

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21.05.2019
Pronounced on: 30.07.2019

+ W.P.(C) 3663/2017 & CM APPL. No. 16121/2017

J P MAHAJAN

..... Petitioner

Through Mr.Ishan Jain, Adv. with petitioner in person.

versus

GOVERNING BODY KIRORI MAL COLLEGE DELHI AND ANR
..... Respondents

Through Mr.Santosh Kumar, Adv. with Mr.Manav Gill, Adv. for R-1. Mr.Mohinder J S Rupal, Adv. for University of Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner is seeking prayer as under: -
 - a) Pass a writ/order/direction quashing the Impugned Order contained in letter dated 17.02.2017 issued by respondent no.1 whereby the petitioner's terminal/retirement benefits have been withheld;
 - b) Pass an order directing respondent no.1 to release the retirement benefits comprising Gratuity, Employer's contribution to CPF and

Leave encashment along with interest @ 18% per annum;

c) Pass a Writ/order/direction quashing the Charge-sheet dated 23.02.2017 whereby disciplinary proceedings have been initiated/instituted against the petitioner after his retirement by respondent no.1.

2. Brief facts of the case are that the petitioner was appointed as teacher w.e.f. 01.09.1973 in the Commerce Department of Kirori Mal College (hereinafter referred to as "*the College*"). On 28.02.1992, an agreement of service for College teachers was entered into between the petitioner and respondent no.1 with retrospective effect from 01.09.1973 i.e. the date of appointment of the petitioner.

3. In the month of November, 2012, the College received an invitation from the University Grants Commission (UGC) to act as Coordinating Institution for "*UGC-National Eligibility Test*" for December, 2012. Thereafter on 27.11.2012, UGC sent first grant of ₹75 lacs to the College for conducting the UGC Net Exams. Vide letter No. F No.6-17/12 (NET) dated 05.12.2012 UGC gave '*no objection certificate*' to the Principal of the College to open a separate Bank account for UGC NET exam. On 28.12.2012, the petitioner was appointed as Bursar of the College for a

period of three years. The acting Principal of the College and the petitioner, vide letter dated 07.06.2013 requested the Manager, Oriental Bank of Commerce to transfer ₹75 lacs to UGC-Net Centre Account from Kirori Mal College General Fund Account as the same was wrongly credited by UGC in the General Fund Account of the College.

4. On 05.07.2013, the petitioner asked for clarification from the Acting Principal of the College, Sh. S. P. Gupta, about his role as College Bursar in the whole UGC NET Examination Account. On 07.07.2013, the petitioner was informed by the Acting Principal that UGC NET Examination Account is not a College account and Bursar of the College is not a signatory to this account and, therefore, its accounts are to be submitted to UGC only.

5. Further case of the petitioner is that on 14.10.2014, Metropolitan Magistrate, Tis Hazari Courts, Delhi in CC No.896/1/2014 u/s 156(3) of Cr.P.C. titled as "***Mithilesh Kumar vs. S.P. Gupta***", directed the police to lodge an FIR against the petitioner and other accused persons, namely, Sh. S.P. Gupta, Sh. Rajinder Maan, Sh. Baleshwar Rai and Sh. Sheroj Singh for financial irregularities in the UGC NET Examination.

6. Accordingly, on 20.10.2014, police registered FIR No.204/2014 under sections 120-B, 409, 419, 420, 466, 468, 471 & 477-A of the Indian Penal

Code, 1860 and Section 13 (1) & (2) of the Prevention of Corruption Act, 1988 against the petitioner and the other co-accused.

7. The petitioner challenged the said order of the learned Magistrate by way of petition u/s 482 Cr.P.C. being CRL.M.C. 5815/2014 and the same is pending before this Court. However, on 26.03.2016, the petitioner received a show cause notice from the Principal of the College as to why action against him should not be taken for alleged unauthorized transfer of ₹75 lacs of UGC NET Exam. The petitioner sent his reply vide letter dated 01.04.2016.

8. On 30.04.2016, respondent no.1 constituted an Empowered Fact Finding Committee (EFFC) with a duty to work out a clear picture of admissible and inadmissible expenditure based on the genuineness or otherwise of the vouchers and also to report on the irregularities and violations of norms of General Financial Rules (GFR) in incurring the said expenditure out of grant of ₹1.5 crore by UGC for conducting UGC NET Examination for December, 2012 and June 2013. The EFFC submitted its report in the month of July, 2016 and found the petitioner guilty of alleged negligence in transferring the sum of ₹75 lacs from the General Fund Account of the College to the UGC NET Examination Account.

9. The EFFC report gave a finding that expenditure of an amount of

₹1,24,49,556/- cannot be allowed. Moreover, the report only pointed out alleged negligence on the part of the petitioner, but not guilty of any financial irregularity/embezzlement and no amount were shown to be recoverable from/against the petitioner.

10. Further case of the petitioner is that on 02.11.2016, the Principal of the College informed the petitioner about the date of retirement of the petitioner and on 02.01.2017, the petitioner requested the Principal of the College to instruct the College Accounts Department to initiate the process of fixation of quantum of terminal benefits of the petitioner.

11. On 10.01.2017, the petitioner submitted '*No Dues Certificate*' to the Principal of the College. On 31.01.2017, the petitioner attained the age of superannuation and retired from the services of the college as Associate Professor. However, the petitioner was informed by the Principal of the College vide letter No. 2105 dated 31.01.2017 that the decision with regard to release of the terminal benefits would be taken by respondent no.1 on 01.02.2017. Thereafter, the petitioner received the impugned letter dated 17.02.2017 from the Principal of the College informing the petitioner about the decision of respondent no.1 of withholding of retirement benefits of the petitioner. On 23.02.2017, the petitioner was served with the chargesheet by

respondent no.1 initiating the disciplinary proceedings. On 03.03.2017, the petitioner sent his explanation/written statement of defence to the chargesheet. In addition, the petitioner filed W.P.(C) No. 2097/2017 in this Court for quashing of letter dated 17.02.2017, however, the same was withdrawn with liberty to file afresh petition. Thereafter on 07.03.2017, the petitioner filed RTI application with the respondents seeking copy of the relevant rules/regulations under which actions against the petitioner has been taken. On 07.04.2017, the petitioner received ambiguous reply from the respondents. Respondent no.2 informing that CCS (Pension) Rules, 1972 are applicable insofar as withholding of retirement benefits are concerned, despite the fact that neither of the respondent is a pensionable establishment qua the petitioner.

12. Learned counsel appearing on behalf of the petitioner submitted that on the date of retirement of the petitioner on attaining superannuation on 31.01.2017, the disciplinary proceedings were not even initiated by respondent no.1 inasmuch as the chargesheet dated 23.02.2017 was served on the petitioner, post his retirement. There are no rules/regulations, etc. in force which empowers the said respondent to initiate/institute/continue disciplinary proceedings against the petitioner on his post retirement.

Moreover, there are no rules/regulations which empowers the respondents to withhold the retirement benefits of the petitioner.

13. He further submitted that the petitioner was retired from the services of respondent no.1 on 31.01.2017 after attaining the age of superannuation. The petitioner was served with chargesheet dated 23.02.2017 post retirement and admittedly, there was no disciplinary enquiry pending against the petitioner on the date of retirement.

14. The counsel for the petitioner has relied upon the case of ***Dev Prakash Tewari vs. U.P. Coop Institutional Service Board: (2014) 7 SCC 260***, whereby the Hon'ble Supreme Court has held as under: -

“In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefit of the Appellant. There is also no provision for conduction a disciplinary enquiry after retirement of the appellant and not any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

15. In view of the fact that there is no rule/regulation authorizing the respondent no.1 to initiate or even continue the disciplinary enquiry post

retirement of the petitioner.

16. Counsel for the petitioner further submitted that respondent no.1 in para 4 of its counter affidavit has admitted that petitioner is governed by the Payment of Gratuity Act, 1972 and, therefore, there is no question of application of provisions of Statute 28-A of the respondent no.2 University, as Section 14 of the Payment of Gratuity Act has a non-obstante clause, thus the Act overrides other enactment.

17. Section 14 of the Act is reproduced hereunder:

“14. Act to override other enactments, etc.-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

18. It is submitted, therefore, since the Payment of Gratuity Act has no provision for withholding the gratuity pending departmental enquiry, the same cannot be withheld by relying on any other enactment or rules. Further even otherwise, there is no question of applicability of the statute of University of Delhi to the petitioner as the same gives power to withhold payment of gratuity only in case of resignation, dismissal or removal for misconduct, insolvency, insufficiency. However, the petitioner retired from the services of the respondent no.1 after attaining the age of superannuation

in normal course of the duty performed by him without any imputation and hence, there is no question of removal for misconduct as no order of removal can be passed post retirement as there is no provision in the service rules of the respondents which continues to treat a retired employee a delinquent employee of respondent for the purpose of departmental enquiry.

19. To strengthen the case of above arguments, counsel for the petitioner has relied upon the case of ***Jaswant Singh Gill vs. M/s. Bharat Coking Coal Ltd. & Ors.: (2007) 1 SCC 66***, whereby the Hon'ble Supreme Court has observed as under: -

“The provision of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the company be negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event, the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rules 27 can be imposed.

Power to withhold gratuity contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee

retires. The only condition therefore is rendition of five years continuous service. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent No.1 or its holding company are not statutory in nature. The Rules in any event do not provide for withholding of retrial benefits or gratuity.”

20. Counsel for the petitioner further submitted that the reliance made by respondent no.1 on judgment of this Court in ***Prof. Marmar Mukhopadhyay vs. Union of India & Ors.*** decided on 18.07.2013 in W.P.(C) No. 2566/2007 is also not applicable to the facts of the present case as the said judgment clearly says that the departmental proceedings should be held only to determine the existence of conditions of Section 4(6) of the Payment of Gratuity Act, however, there is nothing in the chargesheet issued to the petitioner so as to show that the proceedings have been initiated post retirement for determining existence of conditions of Section 4(6) of the Payment of Gratuity Act, 1972 rather the same has been issued for establishing misconduct which is impermissible. Moreover, once the order of Hon'ble Supreme Court in ***Jaswant Singh Gill's case (Supra)*** has laid down that since no order of termination can be passed against an employee, once he retires from the services after attaining the age of superannuation and hence, gratuity cannot be withheld. Therefore, the reliance on the

judgment of this Court in *Prof. Marmar Mukhopadhyay (Supra)* is misconceived.

21. Further, the judgement of this Court in *Prof. Marmar Mukhopadhyay (Supra)* case runs counter to the law laid down by the Hon'ble Supreme Court in *State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava: (2013) 12 SCC 2010*, wherein it has held that in the absence of any power to withhold pension or gratuity the same cannot be done. The relevant para of the judgement of the Hon'ble Supreme Court is as under: -

“11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.”

22. Counsel for the petitioner further submitted that employer's contribution to the PF/CPF on the issues of rules of PF/CPF, respondent no.1 vide impugned letter dated 17.02.2017 withhold the employer's contribution to the CPF of the petitioner. Thus, respondent no.2 has not implemented the judgment of this Court in LPA No.647/2014, whereby the petitioner was held to be under the GPF cum pension scheme. The

respondent no.2 has preferred SLP against the said judgment, hence the petitioner as on the date is covered under CPF scheme, as per the withholding letter/order of the respondent.

23. It is further submitted that the reliance by respondent no.1 on Clause No.1(iv) in Appendix 'B' to Statute 28-A of the University of Delhi empowering deduction of CPF is misconceived inasmuch as Clause 1(iv) is applicable only in case of dismissal from service due to misconduct, insolvency or inefficiency. whereas the petitioner retired from the service of respondent no.1 after attaining the age of superannuation without any imputation and there is now no question of imposing any penalty of dismissal on the petitioner. This rule is fortified by the 2nd proviso to Clause 1(iv) which reads as *"Provided further that if any such order of dismissal is subsequently cancelled, the amount so deducted shall, on his reinstatement in the service be placed to his credit in the fund"*, which clearly shows that clause 1(iv) is not applicable to a retired employee because there would be no occasion of reinstatement of a retired employee. Further reliance of respondent no.2 on provision of GPF cum pension scheme are misconceived as the respondent no.1 has withhold CPF and not GPF.

24. Learned counsel appearing for the petitioner submitted that

respondents have not shown any provision for withholding leave encashment, hence there is no occasion for the respondents for withholding the same.

25. Learned counsel appearing on behalf of respondent no.1 submitted that employees of the University get their retirement benefits as per the provisions of Statute 28-A of the University. As per the Section 18 of Statute of University of Delhi no gratuity is payable by the University in case of dismissal or removal for misconduct. Relevant paragraph of Statute is being reproduced as under: -

*“18. (i) xxxxxxxx
(ii) xxxxxxxxxxxx
(iii) No gratuity shall be payable on resignation from the service of university or the dismissal or removal from it form misconduct, insolvency, inefficiency not due to age.”*

26. It is further submitted that the Statute of the University also empowers the University to deduct the entire amount of University contribution if subscriber is dismissed from the service for misconduct. Relevant paragraph of the Statute is being reproduced as under: -

*“APPENDIX B TO STATUTE 28-A
The vice-chancellor may direct the deduction therefrom and payment to university of (iv) all the amounts representing such contribution and interest if the subscriber is dismissed from the service due to misconduct, insolvency or inefficiency”*

27. Learned counsel for the respondent no.1 submitted that in case of *State of Maharashtra vs. M.H. Mazumdar: (1998) 2 SCC 5*, it is held by Hon'ble Supreme Court that if rules empower the organization to deduct and withdraw the retirement benefits, then disciplinary proceedings may be initiated or continued even after retirement.

28. This Court also held in case of *Prof. Marmar Mukhopadhyay (Supra)* held that if the Payment of Gratuity Act is applicable, then the department may initiate or continue with departmental proceedings, even after retirement of delinquent employee under Section 4(6) of the Payment of Gratuity Act.

29. The Division Bench of this Court in the case of *University of Delhi vs. Kanwar Kumar Gambhir: (2015) 222 DLT 453* has held that Payment of Gratuity Act, 1972 is applicable to employee of University of Delhi. Accordingly, the respondent has jurisdiction to withhold the retirement benefit of the employee and initiate and continue with departmental enquiry even after retirement.

30. 30. Ratio of *Dev Prakash Tewari (Supra)* is not applicable to the facts of present case as in the said case, the Hon'ble Supreme Court has held that in absence of the rules or reduction in the enquiry cannot be continued

ever after the retirement. In the present case, the rules specifically empower the respondent to withhold gratuity and contribution to CPF, therefore, enquiry may be initiated/continued even after retirement. Moreover, the ordinance XII/XVIII of University of Delhi has been mentioned in the chargesheet itself.

31. Learned counsel appearing on behalf of respondent no.2-University of Delhi submitted that the confirmation of the University has been constituted by an Act of Parliament called University of Delhi Act, 1922 as amended from time to time. Section 28 of the said Act provides for Statutes which in turn provides for the Constitution of the pension or provident fund and the establishment of an insurance scheme for the benefits of the officers, teachers and the other employees of the University and its Colleges.

32. Statute 28-A provides for General Provident Fund-cum-pension-cum-Gratuity scheme under its Appendix-A. Clause 14 under the heading pension of the said appendix-A to Statute 28-A provide as under: -

(B) The departmental proceedings, if not instituted while the University employee was in service, whether before his retirement or during his re-employment:

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

Chancellor.

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

(iii) shall be conducted by such authority and in such place as the Vice-Chancellor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from services could be made in relation to the University employee during his service.

33. Also, in this same clause 14(i) of Appendix A to statute 28-A it is provided as under: -

(i) The Vice-Chancellor reserve to himself the right of withholding for specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the University, 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.

34. In view of the above provisions, the teachers of the Colleges affiliated to the University of Delhi to whom these provisions are applicable are

governed accordingly. Moreover, Ordinance XII refers specifically to College appointed teachers with regard to their terms of service and are governed under Annexure-II to the Ordinance above, vide which the teacher concerned has to execute the bond of agreement of the services with the Governing Body of the College which is also the appointing/ Disciplinary Authority. Further Ordinance XVIII also provides for condition of service of teacher. Hence the Petitioner who admittedly served as teacher of Kirori Mal College which is maintained college of University of Delhi is governed by the University of Delhi Act, Statutes and ordinances as is amenable to the same.

35. In *M. Narasimachar vs. The State of Mysore: (1960) 1 SCR 981* and *State of Uttar Pradesh vs. Brahm Datt Sharma & Anr.: (1987) 2 SCC 179*, similar rules authorizing the Government to withhold or reduce the pension granted to the Government servant were interpreted and the Hon'ble Supreme Court held that merely because a Government servant retired from service on attaining the age of superannuation, he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the Government is entitled to withhold or reduce the pension granted to a Government servant.

36. In view of above, this Court in *Prof. Marmar Mukhopadhyay (Supra)* has observed that the provisions of Section 4(6) will have to be read in the same manner as was done by the Supreme Court with reference to Bombay Civil Services Rules 188 and 189 in the case of *M.H.Mazumdar (supra)* i.e. entitling an employer to continue with the departmental proceedings even after retirement of the employee.

37. It is further observed that there is nothing in the applicable provision of Section 4(6) of the aforesaid Act which brings to an end automatically the continuation of an enquiry against a charged employee merely on account of superannuation/retirement.

38. The provision of Section 4(6) also does provide entitlement of forfeiture on account of loss or damages caused by an employee and which entitlement does not bear any co-relation to the incidence of retirement of an employee. because nothing in Section 4(6) of the Payment of Gratuity Act at all provides that on retirement there is disentitlement to continue the enquiry/departmental proceedings against a superannuated employee.

39. The provisions of Section 4 (6) provides that once the services have been terminated i.e. in effect can be terminated if employee was in service or the employee being found guilty of act or wilful omission or negligence

causing any damage or loss or destruction of property belonging to the employer, then, forfeiture can be made of the gratuity, and if that be so, this provision does not in any manner prohibit continuing of the departmental enquiry after superannuation of the charged official/retiring employee. Accordingly, held that there is no disentitlement of the employer-organization to continue with the departmental enquiry against the charged official because the relevant provision being Section 4(6) of the Payment of Gratuity Act, 1972 does not bring to an end an enquiry which is commenced during the employment, and in fact, the said provision 4(6) entitles commencing of an enquiry even after retirement of a charged official, and which is also the ratio of *M.H.Mazumdar (supra)*.

40. Further held that the provision of Section 4(6) of the Payment of Gratuity Act to entitle the employer-organization not only to continue a departmental enquiry after superannuation of an employee, but also to commence departmental proceedings against the employee even after his superannuation/retirement, subject to the fact that such proceedings are not disciplinary proceedings but are enquiries/departmental proceedings to determine the existence of conditions of Section 4(6) of the Payment of Gratuity Act.

41. In view of above discussion and the law discussed above, I find no merit in the present petition and the same is, accordingly, dismissed with no order as to costs.

CM APPL. No. 16121/2017

42. In view of the order passed in the present writ petition, the application has been rendered infructuous and is, accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 30, 2019
ms/ab

सत्यमेव जयते