

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(DB : SHEEL NAGU & S.A. DHARMADHIKARI, JJ)

Writ Appeal No. 357/2016

Ramnarayan Sharma

Vs.

State of M.P. & Ors.

For Appellant

Shri R.P. Singh, Advocate.

For Respondents No. 1 to 5 / State.

Shri Kamal Jain, Govt. Advocate

For Respondent No. 6.

Shri M.K. Sharma, Advocate

Whether approved for reporting: Yes / No.

J U D G M E N T

(Delivered on 06 of March, 2017)

SHEEL NAGU, J.

1. This intra court appeal filed under Section 2(i) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, 2005 assails the final order dated 06.09.2016 passed by learned Single Judge in WP No.7453/2014 whereby the petition in question assailing the recovery of GPF debit balance from the amount of gratuity withheld, has been dismissed.
2. Learned counsel for the rival parties are heard.
3. The questions of law which beg for consideration are as follow :-
 - (i) Whether the amount of gratuity withheld at the time of superannuation (30.04.2012) could have been appropriated in 2014 for recovery of G.P.F debit balance of Rs.1,86,836/-?
 - (ii) Whether the said recovery can take place after more than

two years of retirement?

4. Undisputed facts in nutshell are that the petitioner superannuated on 30.04.2012 from the post of Accountant from the office of Civil Surgeon cum Chief Hospital Superintendent, Shivpuri. Full pension due to the petitioner was released at the time of superannuation. However 90% amount of gratuity was though sanctioned vide order dated 25.10.2012 but was not paid. The withheld gratuity amount was used for adjusting the GPF debit balance of Rs. 1,86,836/-.

4.1. The petitioner filed WP No. 7453/2014 praying for the following reliefs :-

7.1 That, the impugned endorsement made at the backside of L.P.C Annexure P-5 and P-5A to that extent may kindly be set aside.

7.2 That, the impugned order Annexure P-6 dt.27.06.2014, whereby petitioner's claim about the payment of Gratuity amount has been rejected may kindly be set-aside and the respondents further may kindly be directed to provide all Gratuity payment to the petitioners Rs. 4,35,633/-, with the interest from due date to the date of realization of amount may kindly be provided within the stipulated period of one month.

7.3 That any other relief doing justice into the matter including cost of petition, advocate fee etc. may also kindly be awarded to the petitioner.”

4.2 The said WP was dismissed by the impugned order by finding no illegality in the action of respondents in recovering the excess withdrawals made in the GPF account from the outstanding Gratuity.

5. Before adjudication, it would be appropriate to quote relevant provisions which have bearing on the issue involved :-

Rule 14(7) and Rule 29 of the M.P. General Provident Rules (for brevity GPF Rules) are as follows :-

“ Rule14(7). In case a subscriber is found to have drawn from the fund an amount in excess of the amount standing to his credit on the date of the drawal, the overdrawn amount, irrespective of whether the over-drawal occurred in the course of an advance or a withdrawal or the final payment from the fund, shall be repaid by him with interest thereon, in one lump sum, or in default, be ordered to be recovered, by

deduction in one lump sum, from the emoluments of the subscriber. If the total amount to be recovered is more than half of the subscriber's emoluments, recoveries shall be made in monthly installments of moieties of his emoluments till the entire amount together with interest, is recovered. For this rule, the rate of interest to be charged on overdrawn amount would be 2 ½ % over and above the normal rate of Provident Fund balances under sub-rule (1). The interest realised on the overdrawn amount shall be credited to Government account under a distinct sub-head "Interest on overdrawn from Provident Fund."

29. Final withdrawal of accumulations in the fund :-when a subscriber quits the service, the amount standing to his credit in the Fund shall become payable to him:

Provided that a subscriber who has been dismissed or removed from the service and is subsequently reinstated in the service, shall, if required to do so by Government, repay any amount paid to him from the Fund in pursuance of this rule, with interest thereon at the rate provided in rule 14 in the manner provided in the proviso to the rule 30. The amount so repaid shall be credited to his account in the Fund.

Note 1- A subscriber, re-employed in Government service after retirement, is considered to have quitted service from the date of retirement, even though his re-employment may have been in continuation of his active service without break.

Note 2-A subscriber cannot be considered to quit Government service finally when he resigns service under one Government to take up service under another or when he transfers his service from one branch of Government to another. Consequently, a subscriber to any Provident Fund is not entitled to the refund of his deposits in such circumstances if the rules governing the Provident Fund do not permit of the final withdrawal of deposits until he has quitted Government service. In such cases interest shall be calculated under Rule 14(4) and the amount together with interest shall be transferred.

Note 2A:- In respect of calculation of interest and final p;payment of General Provident Fund Fund money at his credit,

the Government servant resigning Government service to take up appointment under a body corporate, owned or controlled by Government, will be subject to the provision of note 2 above, if that body maintains a fund and agrees to such transfer.

Note 3:- When a non-gazetted subscriber retires, resigns, dies or is dismissed or removed from service or proceeds on leave preparatory to retirement, the head of the

office should immediately report the fact to the Account Officer and submit the claim for final payment of Provident Fund money at his credit to the Account Officer in the form prescribed in the Fifth Schedule. The same form should be used also for claims of withdrawal of Provident Fund money of a Gazetted Officer If any of the particulars or documents required cannot be furnished at once they should be sent as early thereafter as possible but the report of the event should not be delayed on that account.

Rule 65 & Rule 66 of the M.P. Civil Services (Pension) Rules, 1976,
(for brevity “1976, Rules”):- are as follows :-

65. Recovery and adjustment of Government dues-(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable :-

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted.

Explanation-1. The expression “ascertainable” Government dues” includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (No.43 of 1961).

“66. Furnishing of surety by retiring Government servant :-

(1) (a) If any of the Government dues (other than those referred to in rule 65 remain unrealised and unassessed for any reasons, the retiring Government servant may be asked to furnish in Form 8 a surety of a suitable permanent Government servant, holding a pensionable post.

(b) If the surety furnished by him is found acceptable the grant of his pension and gratuity shall not be delayed.

(2) (a) If the retiring Government servant is unable or unwilling to furnish a surety, a suitable cash deposit may be taken from him, or such portion of gratuity payable to him as may be considered sufficient may be held over till the outstanding dues are assessed and adjusted.

(b) The cash deposit to be taken or the amount of gratuity to be withheld shall not exceed the estimated amount of the outstanding dues plus twenty-five per cent thereof.

(c) Where it is not possible to estimate the approximate

amount recoverable from the retiring Government servant the amount of deposit to be taken or the portion of gratuity to be withheld shall be limited to ten per cent of the amount of gratuity or one thousand rupees, which ever is less.

3(a) Efforts shall be made to assess and adjust the recoverable Government dues within a period not exceeding six months from the date of retirement of the Government servant and, if no claim is made on Government account against the Government servant within such a period it shall be presumed that no Government claim excluding claim of house rent and water charges is outstanding against him.

(b) The Government dues as assessed shall be adjusted against the cash deposit or the amount withheld from the gratuity and the balance, if any, shall be released to the retired Government servant after the expiry of the period referred to in clause (a).

(c) Where a pensioner has furnished a surety, the surety shall be released after the expiry of the period referred to in clause (a) provided the dues assessed up to that time have been recovered.

(4) The Government dues which remain unrealised within the period referred to in clause (a) of sub-rule (3) and such other dues, the claim for which is received after that period, shall be recoverable from the retired Government servant through legal procedure.

Provided that in respect of house rent and water charges, the amount, if any, the claim for which is received after the period of 12 months from the date of retirement of the Government servant shall not be recoverable from the retired Government servant."

6. Learned counsel for the petitioner relying on the provisions of Rule 64 and 66 of the Civil Services Pension Rules, 1976 submits that no recovery from gratuity can take place except in accordance with the provisions laid down in the 1976 Rules. It is submitted that Rule 65 and 66 which provide for recovery of Government dues do not empower the State or its functionaries to make any recovery of Government dues from gratuity after expiry of 6 /12 months of the date of superannuation.

6.1. In this legal background, it is submitted that action of respondents / authority in recovering the unduly withheld gratuity for balancing the GPF account is uncalled for in law.

7. On the other hand, learned counsel for the AGMP have supported the action of recovery by contending that the course adopted by the respondents was in line with the provision of Rule 14(7) read

with Rule 29 of the GPF rules. Reliance is placed on the Division Bench decision of this Court in the case of *Kashi Yadav Vs. State of M.P. and Ors.*, 2016 (3) MPLJ, 97.

8. After hearing learned counsel for the parties, this Court is of the considered view that the present appeal is liable to be allowed as the action of the respondents in adjusting the debit balance of the GPF account from the gratuity amount due to the petitioner after more than two years of superannuation is unsupported by any authority of law for the reasons mentioned infra.

8.1 The GPF rules are framed under the proviso to Article 309 of the Constitution of India for constitution of General Provident Fund and prescribing procedure for depositing, withdrawal, payment of interest and borrowing qua the said GPF.

8.2 The State has referred to Rule 14(7) of the GPF Rules which is reproduced supra. Rule 14(7) contemplates situation that if withdrawal is made from the fund by the subscriber in excess of the amount to his credit on the date of drawal, the overdrawn amount shall be repaid by the subscriber with interest thereon in lump sum or in default shall be recovered by deduction in one lump sum / in installments from the emoluments of the subscriber.

8.3 Apart from Rule 14(7) in GPF Rules, no other rule governs the field of recovery of over drawn GPF amount. Therefore, this court will have to fall upon Rule 14(7) for judging the validity and legality of the order of recovery assailed herein.

8.4 The expression "emoluments" used in Rule 14(7) is not defined in the GPF Rules. However, if assistance of the Pension Rules of 1976 is sought then definition of emoluments is found in Rule 3(1) (d) read with Rule 30, to mean the pay as defined in Rule 9 (21) of Fundamentals Rules (including dearness allowance pay, if any,) which a Government servant was receiving immediately before his retirement or on the date of his death, as the case may be. For ready reference and convenience rule 3(1) (d) and Rule 30 of the Pension Rules are reproduced below:-

“Rule 3(1)(d)-“Emoluments” means emoluments as defined in Rule 30.

Rule 30. Emoluments- The expression “ emoluments” means pay as defined in rule 9(21) of the Fundamental Rules (including dearness pay, if any, as determined by the order of the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death, as the case may be.

Explanation-(1) For those Government servants who are drawing pay in the revised pay scales, under the Madhya Pradesh Revision of Pay Rules, 1990 or Madhya Pradesh Revision of Pay Rules, 1998 or pay scales of U.G.C. Or All India Council of Technical Education or all India Services, the expression 'emoluments' means basic pay as defined in rule 9(21)(a)(i) of the Fundamental Rules, which a Government servant was receiving immediately before his retirement and will also include dearness pay and personal pay, if any, as determined by the order of State Government, from time to time.”

8.5 From the definition of emoluments it becomes clear that the same refers to the pay which a Govt. servant receives till his retirement. Thus, the expression “emoluments” employed in Rule 14 (7) of GPF Rules necessarily implies that the rule making authority had in service Govt. servant in mind and not a retired Govt. servant in mind while bestowing power of recovery. Thus, it can safely be concluded that the Provident Fund Rules do not empower in expressed terms recovery to be made for adjustment of debit balance in the GPF account from gratuity.

8.6 The subject of accrual of, calculation of, payment of and recovery from the amount of gratuity of a Government servant is governed by the M.P. Civil Services Pension Rules of 1976.

8.7 Gratuity is defined in Rule 3(1)(i) while recovery of Govt. dues from gratuity is provided in rule 65 and 66 which are reproduced supra.

8.8 Rule 65 provides that every retiring Govt. servant is duty bound to clear all Govt. dues before retiring failing which the competent authority is empowered to take equivalent cash deposit from the retiring Govt. servant or recovering the ascertainable Govt. dues from the amount of gratuity payable. The expression “ascertainable Govt.

dues” have though not been exhaustively defined but few illustrations i.e. house building / conveyance advance, arrears of rent and other charges pertaining to occupation of Govt. accommodation or over payment of pay and allowances and arrears of income-tax deductible at source under the income-tax Act, are prescribed in Explanation-1 appended to Rule 65 of Pension Rules.

8.9 Rule 66 circumscribes the generic power under Rule 65. The said Rule provides that if any Govt. dues (other than those referred in Rule 65) remained unrealized and unassessed, surety may be taken from the retiring Govt. servant and the amount of pension and gratuity should be released without any delay. Rule further provides that in case of inability expressed by retired Govt. servant to furnish the surety, suitable cash deposit may be taken from him or a portion of gratuity which is sufficient to meet out the standing dues should be withheld. Rule further provides that where the dues are unascertainable then withholding of gratuity should be limited to 10%.

8.10 Clause (3) of Rule 66 emphasizes that the assessment of dues and its adjustment should be completed within a period six months from the date of retirement and if there is no claim made on Government account against the Government servant within this period then it shall be presumed that no Government claim excluding claim of house rent and water charges are outstanding against him. This sub rule further provides that in case the dues as ascertainable, the same be adjusted against the cash deposit or the amount withheld gratuity and the balance shall be released in favour of the retired Govt. servant immediately after six months from the date of retirement.

8.11 Clause (4) of Rule 66 which is relevant herein provides that after completion of exercise of assessing the unascertainable Govt. dues, if the dues remain unascertained within six months from the date of retirement then recovery can take place from the retired Govt. servant only through legal procedure barring dues pertaining to house rent and water charges for which period of 12 months instead of 6 months is provided.

8.12 Scheme of Rule 66 can be bifurcated in two parts. The first part pertains to recovery of ascertainable dues and the second of unascertainable dues . In case of ascertainable dues the mode of taking cash deposit or surety or recovery from gratuity at the time of retirement is permissible. However, in case of unascertainable except dues relating to house rent and water charge, period of six months from the date of retirement is provided for the Govt. to assess and calculate the exact amount of dues. For adopting the same procedure of adjustment against the cash deposit or partly withheld gratuity within the period of six months. Whereas in case of unascertainable dues pertaining to house rent and water charges long period of 12 months is prescribed for completing the process of assessment and calculation.

8.13 After the period of 6 months / 12 months from the date of retirement the only mode available for recovering ascertainable and unascertainable Govt. dues is by taking recourse to legal procedure which means filing the suit for recovery in the court of competent civil jurisdiction.

9. In the instant case, the dues squarely falls within the category of ascertainable dues i.e overdrawal by the petitioner from his GPF account. Thus the respondents were empowered to recover the said ascertainable dues for adjusting the debit balance in GPF account by withholding / withdrawing gratuity of the petitioner within a period of six months from the date of retirement. Petitioner attained the age of superannuation on 30.04.2012. The period of six months expired on 30th October, 2012, however, respondents by the impugned action made recovery of the dues after more than two years from the date of retirement without following the prescribed procedure of approaching the civil court for recovery of the Govt. dues.

10. The decision relied upon by the State in the case of Kashi Yadav (supra) is of no assistance as in the said case the statutory provision, as discussed above, have not been considered and the sole reason for upholding the decision of the writ Court of dismissal of petition was that the case of *State of Punjab and Ors. Vs. Rafiq Masih (White*

Washer) and Ors, (2015) 4 SCC 334 is not applicable. None of the statutory provisions relating to gratuity and the GPF Rules were taken into account and thus the decision in the case of Kashi Yadav appears to be rendered in peculiar facts prevailing in that case.

11. In view of the above discussion, this Court has no manner of doubt that the only course open to the respondents after expiry of 6 months of the date of retirement of the petitioner for effecting recovery of Govt. dues (overdrawal of GPF amount) was to file a civil suit for recovery in the the court of competent jurisdiction. The recovery made from the gratuity dues of the petitioner is uncalled for in law and therefore is liable to be set aside.

12. Consequently, the appeal is allowed in the following terms :-

(i) The action of respondents in making recovery for adjustment of GPF debit balance from the gratuity amount, is declared unlawful.

(ii) In case the amount of gratuity has been recovered, then the same be refunded to the petitioner forthwith.

(iii) In case the gratuity has not been recovered then the same may not be recovered and the full gratuity due to the petitioner in terms of order of sanction dated 25.10.2012 be released along with interest of 10% from the date of retirement till realization.

(iv) The order of the writ Court dated 06.09.2016 passed in WP No. 7453/2014 is set aside.

(v) Pertinently the respondents are free to adopt the lawful mode to make recovery.

(Sheel Nagu)
Judge
06 / 03 / 2017

(S.A. Dharmadhikari)
Judge
06 / 03 / 2017