order dated 30.04.2012 passed by the High Court in Writ Petition(C) No.2495 of 2012 are set aside. A

14. Since the respondent had admittedly retired on attaining the age of superannuation on 30.06.2008, and has already been released his gratuity, we are of the view that, rather than requiring the respondent to refund the entire amount of gratuity, it would be just and appropriate to require him to furnish a bank guarantee to the appellants. If in addition to the gratuity, the respondent was paid any interest thereon, the same shall be refunded forthwith. The aforesaid bank guarantee may be furnished within a period of two months from today. The bank guarantee will be encashable, if the respondent is found guilty of the charges levelled against him, on the culmination of the departmental proceedings. If the respondent is found innocent, the bank guarantee shall be cancelled. B  
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Devika Gujral

Appeal allowed.