

**BEFORE THE CENTRAL GOVERNMENT LABOUR COURT NO.2,
MUMBAI**

PRESENT

M.V. DESHPANDE
Presiding Officer/Judge

APPLICATION NO. LC-2/8 of 2018

PARTIES:-

Shri Pandurang Vithal Kevane,
Residing at
Wagholi, Post Kamarle,
Tal. Alibag,
Dist. Raigad (Maharashtra) : **APPLICANT**

V/s.

The Chief General Manager,
Telecom Factory, BSNL,
Mumbai Deonar,
Mumbai No. 88. : **OPP PARTY**

APPEARANCES:

FOR THE APPLICANT : Mr. A.K. Jain
Representative

FOR THE OPPOSITE PARTY : Mr. V.M. Gadkar,
Representative

Mumbai, dated the 31st January, 2020.

JUDGMENT

1. This is an application filed by the Applicant under Section 33 C (2) of the Industrial Disputes Act, 1947.

2. The applicant concerned workman has contended that the employer has issued letters dt. 17.7.18 and 31.8.18 and in that letter it is mentioned that the amount of Rs.5840/- has been paid on 23.12.06 towards GPF but as per settlement dt. 7.8.08 issued to him by the employer it is mentioned that he is entitled to Rs.9486/- as on 7.4.08 and therefore he is entitled to interest on the above amount which comes to Rs.10,000/- + Rs.9486/- which comes to Rs.19486/-.

3. It is then contention of the applicant that he was having an amount of Rs.6409/- in the year 2000 under CGEIS and therefore he is also entitled to interest on the said amount which comes to Rs.10,000/- and therefore he is entitled to Rs.19409/-.

4. It is then contention of the applicant that as per record dt. 14.6.96 the annual leave of 28 days was on his credit from 4.6.96 to 14.7.2000, there would be 166 days of leave in his credit and therefore considering the leave of 166 days, he is entitled to Rs.1,80,000/- as leave salary.

5. It is then case of the applicant that in view of judgment of the Hon'ble S.C. in case of D.S. Nakara V/s. Union of India – LAWS [SC] – 1982 – 12 – 17, he is eligible for pension & gratuity. Therefore he has filed application before RLC which was disposed off and thereafter he approached Dy. CLC on 29.10.18 by issuing letter.

6. According to the applicant he is blood cancer patient. His son is mentally retarded having disability of 80%. Employer in order to harass him has deprived his legal rights and dues. He has been deprived of getting medical expenses which he has incurred. He is therefore asking

for giving directions to the employer to give him all the legal dues, leave salary with interest @ 12% p.a. along with cost of Rs.25,000/-.

7. Opponent the employer filed say and opposed the application on the ground that applicant's claim towards balance of GPF Rs.5840/- has been paid to the applicant including interest on 8.12.16 by the principal CCA, DOT vide office Memorandum No. CCA/NY/CIRCLE/GCP/FP/23 dated 23.12.16. There is no relevancy of GPF balance of Rs.9486/- as on 31.3.08 since the applicant was already removed from the services on 14.7.2000. As such the applicant is not entitled to any arrears of GPF.

8. It is then contended that the applicant's claim for CGEGIS has been settled by CCA DOT / MY CIRCLE vide sanctioned No. CCA/MH/MUM/CGEGIS/PVK/4 dated 21.12.18 for Rs.7652/-. There is no leave balance for the period from 1.1.94 to 17.9.96 since the applicant had availed the leave for 28 days in 3 spells of 6 days, 8 days & 14 days respectively. The applicant was absent from duty for the period from 18.9.96 to 14.7.2000 i.e. date of removal. Applicant is not entitled to leave for this period. He is not entitled for payment of leave salary. As per Govt. of India, Dept. of Personnel & Training O.M. No. 2011/08/2013-Estt. [AL] issued by the Under Secretary, the Rule with regard to 'Leave Encashment on Suspension/Dismissal/Removal' mentioned A page – 5, Sl. No.2 is reproduced below:

“A government servant, who is dismissed/removed from service, ceases to have any claim to leave at his credit from

the date of such dismissal, as per rule 9 (1) of CCS Leave Rules, Hence he is not entitled to any leave encashment.”

9. It is then contended by the opponent that the applicant has been removed from service of DOT. Hence as per rule 24 read with rule 14/1 of CCS Pension Rules, 1972 he is not eligible for pension and gratuity. He is also not eligible for CGHS facility since he has been removed from service of DOT. It is thus contended that the application is liable to be dismissed.

10. Following points arise for my determination findings thereon for the reasons to follow are as under:

Sr. No.	Points	Findings
1	Whether the applicant is entitled to Pension, Gratuity, Leave Salary with interest as is claimed for along with interest @ 12% p.a. ?	No
2.	What order ?	As per final order

Reasons

Point No.1 & 2.

11. From the facts, it appears that the applicant is removed from service on 14.7.2000 after holding departmental enquiry against him. He challenged the dismissal. However, the decision of the opponent as

regards removal of the applicant was upheld by the CGIT-1. It was also upheld by Hon'ble H.C. and Hon'ble S.C. However, it appears that the Hon'ble S.C. has directed the respondent No.1 [Opponent] to pay the applicant [petitioner] the GPF and all other dues as may be admissible in law. The fact remains that his removal from the services has been upheld by the Hon'ble H.C. and Hon'ble S.C. and Hon'ble S.C. in the order has clearly stated that there is no legal & valid ground for interference. The question therefore remains is only in respect of GPF and other admissible dues. In this respect, it is very much clear from the letter dt. 31.8.18 of the Chief Account Officer, CGMTF Mumbai that as per directions given by the Hon'ble S.C. following action has been taken by the office verified from relevant records of the employee and it is mentioned as below:

1. **GPF Final Payment** of Rs.5840/- including interest as on date of Removal paid by Sr. AO(GPF), O/o Pr. CCA, DOT, Mumbai – 54 vide their memo No. CCA/MH/Circle/GPF/FP/23 dated 23.12.16 on 08.12.16 vide Vr. No. 5488/8.12.16. The GPF ledger of the employee is maintained by Pr. CCA, DOT, Mumbai who is paying authority for making GPF payment.
2. **CGEGIS Claim** of Rs.6409/- duly sanctioned by this office and sent to Pr. CCA, DOT, Mumbai – 54 vide this office No. TFM/BSNL/CA/P.V.Kevne/2016-17/11 dated 17.10.2016 for releasing payment at their end.

3. **Leave encashment** :- On verification of Leave Account there is no Leave balance in Leave account of the employee on the date of removal of service i.e. on 14.07.2000.

4. **Pension & Gratuity** :- As per Rule (24) of CCS Pension Rules 1972, dismissal or removal of a Government Servant from Service or post entails forfeiture of his past service, as such the employee is not eligible for pension and gratuity.

12. Even then, it is the case of the concerned applicant that there is no compliance of the order of the Hon'ble S.C. since he has not received the dues as may be admissible in law. According to him, he is entitled to pension as it is hard earned benefit which accrues to employee and is in the nature of property. The right to property cannot be taken away without due process of law as per article 300A of the rules of the Constitution. In the context, he seeks to rely on the decision in case of State of Jharkhand & Ors. V/s. Jitendra Kumar Srivastava – Civil Appeal No. 6770 / 2013. In para – 14 of the said judgment it has been observed that

“A person cannot be deprived of his pension without the authority of law which is constitutional mandate in enshrined in article 300A of the Constitution. As such the attempt to take away a part of the pension or gratuity or even leave encashment without any statutory provisions and under the umbrage of

administrative instructions cannot be countenanced.”

13. In that case the question which arose for consideration is as to whether in the absence of any provisions in the pension rules the State Govt. can withhold a part of the pension and / or gratuity during the pendency of departmental and criminal proceedings. The respondent was workman in that case in the Govt. of Bihar, was prosecuted in 2 criminal cases alleging serious financial irregularities during the years 1990-91 and 1991-92. The proceedings were pending on attaining the age of superannuation. The workman respondent retired from the post of Artificial Insemination Officer, Ranchi on 31.8.2002. 90% provisional pension was sanctioned to him and remaining 10% pension and salary of his suspension period was withheld pending outcome of the criminal cases. He was also not paid leave encashment and gratuity. In the circumstances it has been observed that there is no power for the government to withhold the gratuity & pension under rule 43 (a) and 43 (b) of Bihar Pension Rules during the pendency of the departmental and criminal proceedings. It does not give any power to withhold leave encashment at any stage either prior to the proceedings or after conclusion of proceedings.

14. Here in the instant case facts are quite different & distinguishable. In the instant case the applicant is removed from the services from 14.7.2000 after holding departmental enquiry against him. He has challenged the dismissal but his dismissal was upheld by CGIT. It was also upheld by Hon'ble H.C. and Hon'ble S.C. It is in that

circumstances it was considered that as per CCS Pension Rules 1972 he is not eligible for pension & gratuity in case of removal from service. Obviously, therefore the applicant employee is not entitled to pension & gratuity as per CCS Pension Rules 1972.

15. Even then it was tried to believe that right to issue the pension was recognized as right to property so as to attract article 19 (i) (f) and article 31 (i) of the Constitution. However, on going through the decision in case of State of Jharkhand & Ors. cited supra it is clear that after conclusion of departmental enquiry it is permissible for the government to withhold the pension etc. when the finding is recorded in departmental enquiry that the employee had conducted grave misconduct in discharge of his duty while in office. As seen earlier in the present matter also the applicant is removed / dismissed from the service after departmental enquiry and his removal is affirmed upto Hon'ble S.C. Therefore in the facts of present case, applicant is not entitled to pension or gratuity as of right as per CCS Pension Rules 1972.

16. But then the submission of applicant is that CCS Pension Rules 1972 are not applicable in the present matter. Submission is to the effect that computation of pension to the pensioners who are entitled to receive superannuation or retiring pension under CCS Pension Rules 1972 is the date of retirement relevant consideration for eligibility when the revised formula for computation of pension is ushered in or made effective from the specified date would differential to the petitioners related to the date of retirement qua revised formula for computation of

pension attract section 40 of the Constitution and the element of discrimination is liable to be declared unconstitutional as being violative of article – 14. Reliance is placed on the decision in case of D.S. Nakara V/s. Union of India – LAWS [SC] – 1982 – 12 – 17. However, in that matter the facts are quite different because petitioners were retired pensioners of the Central Govt. Here in the instant case the applicant is not eligible for pension & gratuity since he is removed from service. So eligibility is the criteria and not the date of retirement relevant consideration for eligibility. It is not possible therefore to accept the contention of the applicant that he cannot be deprived of pension & gratuity on the ground that he is removed from the service.

17. According to the applicant other employees who have been removed from service like him for remaining absent from duty, are given benefit of pension & gratuity. But there is no concrete evidence on record that the applicant is discriminated as compared to other employees who have been charge-sheeted like him and removed from service. No any evidence adduced by the applicant in the context.

18. As regards the other claims of the applicant in respect of leave encashment, it is also made clear that on the date of his removal from service i.e. on 14.7.2000 there was no leave balance in his leave account.

19. As regards the GPF claim, it is made clear that Rs.5840/- as on date of removal including interest was paid to him as per the directions given by the Hon'ble S.C. In this respect it is contention of the applicant that as per slip in 2007 – 08 the amount of Rs.9486/- was in his GPF

a/c. In this respect also it is made clear that when he was removed from service in 2000, there is no relevancy of GPF of Rs.9486/- as on 31.3.08 i.e. after his removal from service.

20. From the facts, it appears that applicant has been paid the dues as are admissible in law as per the order of Hon'ble S.C. and therefore the applicant is not entitled to any claim as regards the pension, gratuity, leave salary as is claimed by him. Issue No.1 is therefore answered accordingly in negative.

21. In the result, I pass the following order.

Order

**Application is rejected with no order as
to costs.**

Date: 31.01.2020

Sd/-

(M.V. Deshpande)
Presiding Officer
CGIT-cum-LC-2, Mumbai