

HIGH COURT OF CHHATTISGARH, BILASPUR
WPS No.295 of 2016

Dr.S.D. Dwivedi S/o Late H.R. Dwivedi, Aged about 65 years,
Occupation-Retired Deputy Director, Veterinary Services, Raigarh
R/o Near Kalimata Mandir, Amahiya, Rewa, Police Station Civil
Lines, Rewa, Civil and Revenue, Distt.Rewa (Madhya Pradesh)
---- Petitioner

Versus

1. The State of Chhattisgarh, Through the Secretary, Livestock Development Department, Secretariat, Mahanadi Bhawan, New Raipur (CG)
2. The Director, Veterinary Services, Ground Floor, Indravati Block, New Raipur (CG)
3. The Deputy Director Veterinary Services, Dist-Raigarh (CG)

---- Respondents

For Petitioner	:	Mr.Sunil Kumar Soni, Advocate
For Respondents	:	Mr.R.N.Pusty, Government Advocate
For Amicus Curiae	:	Mr.Amrto Das and Mr.Harsh Wardhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/02/2018

1. The petitioner retired from service on the post of Deputy Director, Veterinary Services on 31.10.2012, but on that day, he was placed under suspension and was not paid gratuity. He filed writ petition being WPS No.2992 of 2013 before this Court, which was referred to the Pension Committee. The Pension Committee took the view that against the petitioner offence under Section 420, 468 and 471/34 of the IPC has been registered, therefore, he would be entitled for gratuity upon conclusion of the said criminal case/trial. Feeling aggrieved against non-payment of gratuity, the petitioner has filed this writ petition claiming that he is entitled for full gratuity.

2. Return has been filed by the respondents/State stating inter-alia

that since criminal case has been registered against the petitioner on 29.11.2012 for offence punishable under Section 420, 468 and 471/34 of the IPC, therefore, he is not entitled for gratuity in view of the provisions contained in Section 64(2) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter called as 'the Rules of 1976') and he would be entitled for gratuity only upon conclusion of the trial and prayed for dismissal of the writ petition.

3. Mr.Sunil Kumar Soni, learned counsel for the petitioner would submit that the petitioner was allowed to be retired on 31.10.2012 and he was malafidely placed under suspension on the same date and criminal case has been registered against him much after he has retired from service which has no relevance for payment of gratuity and gratuity can be withheld if criminal/judicial proceedings are initiated or pending on the date of retirement, otherwise, he is entitled for full gratuity.

4. On the other hand, Mr.R.N.Pusty, learned Government Advocate for the respondents/State, would submit that by virtue of the provisions contained in Rule 9(4) of the Rules of 1976 if the judicial proceedings are instituted or pending after retirement, Rule 64(2) of the Rules of 1976 is attracted and he would not be entitled for gratuity.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

6. In view of conflict between Hindi version and English version of Rule 9(4) of the Rules of 1976, this Court appointed Mr.Amrito

Das and Mr.Harsh Wardhan to assist the Court as Amicus. Mr.Amrto Das and Mr.Harsh Wardhan would submit that apparently there is difference between Hindi version and English version of Rule 9 (4) of the Rules of 1976, but by virtue of the provisions contained in Article 348(3) of the Constitution of India and in the light of the Madhya Pradesh Official Language Act, 1957 (hereinafter called as 'the Act of 1957') as amended w.e.f. 11th July, 2007 which provides that official language of the State of Chhattisgarh is Hindi, Hindi version of Rule 9(4) of the Rules of 1976 has to prevail.

7. In order to decide the dispute, it would be appropriate to notice English version of Rule 9(4) of the Rules of 1976 which provides as under:-

“(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in Rule 64, as the case may be, shall be sanctioned.”

The aforesaid Rules clearly shows that even if the judicial proceedings are instituted after retirement, rule 64(2) of the Rules of 1976 would apply. On the other hand, Hindi version of Rule 9(4) of the Rules of 1976 provides as under:-

“(4) इस मामले में जहां शासकीय सेवक अधिवार्षिकी आयु पर पहुंचने या अन्यथा से सेवानिवृत्त हुआ है, तथा जिसके विरुद्ध कोई विभागीय या न्यायिक कार्यवाहियां संस्थित हैं अथवा जहां विभागीय कार्यवाहियां उननियम (2) के अधीन निरन्तर हैं, अनन्तिम पेंशन तथा मृत्यु-सह-सेवानिवृत्ति उपदान, जैसा नियम 64 में उपबंधित है, मंजूर होगा ।”

Hindi version of rule 9(4) of the Rules of 1976 would show that

judicial proceedings must be instituted prior to the date of retirement and must be pending on the date of retirement to attract Rule 64(2) of the Rules of 1976.

8. In order to resolve the dispute, it would be appropriate to notice Article 345 of the Constitution of India which reads as under:-

“345. Official language or languages of a State.- Subject to the provisions of Articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.”

Article 348 (3) of the Constitution of India reads as under:-

“348(3). Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use of Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative test thereof in the English language under this article.”

9. The Madhya Pradesh Official Language Act, 1957 has been enacted and brought in force w.e.f. 24.1.1958. Section 4 of the Act of 1957 reads as under:-

“4. Language to be used in Bills, etc.-(1) The language to be used in,-

- (a) all Bills to be introduced or amendment thereto to be moved in each House of the State Legislature;
- (b) all Acts passed by each House of the State Legislature;

(c) all Ordinances promulgated under Article 213 of the Constitution of India;

(d) all orders, rules, regulations and bye-laws issued by the State Government under the Constitution of India or under any law made by the Parliament or the Legislature of the State;

shall, on and from such date, as the State Government may, in respect of each of the items aforesaid, appoint by notification, be Hindi.

(2) The form of numerals to be used in all Bills, Acts and Ordinances and all orders, rules, regulations and bye-laws mentioned in the sub-section (1) shall be the international form of Indian numerals.”

- 10.** The Full Bench of the Madhya Pradesh High Court in the matter of **Mangilal Suratsingh and another v. Board of Revenue, M.P., Gwalior and others**¹ has held that Hindi has been adopted as a language by the Legislature of a State, therefore, Hindi version can be relied upon. Para 5 of the report states as under:-

“5. In this connection, we may usefully refer to the decision of the Allahabad High Court reported in Haji Lal Mohammad Biri Works, Meeranaj, Allahabad and others v. The Sales-Tax Officer, Allahabad². In that case, the Court was required to construe the provisions of section 3 of the U.P. Sales Tax (Validation) Act, 1958, which was as follows:

“3 (1). Notwithstanding any judgment, decree or order of any Court, the notification specified in Part A, Part B and Part C of the Schedule shall be deemed to have been issued in exercise of the powers conferred respectively by section 3, section 3A and section 4 of the U.P. Sales Tax Act, 1948, as if the said sections were in force on the date on which the notifications were issued in the form in which they were in force immediately before the commencement of this Act, and all the said notifications shall be valid and shall be deemed always to have been valid and shall continue in force until amended, varied or rescinded by any notification issued under any of the said section.”

On the language of the aforesaid section 3 it was

¹ 1983 M.P.L.J. 254
² A I R 1959 All. 208

urged before the Court that the expression “in the form, in which they were in force immediately before the commencement of this Act” should be read as qualifying the words “the notifications” and should not be read as qualifying the expression ‘the said section occurring a little earlier. To resolve this doubt, the Court referred to the Government Gazette, in which the said Act was published in Hindi, in view of the fact that Hindi has been adopted as a language by the U.P. Legislature. The Court then observed as follows:

“The English version of the Act, on the basis of which arguments were advanced before us, in the State has merely the status of an authoritative text in the English language of the original Act. The original Act is in Hindi and wherever there be any doubt, and, in fact, principally for purposes of properly interpreting any provision of such an enactment, the proper course is to look at the original Act as published in Hindi. In these circumstances, we looked up the Hindi version of this Act. On examining it, we find that there can be no doubt at all that the expression in English authoritative version ‘in the form in which they were in force immediately before the commencement of this Act’ qualifies the words “the notifications” in section 3 of the U.P. Sales Tax (Validation) Act, 1958. The language in Hindi version is as follows:

“मानों कि उक्त धाराएँ विज्ञप्तियों के जारी होने के दिन उसी रूप में प्रचलित थी जिस रूप में कि वे इस अधिनियम के प्रारंभ के ठीक पूर्व प्रचलित थी।”

It would, of course, have been better, had the meaning conveyed in the original Hindi version been put in the proper form in the English translation so as not to leave any ambiguity which could easily have been done if the expression on the date on which the notifications were issued had not been placed in this section at the place where this expression has been placed but had been placed earlier between the expression “as if the said sections were” and the words “in force”. If this had been done, it would not have been necessary for us to make a reference to the original Hindi version.”

The aforesaid decision in A I R 1959 All. 208 (supra) came up for consideration before the Supreme Court in M/s. J.K. Jute Mills Co. Ltd. v. State of Uttar Pradesh and another³, where the Supreme Court observed as

follows:-

“It should further be noted that the Validation Act was published both in Hindi and in English, and both of them were authorised versions. The words in the Hindi version make it clear beyond all doubt that the words, “in the form in which they were in force immediately before the commencement of this Act” qualify the word “sections” and not the word “notifications”. That is the view expressed by a Bench of the Allahabad High Court in *Haji Lal Mohammad Biri Works v. Sales Tax Officer*, on a comparison of the two versions, and we are in agreement with it.”

In view of the aforesaid decision of the Supreme Court, it must be held that where Hindi has been adopted as a language by the Legislature of a State, Hindi and English are both authorised versions, and it is permissible to rely on the Hindi version in case of a doubt.”

Thereafter, it has been further held in **Mangilal Suratsingh** (supra) that it is permissible to refer to the Hindi version of the act in case of doubt. Para 7 of the report states as under:-

“7. In our opinion, in view of the facts that in the erstwhile State of Madhya Bharat, Hindi, was prescribed as the language for use in Acts passed by the State Legislature, and that the Legislative intent was accordingly expressed in the Hindi version of the Act No.18 of 1952 amending section 36 of the Act, the contention urged on behalf of the petitioners that it was not permissible to refer to the Hindi version of the Act, cannot be upheld.”

- 11.** In the matter of **Commissioner of Trade Tax, Uttar Pradesh v. Associated Distributors Limited**⁴ the Supreme Court has held that if the official language of the State is Hindi and if any difference is found in Hindi and English versions of notification, Hindi version would be applied. Para 7 of the report states as under:-

"7. It is pertinent to mention here that the official

4 (2008) 7 SCC 409

language of the State of Uttar Pradesh is Hindi. If any difference is found between the notifications in English and Hindi, the notification issued in Hindi will be applicable. On the said notification, the courts have decided that confectionery comes within sweets (mithai) and sweetmeat, but it has not been mentioned that bubblegum comes within the category of a sweet.”

12. Applying the principle of law laid down by Full Bench of the High Court of Madhya Pradesh in **Mangilal Suratsingh** (supra) to the factual score of the present case, it is quite vivid that official language of the State of Chhattisgarh is Hindi for the purposes of notifications and Rules as mandated in Section 4 of the Act of 1957. Therefore, in the case in hand, Hindi version of the Rules of 1976 would be preferable. Rule 9 (4) of the Rules of 1976 clearly provides that in order to invoke Rule 64 (1) (c) of the Rules of 1976 to withhold the gratuity till conclusion of the judicial proceedings, judicial proceedings must be instituted and pending on the date of retirement as provided in Rule 9 (6) (b) (i) of the Rules of 1976 which provides that judicial proceedings shall be deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made.

13. In the present case, undisputedly, no judicial (criminal) proceedings in terms of Rule 9 (6) (b) (i) of the Rules 1976 was instituted and pending on the date of retirement of the petitioner as admittedly he retired on 31.10.2012 and charge-sheet was filed only on 31.12.2013 and cognizance was taken by jurisdictional criminal court thereafter, therefore, Rule 64 (1) (c) of the Rules of 1976 which provides that no gratuity shall be paid to the Government servant until the conclusion of the

departmental or judicial proceedings and issue of final orders will not be applicable and the petitioner was entitled for full gratuity and full pension on the date of retirement. It is held accordingly. The respondent-authorities are absolutely unjustified in retaining the gratuity and pension of the petitioner on the ground of subsequent initiation of judicial proceedings against him after his superannuation from the office of Deputy Director, Veterinary Services.

- 14.** For the foregoing reasons, the writ petition is allowed and the respondents are directed to release the amount of full gratuity in favour of the petitioner with interest at the rate of 8% from the date of entitlement till the actual payment. He will also be entitled for full pension. However, this will not bar the respondents to proceed in accordance with law. However, this court appreciates the valuable assistance rendered by Mr. Amrito Das and Mr. Harsh Wardhan, learned amicus and same is placed on record.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No.295 of 2016****Petitioner**

Dr.S.D.Dwivedi

Versus**Respondents**

The State of Chhattisgarh and others

(English)

For withholding pension and gratuity, criminal case must be instituted and pending on the date of retirement.

(हिन्दी)

पेन्शन तथा उपदान (ग्रेज्युटि) रोकने हेतु आपराधिक प्रकरण का सेवानिवृत्ति दिनांक को संस्थित एवं लम्बित होना आवश्यक है।

