

(2014) 144 DRJ 237

Delhi High Court

Case No: W.P. (C) 7071/2013

Sushil Kumar Gupta

APPELLANT

Vs

The Chairman ECPF
and Gratuity Trusts

RESPONDENT

Date of Decision: July 3, 2014

Acts Referred:

Constitution of India, 1950 – Article 226, 300A

Citation: (2014) 144 DRJ 237

Hon'ble Judges: Rajiv Shakdher, J

Bench: Single Bench

Advocate: R.K. Maheshwari, Advocate for the Appellant; J.K. Singh, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Rajiv Shakdher, J.

This petition assails the order dated 26.08.2009 passed by the respondents whereby a part of the petitioner's terminal

benefits have been withheld. There are attendant prayers as well which are, that the respondents be directed to release forthwith pending retiral

benefits of the petitioner, such as, employer's contribution to CPF, gratuity and insurance with interest @ 12%; and that, the respondents be

directed to pay interest @ 12% on the employee's share of CPF for the period of 28 months, which is, the period during which the payment was

delayed.

2. In order to adjudicate upon the grievance articulated in the petition, the following facts are required to be noticed:-

2.1 The petitioner, was appointed as a Director of the Pune Centre of Software Technology Parks of India (STPI), in July 1997, on deputation

from the Department of Electronics, Ministry of Information and Technology, Government of India where, he held the post of Scientist (E).

2.2 On 30.11.1998, the petitioner was absorbed on permanent basis, in STPI. On account of an allegation of misconduct, of having, spent the

funds of the organization unauthorisedly and irregularly, for construction of certain plots at Pune, Aurangabad, Nashik, Nagpur and Kolhapur, the

petitioner was suspended from service, on 09.07.2004.

2.3 The extent of funds that the petitioner allegedly overspent without authority and, in an irregular manner, was a sum of Rs. 7.98 Crores

(approximately). Quite strangely, despite such grave allegation, departmental proceedings were not initiated against the petitioner, while he

continued to remain under suspension for a period of approximately five (5) years till he reached the age of superannuation.

2.4 The petitioner superannuated from service of STPI, on 28.02.2009.

2.5 Vide letter dated 26.08.2009, the petitioner was informed that his terminal benefits were being withheld because the matter vis-a-vis pecuniary

loss caused by him was being investigated by the Central Bureau of Investigation (CBI).

2.6 Evidently, the petitioner persisted with STPI for release of his terminal benefits which, ultimately yielded, some result.

2.7 Consequently, on 10.06.2011, STPI despatched a draft in favour of the petitioner in the sum of Rs. 2,40,417/- towards his share of the CPF.

2.8 Being aggrieved by the fact that the remaining terminal benefits, such as, the employers contribution to CPF, gratuity and a portion of the

insurance money were not released, the petitioner shot of a legal notice dated 13.10.2013 to the Director General of STPI, and the Chief Financial

Officer and Trustee of ECPF and Gratuity Trust of STPI.

2.9 In this representation, reference was made to the judgment of the Supreme Court dated 14.08.2013, passed in Civil Appeal No. 6770/2013,

titled: State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr.

3. Since, the respondents, did not yield their position, the petitioner approached this court by way of the instant writ petition under Article 226 of

the Constitution.

4. Upon notice being issued, pleadings in the matter were completed. As a matter of fact, the case was listed in the regular category, which was,

directed to be placed in the "after notice miscellaneous matters" category, on an application being moved by the petitioner, being: CM No.

8095/2014. The said application was disposed of by me vide order dated 02.07.2014.

4.1 In the proceedings held yesterday, the controversy was narrowed down to essentially one singular aspect, which is, as to whether STPI had

the requisite statutory power to withhold the balance terminal benefits, to which I have made a reference above.

4.2 I may only note that the counsel for the petitioner drew my attention to the provisions in the ECPF Trust Deed and the Gratuity Trust Deed to

demonstrate that the pre-requisites referred to therein for withholding both the employer's contribution to CPF and gratuity were not present in the

instant case. It may be pertinent to note that reference was made to Rule 19(1) of the ECPF Trust Deed and Rule 11 of the STPI Gratuity Trust

Deed.

4.3 The learned counsel for the petitioner submitted before me both at the hearing held on 02.07.2014, and today, that the employer's contribution

could be withheld only if, an employee is dismissed for, ""wilful misconduct"" and, similarly, in case of gratuity, it could only be ""wholly"" or ""partially

forfeited in the eventuality of an employee's service being terminated or on the ground of having caused damage or loss or even destruction of

property of the society by his wilful omission or negligence.

4.4 In the instant case, it was argued that since, the petitioner, had superannuated and no departmental proceedings had been commenced prior to

his superannuation, the requisite conditions for withholding the employer's contribution towards CPF or forfeiture of gratuity were not fulfilled.

5. Mr. Singh, learned counsel for the respondents, had, yesterday, sought a short accommodation to examine the matter in so far as the

withholding of employer's contribution to CPF was concerned. As regards, gratuity, Mr. Singh had relied upon the CVC Guidelines, to which, I

will make a reference hereinafter.

5.1 Mr. Singh, has today, come back with instructions. He says that apart from the rule to which reference was made by the petitioner, there is no

other statutory rule available for withholding the employer's contribution to CPF.

5.2 As regards, gratuity, Mr. Singh, has once again, relied upon the CVC guidelines.

6. I have heard the learned counsel for the parties. I am of the view that in so far as employer's contribution is concerned, the same cannot be

withheld. The reason for the same is that, Rule 19(i) of the STPI ECPF Trust Deed is triggered only if, an employee is dismissed for ""wilful

misconduct"". For the sake of convenience, the relevant rule is extracted hereinafter:-

19. i). A member who ceases to be a member by reason of his being dismissed for wilful misconduct whatever be his period of service shall in no

case be entitled to any part of the contributions of the society to the fund or of the proportionate interest thereon.

6.1 Admittedly, no departmental proceedings were commenced against the petitioner and, therefore, the said Rule cannot apply to the petitioner.

Accordingly, employers' contribution to CPF would have to be released.

6.2 In so far as the gratuity is concerned, as correctly argued by the counsel for the petitioner, the said rule cannot come to the aid of STPI as,

gratuity can only be ""wholly"" or ""partially"" forfeited on termination of service in the circumstances given therein under clause (a) of Rule 11.

6.3 In so far as clause (b) of Rule 11 is concerned, it encompasses (if a liberal view of the provision is taken), the following circumstances to

enable forfeiture of gratuity: (i) when there is termination of service for ""any act"", or, (ii) on account of wilful omission or negligence which causes

damage/loss or destruction of property belonging to the society. The limiting factor is that forfeiture can be made only to the extent of damage

caused. For the sake of convenience and better appreciation, the relevant rule, i.e., Rule 11 is extracted hereinafter:-

(a). Gratuity shall be wholly or partially forfeited in case of termination of service of the member (a) for riotous or disorderly conduct or any other

act of violence on his part or (b) for any act which constitute an offense involving moral turpitude provided such offense is committed by him in the

course of his employment.

(b). In case of termination of service for any act, wilful omission or negligence of the member causing any damage of (sic) loss to or destruction or

(sic) property belonging to the Society, gratuity payable under the Scheme shall be forfeited to the extent of the damage or loss so caused.

6.4 Clearly, in the instant case, neither was the petitioner terminated from service nor, has the petitioner been found to have committed any wilful

act of omission or negligence causing loss or damage or even destruction of property belonging to the society. There were only allegations of loss

made at the time of suspension of the petitioner, which were not carried forward by way of departmental proceedings. The fact that, criminal

proceedings are taken out will not enable respondents to withhold gratuity, at least, at this stage. In addition Rule 11(b) requires quantification of

damage or/loss or extent of damage caused before forfeiture can be undertaken.

6.5 The argument of Mr. Singh, learned counsel for the respondents that the ""CVC guidelines"" could be relied upon, cannot be accepted, for the

reason, that they have no statutory force; they are only guidelines even as per the respondents. Mr. Singh has not been able to draw my attention

to any statutory act, in which the said guidelines can be said to be sourced. These guidelines, which are adverted to in the counter affidavit, I am

told by Mr. Singh, are contained in the CVC Manual. The relevant provision is extracted hereinbelow:

22. Provisional pension is the Government servant retires while under suspension.

If the Government servant was under suspension on the date of retirement, the provisional pension equal to the maximum pension which would

have been admissible to him on the basis of qualifying service upto the date immediately preceding the date on which he was placed under

suspension should be authorized. No gratuity should, however, be paid until the conclusion of the departmental or judicial proceedings and issue of

final orders thereon, except in those cases where departmental proceedings have been instituted under rule 16 of the CCS (CCA) Rules, 1965, for

imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 11 of the said Rules.

6.6 There is no material on record which would show that the said provision in the CVC Manual has a statutory force. The CVC by itself was

constituted by the Central Vigilance Commission Act, 2003. There has been no submission made or stand taken in the counter affidavit that the

provision in issue has been framed in furtherance of power invested in the CVC under the said Act.

6.7 Rule 11 of the STPI Gratuity Trust Deed, in a sense, occupies the field and provides for necessary circumstances under which, gratuity can be

wholly"" or ""partially"" forfeited. This would be another reason, why the CVC Guidelines may not apply to the employees of STPI. One would have

to remember that terminal benefits are not bounties which can be withheld and forfeited at the whim and fancy of an employer. They are earned by

an employee upon rendering service to the employer. They can be withheld or forfeited in accordance with law and as per the rules prescribed in

that behalf under which they are payable. In coming to this conclusion, I am fortified by the judgment of the Supreme Court in the case of State of

Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr., wherein the court has made the following observations in somewhat similar circumstances.

14. Article 300A of the Constitution of India reads as under:

300A Persons not to be deprived of property save by authority of law-No person shall be deprived of his property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person

cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution.

It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and

under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law

within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold-even

a part of pension or gratuity. As we noticed above, so far as gratuity rules are concerned, there is no provision for withholding pension or gratuity

in the given situation. Had there been any such provision in these rules, the position would have been different.

6.8 Having regard to the above, in my view, the STPI would have to release the gratuity to the petitioner as well, notwithstanding the fact that

criminal proceedings are pending against him. In so far as insurance amounts are concerned, though there is a reference to the same in paragraph 5

of the writ petition, the respondents have not taken the trouble of dealing with this aspect. Therefore, it is directed that if any amount is payable

towards insurance that will be paid unless there is a statutory rule or provision prohibiting its payment during the pendency of the criminal

proceedings.

7. This brings me to the relief sought for by the petitioner with regard to the payment of interest on the employer"s contribution to CPF and

gratuity. In my view, interest with effect from the date of superannuation i.e., 28.02.2009 should be paid to the petitioner at the rate of 9% p.a.

(simple). It is ordered accordingly.

7.1 As to the last relief, which is for, payment of interest on employee"s contribution to CPF. In my view, interest at the rate of 9% p.a. (simple)

should suffice on the principle of parity for the actual period during which payment was delayed. It is ordered accordingly.

8. With the aforesaid directions in place, the captioned petition is disposed of. Parties will, however, bear their own costs.