

**A.F.R.**  
**Reserved.**

**Case :-** WRIT - A No. - 36165 of 2014

**Petitioner :-** Ramsiya Yadav

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Sanjay Pratap Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Mrs. Sunita Agarwal,J.**

Heard learned counsel for the parties and perused the record.

The present writ petition is directed against the order dated 12.11.2013 passed by the respondent No.2 namely Superintendent of Police, District Jalaun in holding that the petitioner is entitled for only interim pension on account of pendency of criminal case.

The submission of learned counsel for the petitioner is that he was selected and appointed as Constable Driver in the Police Department on 18.6.1975. He was honestly performing his duties and retired on 30.9.2013. The post retiral benefits of the petitioner have not been paid in full. No gratuity has been paid and he is getting interim pension only.

It appears that on 13.11.1998 the First Information Report was registered against the petitioner and 12 others bearing Case Crime No.118 of 1998 under Section 342, 217, 218, 120B, 195, 467, 468 & 471 I.P.C., Police Station Majhagawa, District Hamirpur. After retirement, the petitioner represented the authorities to pay him gratuity and full pension. The representation was rejected *vide* order dated 12.11.2013, hence this writ petition.

The submission is that the sole ground of pendency of criminal proceedings/judicial proceedings cannot be a valid ground for withholding gratuity. The Apex Court and this Court has held time and again that gratuity cannot be withheld. Only in cases

where the proceedings are pending against the incumbent are going to culminate giving rise to the situation that the Government would suffer loss on account of conduct of the employee, in other words, where there is any allegation of loss to the Government and some recovery is to be made from the incumbent, the gratuity can be withheld.

Reliance is placed upon the judgment of this Court in **Shiv Sewak Prasad Mishra v. State of U.P. & Others**<sup>1</sup> and in **Bhagwat Prasad Yadav v. State of U.P. & Others**<sup>2</sup>.

Learned Standing Counsel, on the other hand, placing reliance upon the judgment of this Court in **(State of U.P. & 2 Ors. v. Jai Prakash)** being **Special Appeal Defective No.1278 of 2013** submits that the gratuity can be withheld in a case where judicial proceedings are pending on the serious charges against employee.

The legal position for withholding gratuity during the pendency of the judicial proceedings is considered by two Division Benches of the Court which are as follows:-

The Division Bench in the case of **State of U.P. & 2 Others v. Jai Prakash** (Supra) had held that the Government has the power to withhold or withdraw the pension and the power to recover any pecuniary loss suffered.

Regulation 351-A of the Civil Services Regulation postulates that there has to be a determination in departmental or judicial proceedings.

Regulation 351-AA of the Civil Services Regulation deals with the situation where a departmental or judicial proceeding or any enquiry by the Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement, a provisional pension under Regulation 919-A may be sanctioned. Regulation

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<sup>1</sup> 2015(2) ADJ 393.

<sup>2</sup> [2014(1) LBESR 928 (ALL)(LB)].

351-AA stipulates that a provisional pension would be admissible and the modalities for the payment of a provisional pension are prescribed under Regulation 919-A. The provisional pension is to be authorized for the period of commencement from the date of retirement upto and including the date of conclusion of departmental or judicial proceedings or, the enquiry by the Administrative Tribunal, as the case may be.

Regulation 919-A (3) contains the expression “prohibition on the payment of death-cum-retirement gratuity to a Government Servants” until the conclusion of the department proceeding, judicial proceeding or, an enquiry by the Administrative Tribunal, as the case may be.

Regulation 41 provides that except when the 'pension' is used in contradistinction to gratuity, 'pension would include gratuity'.

Consequently, Regulation 919-A(3) which contains a bar on the payment of gratuity till the conclusion of departmental or judicial proceeding would allow the payment of provisional pension stipulated in Clause (1) of Regulation 919-A.

Thus, in view of the specific prohibition which is contained in Regulation 919-A (3) no death-cum-retirement gratuity would be admissible until the conclusion of a departmental or judicial proceeding. The expression 'judicial proceeding' would necessarily include the pendency of a criminal case.

It was, therefore, held that the order passed by the Superintendent of Police, Jalaun, withholding the payment of gratuity until the conclusion of the criminal trial was correct and proper being in accordance with the provisions of Regulation 351-AA read with Regulation 919-A (3) of the Civil Service Regulations.

In subsequent Division Bench judgment in **Special Appeal Defective No.416 of 2014 (State of U.P. & 3 Others v. Faini Singh)**, the question raised was whether the power under Section

351-AA read with Regulation 919-A can be used mechanically and on the ground of pendency of any judicial proceeding against the Government Servant without considering the allegations against the retired Government Servant, the Competent Authority would be empowered to withhold the gratuity and full pension.

It was observed in **Faini Singh** (supra) that every power vested in Authority has to be utilized *bona fide* for the purpose for which such power is given, the discretion given should not consume the power where such discretion is to be exercised.

It was found that in the said case the petitioner/respondent was accused of committing the fraud in taking loan by one Shriram son of Hari Ram from U.P. Financial Corporation. The petitioner, Faini Singh was guarantor, the total amount of loan involved was Rs.20,000/-.

It was found that the entire loan amount was repaid as soon as the notice was received by Shri Faini Singh and that no loss was caused to the U.P. Financial Corporation.

However, the Superintendent of Police, Bijnor had withheld the gratuity and pension only on the ground that the criminal case was pending. It was considered that there is power with the State Government to withhold gratuity in a case where there are allegations of serious crime or grave misconduct or any pecuniary loss caused to the Government by misconduct or negligence during the service including services rendered on re-employment after retirement. It was held that the object of these powers clearly demonstrates that these powers have to be exercised with circumspection and caution and have to be utilized for the purpose for which they have been vested in the State Government. Such powers cannot be used mechanically on the pendency of any judicial proceedings. The delay in judicial proceedings is also required to be taken into consideration and counted for the purposes of exercise of such powers.

It was lastly, held that mere pendency of any judicial proceedings cannot be a ground to exercise the powers under Article 351-AA read with Regulation 919-A for withholding the retirement dues. The nature of allegations and the gravity of charge has to be taken into consideration by the Competent Authority before making an order to withhold the retiral dues.

Thus in the facts and circumstances of the said case, it was held that the existence of the power by itself did not justify the exercise of power.

This view taken by the Special Appellate Bench in the case **State of U.P. v. Faini Singh** (supra) has been followed in **Special Appeal Defective No.45 of 2016 (Mohan Ram v. State of U.P. And 3 Others)** and in **Special Appeal Defective No.52 of 2016 (Hargovind Singh v. State of U.P. And 7 Others)**.

Having considered the legal position relating to withholding of gratuity, it is clear that the said exercise of power cannot be mechanical but has to be utilized looking to the nature of offence alleged against the employee.

In the instant case, the petitioner has been accused in a Criminal Case under Section 342, 217, 218, 120B, the charges against him are that he alongwith other Police Personnels conspired to implicate three innocent persons in Criminal cases and, further, false evidences were collected during investigation to implicate them. These accused have been shown to be arrested simultaneously from different places by the local police and they have wrongly been implicated. The charges levelled against the petitioner are of conspiracy to implicate innocent persons in criminal charges and then conspiring in collecting false evidence against them during investigation. The allegations of lapses in discharge of duty with utmost integrity and honesty are serious charges. The charge-sheet has been filed against the petitioner and the criminal trial is going on.

In view of the above facts, this Court does not find any illegality in the order passed by the Superintendent of Police. The petitioner will be entitled for gratuity only after the criminal proceeding against him are culminated.

The judgment in the case of **Shiv Sewak Prasad Mishra** and **Bhagwat Prasad Yadav** (supra) proceeded only on the premise that where there are no allegations of loss to the Government in a criminal case and no recovery is required to be made, the gratuity, therefore, cannot be withheld.

This preposition with all due respect is not in comfirmity with the provisions of Civil Services Regulations as interpreted by the Division Benches of this Court.

The writ petition is, accordingly, **dismissed**.

(Sunita Agarwal, J.)

**Order Date :- 6.9.2016.**  
Jyotsana