

AFR

Neutral Citation No. - 2024:AHC:188201-DB

Court No. - 29

Case :- SPECIAL APPEAL No. - 906 of 2024

Appellant :- Buddha Prakash Sachan

Respondent :- State Of U.P. And 7 Others

Counsel for Appellant :- Yashpal Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per: Dr Yogendra Kumar Srivastava, J)

1. Heard Sri Yashpal Yadav, learned counsel for the appellant and Sri Ratandeep Mishra, learned Standing Counsel for the State-respondents.
2. The instant intra-Court appeal is directed against the judgment and order dated 21.8.2024 passed by a learned Single Judge of this Court in Writ-A No.9991 of 2024 (*Buddha Prakash Sachan vs. State of Uttar Pradesh*), whereby the writ petition has been disposed of, with certain observations.
3. The records of the case indicate that the writ petition had been filed by the petitioner-appellant, seeking quashing of letter dated 22.3.2023 issued by the Deputy Director (Agricultural Development), Jalaun at Orai, withholding a sum of Rs.4,46,880/- out of the gratuity payable to the petitioner. A challenge was also raised to charge-sheet dated 26.4.2024 issued to the petitioner. The grievance, which had been sought to be raised by the petitioner, was that he has not been paid the balance of his gratuity, which is a total sum of Rs.14,17,251/- after deducting the sum of Rs.4,46,880/-, i.e. even if the order dated 22.3.2023 is to be upheld.

4. The argument which was sought to be put forward was that while in service, no disciplinary proceedings were initiated against the petitioner marked by the issue of a charge-sheet or the petitioner being placed under suspension pending inquiry. It was pointed out that the petitioner had retired on 30.6.2022, whereas the charge-sheet was issued to him on 26.4.2024, to contend that no disciplinary proceedings against the petitioner could be initiated after his retirement, without the Governor's sanction under Article 351-A of the Civil Service Regulations.

5. During pendency of the proceedings before the writ court, the District Magistrate, Jalaun filed his personal affidavit, wherein it was averred as follows:

"4. That in compliance of the aforesaid order dated 07.08.2024 passed by this Hon'ble Court, it is humbly submitted that the petitioner was not suspended pending enquiry in connection with the matter regarding which, the chargesheet dated 26.04.2024 has been issued. It is further submitted that, a sanction of Hon'ble Governor under Article 351-A of the Civil Service Regulation was granted on 23.11.2023 pursuant to the letter dated 16.05.2023 sent by the Director, Agriculture, U.P. Lucknow. For kind perusal of this Hon'ble Court, a photo stat copy of the letters dated 23.11.2023 & and sanction letter dated 16.05.2023 are being filed herewith and marked as ANNEXURE-1 & 2 to this affidavit."

6. Along with the affidavit, a copy of the memo dated 23.11.2023 issued by the Special Secretary to the State Government and addressed to the Director (Agriculture), UP, Lucknow, conveying the Governor's sanction under Article 351-A of the Civil Service Regulations, sanctioning the holding of disciplinary proceedings against the petitioner, post retirement had been appended. The order also imposed an embargo on the payment of the petitioner's post retiral benefits.

7. In view of the aforesaid factual position having been placed, with regard to the sanction having been granted by the Governor, the writ Court held that the petitioner had no case to canvass regarding his claim for quashing of the charge-sheet or in regard to payment of the gratuity-

balance or whole. It was observed that the petitioner would be entitled to his provisional pension which he was receiving.

8. The learned Single Judge, while disposing of the writ petition, further observed that the inquiry proceedings initiated against the petitioner will be concluded within a period of three months after giving due opportunity to him. It was also emphasised that in the disciplinary proceedings, it would be for the State-respondents to prove the charges against the petitioner by producing evidence both oral and documentary.

9. The principal ground, which is sought to be urged in support of the appeal, is that Article 351-A of the Civil Service Regulations deals exclusively with 'pension' which may be withheld or withdrawn, in part or whole, permanently or temporarily, and it does not contain any provision on the basis of which, an embargo can be imposed on the retiral funds/benefits of a government employee.

10. Counsel for the appellant-petitioner has sought to argue that withholding of balance of the gratuity amount due to him is wholly illegal, and the learned Single Judge has erred in declining to grant relief prayed for in the writ petition.

11. In response to the aforesaid submission, counsel appearing for the State-respondents has supported the impugned judgment and order of the learned Single Judge, by submitting that no gratuity would be payable to a government servant during pendency of disciplinary proceedings inasmuch as entitlement to full pension/death-cum-retirement gratuity to a government servant is subject to the outcome of the disciplinary proceedings.

12. The procedure for granting pension to a government servant is regulated by the provisions of the Civil Service Regulations, which have statutory character, and serve as a comprehensive code regulating conditions of service of civil servants relating to pay, pension, leave, travelling allowances etc. Article 348-A provides that pension shall be

granted subject to conditions contained in Chapter XXI of the Regulations. Article 353 lays down that no pension shall be granted to an officer dismissed or removed from service for misconduct, insolvency or inefficiency. The claim of pension is determined by length of service, as provided by Articles 474 to 485. Full pension is admissible under the Regulations/Rules not as a matter of course but only if the service rendered by the government servant is approved.

13. The question whether the term ‘pension’ would include ‘gratuity’ came to be examined by a Three Judge Bench of the Supreme Court in **Jarnail Singh vs. The Secretary, Ministry of Home Affairs and others**¹ and referring to Rule 3 (1) (o) of the CCS (Pension) Rules, 1972, it was held that 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.

14. We may notice that Article 366 of the Constitution assigns the meaning of certain expressions, and in terms of clause (17) thereof, ‘pension’ is defined to include ‘gratuity’ as well. Article 41 of the Civil Service Regulations defines the term ‘pension’ to include ‘gratuity’, except when the terms ‘pension’ is used in contradistinction to gratuity. Article 474 of the Civil Service Regulations read with Article 41 also indicates that the term ‘pension’ would include ‘gratuity’ in reference to Article 351-A.

15. Reference may had to the Bench decisions in **Shri Pal Vaish vs. U P Power Corporation Limited and another**² and **State of UP and others vs. Jai Prakash**³, wherein the word ‘pension’ was held to include ‘gratuity’.

16. A recent Full Bench of this Court in **Shivagopal vs. State of UP and others**⁴, after observing that ordinarily the word ‘pension’ wherever

1 AIR 1994 SC 1484

2 2009 (9) ADJ 45 (DB)

3 2014 (1) ADJ 207

4 2019 (5) ADJ 441

used in the Civil Service Regulations includes 'gratuity', except when the term 'pension' is used in contradistinction to 'gratuity', has held that the term 'pension' would include 'gratuity' particularly in Articles 351, 351-A of the Civil Service Regulations. In terms of Article 351 of the Civil Service Regulations, right and entitlement of the government servant to pension and gratuity is subject to future good conduct, which is an implied condition for ever grant of pension.

17. The State Government under Article 351 is conferred with the power of withholding or withdrawing pension or any part of it, if the pensioner be convicted of 'serious crime' or be guilty of 'grave misconduct'.

18. As per terms of Article 351-A, the Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement. For ease of reference, Article 351-A is reproduced below:

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

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

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

[Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission].

Explanation-For the purposes of this article-

(a) Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court ; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil court.

Note- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

19. Explanation to Article 351-A clarifies that departmental proceedings shall be deemed to have been instituted when the charges are framed against the pensioner or the officer has been placed under suspension from an earlier date, on such date.

20. The proviso to Article 351-A relates to initiation of disciplinary proceedings or judicial proceedings against a government servant after retirement. In regard to the departmental proceedings, clause (a) of the proviso stipulates that the departmental proceedings, if not instituted

while the officer was on duty either before retirement or during re-employment, shall not be instituted, except:

- (i) with the sanction of the Governor;
- (ii) it shall be in respect of an event which took place not more than four years before the institution of the proceedings; and
- (iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

21. We may also take notice of Article 351-AA, which provides entitlement to provisional pension to a government servant, as provided under Article 919-A, who retires on attaining the age of superannuation or otherwise against whom departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement. Article 351-AA reads as follows:

"351-AA. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned."

22. Article 919-A of the Civil Service Regulations, which was also inserted alongwith Article 351-AA, provides that provisional pension, admissible to a government servant in cases referred to in Article 351-AA, shall be authorized for the period commencing from the date of retirement upto and including the date on which after conclusion of departmental or judicial proceeding or the enquiry by the Administrative Tribunal, as the case may be, final orders are passed by the competent authority. Article 919-A reads as under:

"919-A. (1) In case referred to in Article 351-AA the Head of Department authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date and

retirement up to the date immediately preceding the date on which he was placed under suspension.

(2) The provisional pension shall be authorized for the period commencing from the date of retirement up to and including the date on which after conclusion of departmental or judicial proceeding or the enquiry by the administrative Tribunal; as the case may be, final orders are passed by the competent authority.

(3) No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings, judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

(4) Payment of provisional pension made under clause (1) above shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceeding or enquiry referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or withheld either permanently or for special period."

23. Clause (3) of Article 919-A contains a clear stipulation that no death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings, judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

24. The legal position in this regard was examined by the Full Bench of this Court in **Shivagopal** (supra) and while considering the question as to whether a government servant/pensioner is entitled to full pension/death-cum-retirement gratuity before conclusion of disciplinary proceedings or judicial proceedings and final orders being passed by the competent authority, it was observed as follows:

“56. Sub-Clause (3) to Article 919-A is negatively worded, it categorically mandates that gratuity shall not be paid to the government servant until conclusion of the departmental/or judicial proceedings or enquiry by the Administrative Tribunal. On plain reading, it is clear that in the event of pending proceedings/enquiry there is an embargo mandating that government servant shall not be entitled to gratuity until conclusion of the pending proceedings and final orders being issued thereon by the competent authority. That what was subservient/inert in the definition of pension that "pension includes gratuity" (Article 41) was made explicit and in contradiction to pension that gratuity is not payable to government

servant pending disciplinary proceedings/or judicial proceedings, but the provision {Sub Clause (1)} is positively worded entitling the government servant provisional pension equal to maximum pension, admissible to the government servant on the basis of the qualifying service up to the date of retirement or suspension as the case may be. The provision (Sub-clause (3)) employs the word 'shall' thus making it mandatory. Article 351-AA uses the word 'may', thus leaving it to the competent authority to sanction provisional pension. We have not come across any provision in the Civil Service Regulations that prohibits or imposes restriction on sanction of provisional pension. The government servant in our opinion is entitled to provisional pension pending proceedings/enquiry.

57. Article 351-AA and 919-A get invoked in the event of pending departmental/judicial proceedings or an enquiry by Administrative Tribunal against the government servant. As against Article 351 and 351-A is invoked upon the outcome of the disciplinary/judicial proceedings. It follows that where the government servant retires on attaining the age of superannuation or otherwise and against whom any departmental/judicial proceedings or any enquiry by the Administrative Tribunal is pending on the date of retirement or to be instituted after retirement, the following consequences flow: (i) government servant is entitled to provisional pension equal to maximum pension; (ii) no gratuity is payable pending departmental/judicial proceedings or the enquiry; (iii) full pension (commutation of pension) and gratuity is payable upon conclusion of the pending departmental/judicial proceedings/enquiry and final order being passed thereon by the competent authority.

... ..

63. In view of the specific provision viz. Article 351-AA and 919-A, a government servant against whom disciplinary/judicial proceedings is pending on retirement or to be instituted, the government servant is not entitled to gratuity, but to provisional pension subject to the outcome of the proceedings/enquiry. It is not open to the government servant at that stage/or during pendency of the disciplinary/judicial proceedings to contend that since allegations of 'grave misconduct' or pecuniary loss to the Government, prima facie, is not made out from the charge(s), therefore, he is entitled to full pension and gratuity. The stage to entertain such a plea has not arisen yet.

... ..

65. We accordingly hold that during pendency of proceedings/enquiry government servant shall be sanctioned provisional pension and no gratuity is payable for the period upto conclusion of the proceedings/enquiry and orders being passed thereon by the competent authority.

Stage at which government servant is entitled to full pension/gratuity:

66. The question that arises is whether the government servant/pensioner can seek intervention at a stage before the competent authority has had the occasion to pass appropriate order upon conclusion of the disciplinary/judicial proceedings/or enquiry by Administrative Tribunal. We are of the opinion that such a course is not available to the pensioner and if allowed would entail serious consequences, otherwise not mandated by the Regulations. It is not open to the government servant/pensioner, in view of the conjoint reading of the Articles to preempt the pending proceedings/enquiry by walking away with pension/gratuity without awaiting the outcome/conclusion of the disciplinary/judicial proceedings/enquiry. The competent authority upon conclusion of the proceedings would be in a position to apply its mind on the outcome of the proceedings/enquiry and pass order thereon either withholding/withdrawing/reduction of pension or directing recovery of pecuniary loss from pension under Articles 351/351-A of the Civil Service Regulations.

... ..

68. The principle of statutory interpretation requires that while interpreting a provision, the scope/ambit and impact of any other provision or the same provision should not be rendered inoperative or made redundant. It, therefore, follows that in cases where a government servant is allowed to receive full pension/gratuity during pendency or before conclusion of the proceedings, the competent authority is denuded of its power to take a call thereon upon conclusion of the proceedings/enquiry. The decision/order required to be passed by the competent authority upon conclusion of the proceedings may include: (i) whether misconduct tantamounts to grave misconduct; (ii) whether conviction is of serious crime; (iii) judicial proceedings includes civil cases involving the government servant which may or may not involve 'grave misconduct', therefore, the decision thereon is set at naught; (iv) a government servant under suspension at the time of retirement walks away with full pension, treating the period of suspension computable towards pension, without the competent authority having an occasion to pass order, whether the period of suspension would count towards computation pension or not, etc.

69. It, therefore, follows that the stage of passing appropriate order under Article 351/351-A by the competent authority is mandated at the conclusion of the proceedings and certainly not at the stage during pendency of the disciplinary/judicial proceedings. The cause to the pensioner would arise after the order is passed by the competent authority upon conclusion of the proceedings and findings returned thereon. In the opinion of the competent authority if the pensioner is guilty of grave misconduct, or convicted of serious crime, or caused pecuniary loss, the

consequence under Article 351/351-A would follow. The government servant/pensioner would have to wait until such an order is passed before claiming full pension and gratuity. In other words the cause to the government servant of taking remedy would arise after order of the competent authority is passed upon conclusion of the proceedings/enquiry and not during pendency of the proceedings/enquiry.

70. It is not open to the government servant to contend that he is facing 'hardship' due to the prolonged pendency of the proceedings. The Regulations entitles the government servant provisional pension 'equal to maximum pension' (Article 919-A(1)) during the period until conclusion, thereby, taking care of the likely hardship, and that what is postponed is commutation of pension and gratuity. ”

25. The conclusions drawn by the Full Bench in regard to the question, which had been referred to, were recorded in the following terms:

“78. In view of the foregoing discussions, we arrive at the following conclusions:

(i) Future good conduct is implied condition of ever grant of pension. Full pension is not to be given as a matter of course, or unless the service rendered has been thoroughly satisfactory. (Article 351/351-A)

(ii) Article 351 and/or 351-A can be invoked by the State Government or the Governor, as the case may be, if the pensioner (a) be convicted of serious crime; (b) be guilty of grave misconduct (c) caused pecuniary loss to the government in service. The power can be exercised in either of the eventualities. The action thereunder is punitive.

(iii) Pendency of disciplinary/judicial proceedings on the date of retirement, or instituted after retirement, provisional pension equal to maximum pension as mandated under Article 919-A may be sanctioned to the government servant for the period upto conclusion of the proceedings. (Article 351-AA/Article 919-A(1)/(2))

(iv) No gratuity is payable to the government servant during pendency of disciplinary/judicial proceedings/enquiry by Administrative Tribunal, until conclusion of the proceedings/enquiry and orders being passed thereon by the competent authority. [Article 919 A(3)]

(v) The Regulations mandates that government servant is entitled to provisional pension equal to maximum pension during pendency of the proceedings until conclusion. The Regulations does not mandate the entitlement of full

pension/gratuity on the ground of 'hardship' being faced by the pensioner pending proceedings.

(vi) The nature of the charge/allegations against the government servant cannot be gone into during pendency of the proceedings. The government servant whether guilty of 'serious crime' and/or 'grave misconduct' in the opinion of the competent authority can be assessed/considered while passing final orders upon conclusion of the disciplinary/judicial proceedings.

(vii) On combined reading of Article 351, 351-A, 351-AA and 919-A, the impact on pension/gratuity would arise after the competent authority has had the occasion to consider and issue final orders upon conclusion of the proceedings. The cause to the government servant arises thereafter and not at the stage pending proceedings/enquiry.”

Emphasis supplied.

26. Based on the aforesaid conclusions, the Full Bench answered the question with regard to the entitlement to a government servant/pensioner to full pension/death-cum-retirement gratuity by stating that such entitlement is subject to the outcome of the disciplinary proceedings/judicial proceedings and issue of final orders thereon by the competent authority.

27. Having regard to the foregoing discussions and taking note of the fact that the legal position with regard to the entitlement to a government servant/pensioner to full pension/death-cum-retirement gratuity before conclusion of disciplinary proceedings/judicial proceedings and final order being passed thereon, we are of the view that the judgment of the learned Single Judge insofar as it declines to grant of relief in regard to payment of balance amount of gratuity during the pendency of the disciplinary proceedings and observing that the petitioner is entitled to his provisional pension, which he is receiving, does not call for any interference.

28. The appeal lacks merit and is, accordingly, **dismissed**.

Order Date :- 29.11.2024

RKK/-