

[AFR]
[RESERVED]

Case :- SPECIAL APPEAL No. - 40 of 2017
Appellant :- Shivagopal
Respondent :- State Of U.P. And 4 Others
Counsel for Appellant :- Ram Kishor Gupta
Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 47540 of 2015
Petitioner :- Kalika Prasad Yadav
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- B.N. Singh Rathore
Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 47532 of 2015
Petitioner :- Deshraj
Respondent :- The State Of U.P. And 2 Others
Counsel for Petitioner :- B.N. Singh Rathore
Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 47537 of 2015
Petitioner :- Kaushlesh Sunder Pandey
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- B.N. Singh Rathore
Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 29319 of 2017
Petitioner :- Chandrakesh Yadav
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Amrit Raj Chaurasiya
Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 29320 of 2017
Petitioner :- Sachidanand Ram
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Amrit Raj Chaurasiya
Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal,J.
Hon'ble Suneet Kumar,J.
Hon'ble Rohit Ranjan Agarwal,J.

Suneet Kumar,J.

1. We have heard Sri Ram Kishore Gupta on behalf of the appellants and Sri Shashank Shekhar Singh, Additional Chief Standing Counsel for the respondents.
2. The written submission of Sri B.N. Singh Rathore has also been considered.
3. In the batch of writ petitions the controversy involved is with regard to entitlement of the government servant to receive death-cum-retirement gratuity on superannuation or otherwise pending judicial proceedings.
4. Petitioners are government employees (Lekhpal/Police Officials), who have retired on attaining the age of superannuation, and by the impugned orders, their full pension and gratuity has been kept in abeyance pending judicial proceedings against them. The petitioners have sought quashing of the impugned orders declining full pension and gratuity during pendency of the judicial proceedings and further have sought an additional direction to the respondent-authority to release/pay full pension and gratuity on the plea that pension and gratuity cannot be withheld during pendency of the judicial proceedings or that the allegations/charge do not pertain to grave misconduct/serious crime or having caused pecuniary loss.
5. The learned Single Judge upon noticing conflicting Division Bench decisions rendered in *State of U.P., and others Vs. Jai Prakash*¹ (Jai Prakash case) on the one hand and in particular the decision rendered by the Division Bench in *State of U.P. and others Vs. Faini Singh*² (Faini Singh case) and others on the other hand, referred the matter to the larger Bench.
6. The learned Single Judge while referring the matter has not

1. 2014 (1) ADJ 207

2. Special Appeal Defective No. 416 of 2014, decided on 25.04.2014

formulated or referred any particular question of law to be answered by the larger Bench. The Full Bench of this Court in *Tuples Educational Society and another Vs. State of U.P., and another*³ opined that the referring Court has ample power under Chapter V Rule-6⁴ to refer a case to a larger Bench either framing questions of law or the entire case.

7. We have gone through the pleadings of the writ petitions and the reference order with the assistance of the learned counsel parties, in our opinion the following points arise for consideration; (i) whether government servant upon retirement on attaining the age of superannuation or otherwise is entitled to full pension/death-cum-retirement-gratuity on and during pendency of judicial proceedings; (ii) whether the government servant/pensioner is entitled to full pension/death-cum-retirement gratuity before conclusion of the disciplinary proceedings/or judicial proceedings and final orders being passed thereon by the competent authority; (iii) whether the view expressed in **Jai Prakash** lays down the correct law or that expressed in **Faini Singh** the other decisions noted in the referring order.

Concept of Pension:

8. It is accepted position of law that pension and gratuity are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. In case of a civil servant whose service conditions are governed by statutory rules; pension, a deferred salary, is a right and the payment of pension/gratuity does not dependent upon the discretion of the Government. Government servant coming within the Rules is entitled to claim pension. The right to receive pension flows not by any order to that effect but the right to receive pension flows by virtue of the Rules governing pension and gratuity.

3. (2008) 2 UPLBEC 1611

4. High Court Rules, 1952

9. The Supreme Court in **D.S. Nakara vs. Union of India**⁵ placing reliance upon the Constitution Bench decision rendered in **Deokinandan Prasad vs. State of Bihar**⁶, and **State of Punjab vs. Iqbal Singh**⁷, observed as follows:

“The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad (supra) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in Iqbal Singh (supra)”.

10. Thus the hard earned benefit which accrues to an employee is in the nature of 'property'. This right of property cannot be taken away without due process of law as per the provisions of Article 300-A of the Constitution of India. It, therefore, follows that executive instructions not having statutory character and, therefore, cannot be deemed as 'law' within the meaning of Article 300A. The State Government cannot withhold even a part of pension or gratuity if there is no provision for withholding pension or gratuity in the given situation. For withholding of pension or gratuity there must be an express provision in the Rules failing which the State Government is not competent to withhold pension or gratuity on the strength of executive instructions not having the force of law. **(Refer: State of Jharkhand vs. Jitendra Kumar**

5. 1983 (1) SCC 305

6. 1971 (2) SCC 330

7. 1976 (2) SCC 1

Srivastava and others⁸; U.P. Raghavendra Acharya vs. State of Karnataka⁹)

Civil Service Regulations:

11. Having explained the legal position, it would be apposite to examine the Rules/Regulations relating to pension and gratuity admissible to the servants of the State Government. The procedure for grant of pension is regulated by the provisions of the Civil Service Regulations. It served as a comprehensive Code regulating conditions of service of civil servants relating to pay, pension, leave, traveling allowances etc. The State Government thereafter framed its own Fundamental Rules, Leave Rules, Traveling Rules etc., thereby, the provisions in the Civil Service Regulations with the exception of Pension Rules have become obsolete. The provisions relating to pension in the Civil Service Regulations have from time to time been modified and amended under the rule making power of the State Government (proviso to Article 309 of the Constitution of India). The State Government has framed several Rules for the benefit of its employees. The U.P. Liberalized Pension Rules, 1961, affords relief to the families of unfortunate government servants who died prematurely during service. The U.P. Retirement Benefit Rules, 1961, and the Family Pension Scheme, 1961, govern the State employees.

12. Civil Service Regulations have statutory character. Article 1 of the Civil Service Regulations, relating to pension, in its application in the State of Uttar Pradesh, provides that the “Regulations are intended to define the conditions under which pension is earned by servant in the civil department and in what manner it is calculated”. Article 348-A provides that pension shall be granted subject to conditions contained in Chapter XXI of the

8. 2013 (12) SCC 210

9. 2006 9 SCC 630/640

Regulations. Article 353 lays down that no pension shall be granted to an officer dismissed or removed from service for misconduct, insolvency or inefficiency. The claim of pension is determined by length of service, as provided by Article 474 to 485. Full pension is admissible under the Regulations/Rules not as a matter of course but only if the service rendered by the government servant is approved. No doubt pension is no more a bounty; instead it is a right earned by the government servant on the basis of length of service, none the less, grant of full pension depends on the approval of service rendered by the employee. In other words, if the service rendered by the government servant has not been satisfactory he would not be entitled to full pension and it would always be open to the Government/Governor to withhold or reduce the amount of pension in accordance with the statutory rules. (Article 351, 351-A)

13. The competent authority prior to 1996 had an additional power under Article 470 to make reduction of pension in case the services of the government servant was not thoroughly satisfactory. The said Article has since been deleted by C.S.R. Twelfth Amendment.¹⁰

14. These provisions, in a nutshell, ordain the government servant to perform his duties faithfully and honestly. Merely because a government servant retires from service on attaining the age of superannuation or otherwise he cannot escape the liability of misconduct/and negligence or financial irregularities.

Pension/Death-cum-Retirement Gratuity¹¹:

15. A civil servant's claim to pension and gratuity, therefore, is regulated by the Regulations/Rules in force at the time when the officer demits office on attaining the age of superannuation or

10. vide Notification No. 3-424/X-933/89 Finance (General) Section-3 dated 12.2.1996

11. gratuity

otherwise from the service of the government.

16. Chapter XVIII of Civil Service Regulations provides for '**Conditions of Grant of Pension**'; Section-I to the Chapter provides the classification of pensions. Article 424 reads thus:

“424. Pensions for “Superior and Inferior services” are divided into four classes, the Rules for which are prescribed in the following section of this Chapter :

- (a) compensation pensions (See Section II),*
- (b) invalid pensions (See Section III),*
- (c) superannuation pensions (See Section IV),*
- (d) retiring pensions (See Section V).”*

17. The 'superannuation pension' contained in Section IV of the aforementioned Chapter reads thus:

“458. A superannuation pension is granted to an officer in superior and inferior service entitled or compelled, by Rule to retire at a particular age.”

18. Article 41 defines pension which reads thus:

“41. Pension— Except when the term “Pension” is used in contradistinction to Gratuity, “Pension” includes Gratuity.”

19. Article 23-A¹² defines Death-cum-Retirement Gratuity.

“23-A. “Death-cum-retirement gratuity” means death-cum-retirement gratuity admissible, as the case may be, under Rule 3 of the U. P. Liberalized Pension Rules, 1961 or under rule 5 of the U. P. Retirement Benefits Rules, 1961.”

20. Whether the term 'pension' includes 'gratuity' came to be settled by a Three Judge Bench of the Supreme Court in **Jarnail Singh vs. The Secretary, Ministry of Home Affairs and others**¹³. Rule 3 of CCS (Pension) Rules, 1972, defines pension in similar terms as defined in Article 41. Rule 3(1)(o) of the C.C.S. (Pension) Rules, 1972 reads thus:

“Clause (o) in Sub-rule (1) of Rule 3 is as under:-

“'pension' includes gratuity except when the term pension is

12. inserted vide notification dated 31 March 1970

13. AIR 1994 SC 1484

used in contradistinction to gratuity”

21. Rule 9 of the CCS (Pension) Rules, 1972, confers power upon the President to withhold or withdraw pension. The provision is similarly worded as Article 351-A. Rule 9 for our convenience reads thus:

9. Right of President to withhold or withdraw pension. - (1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed”

22. Supreme Court in **Jarnail Singh** upon considering the provisions held as follows:

“xxx xxx xxx Bearing in mind the definition of the term 'pension' in Rule 3(1)(o), the term 'pension' used in Rule 9(1) must be construed to include gratuity since the term 'pension', in the context, is not used in contradistinction to gratuity. Learned counsel for the appellant, however, referred to the amendment made in Rule 9(1) by the Central Civil Services (Pension) Third Amendment Rules, 1991, whereby the term 'pension' has been substituted by the expression 'pension or gratuity, or both' and consequential amendments made in that sub-rule. The question is : Whether this amendment made in 1991 indicates, as contended by learned Counsel for the appellant, that 'pension' alone could be withheld under Rule 9(1) and not also the gratuity prior to the amendment of Rule 9(1) in 1991. In our opinion, the definition of 'pension' in Rule 3(1)(o) quoted above negatives the appellant's contention and clearly indicates that the 1991 Amendment is merely clarificatory and makes explicit that which was clearly implicit prior to that Amendment by virtue of the definition of term 'pension' in Rule 3(1)(o). This clarification appears to have been made only to remove

the doubt created by the decisions relied on by counsel for the appellant which are considered hereafter.....”

23. The Court disagreed with the observations made in **D.V. Kapoor vs. Union of India and others**¹⁴ to the effect that the power of President in Rule 9 prior to its amendment in 1991, was confined only to withholding pension and did not extend to gratuity as well. The observation of the Court is based on the fact that the clear definition of the term 'pension' in Rule 3 of CCS (Pension) Rules was not brought to the notice of the Bench deciding **D.V. Kapoor**. Accordingly, **D.V. Kapoor** was rendered per-incuriam.

24. Article 366 of the Constitution of India contains the definitions for the purposes of the Constitution and in Clause 17 is defined 'pension' to include 'gratuity' as well. This definition of 'pension' in the Constitution also indicates that conceptually the term 'pension' includes 'gratuity'. In Article 41, of Civil Service Regulations the term 'pension' is defined to include 'gratuity' except when the term pension is used in contradiction to gratuity, in consonance with the basic concept.

25. The Division Bench in **Shri Pal Vaish vs. U.P. Power Corporation Limited and another**¹⁵ and **Jai Prakash** correctly appreciated that the word 'pension' to include 'gratuity'. The provision of Article 474 of the Civil Service Regulations read with Article 41 would indicate that 'pension' includes 'gratuity' in reference to Article 351-A. The provision of Clause(a) of Article 474 makes it clear that 'gratuity' is included under the head 'Amount of Pension'.

26. The Division Bench in **Bhagwati Prasad Verma vs. State of U.P. and others**¹⁶ (Bhagwati Prasad Verma case), in our opinion

14. 1990 AIR 1923

15. 2009 (9) ADJ 45 (DB)

16. 2008 (3) All LJ 150

does not lay down the correct proposition of law insofar it holds that the word 'pension' in Article 351-A would not include 'gratuity', and that gratuity cannot be withheld/withdrawn under Article 351-A. The provisions of Article 474 and 919-A was not brought to the notice of the Court. The decision was rendered on misreading of **D.V. Kapoor** and the **State of U.P. vs. U.P. University Pensioners Association**¹⁷ (U.P. University Pensioners case).

27. In **U.P. University Pensioners** case the issue was absolutely different and it was not a case where gratuity and commutation of pension was withheld on the ground of pendency of departmental enquiry. The decision is not an authority on the issue as to whether 'pension' includes 'gratuity' under the Civil Service Regulations or on similar Rules applicable to the Central Government employees. The issue that the word 'pension' includes 'gratuity' stands settled in **Jarnail Singh** as discussed earlier. In view of the foregoing discussions, we do not agree with **Bhagwati Prasad Verma** holding that 'pension' would not include 'gratuity' under Article 351-A.

28. From the definition of 'pension', it is clear that ordinarily the word 'pension' wherever used in the Civil Service Regulations includes 'gratuity' except when the term 'pension' is used in contradistinction to 'gratuity'. We accordingly hold that the term 'pension' would include 'gratuity' particularly in Article 351, 351-A of the Civil Service Regulations.

29. We accordingly approve **Sri Pal Vaish** and **Jai Prakash**. The decisions correctly hold that 'pension' would include 'gratuity' in reference to Article 351-A.

Article 351/351-A of Civil Service Regulation:

30. Part III of Civil Service Regulations commences with the

17. 1994 (2) SCC 729

heading “**Ordinary Pension**”. Chapter XV spells out the '**General Rules**' and '**Extent of Application**' regarding right and entitlement of the government servant to pension and gratuity is subject to future good conduct, an implied condition for ever grant of pension is contemplated under Article 351. Article 351 reads thus:

“351¹⁸. Future good conduct is an implied condition of ever grant of a pension. The State Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct. The decision of the State Government on any question of withholding or withdrawing the whole or any part of pension under this regulation shall be final and conclusive.”

31. On plain reading, Article 351 confers power upon the State Government of withholding or withdrawing pension or any part of it, if the pensioner be convicted of 'serious crime' or be guilty of 'grave misconduct'. In other words the State Government can withhold or withdraw pension on two grounds: (i) convicted of serious crime; (ii) guilty of grave misconduct; but not otherwise. In other words mere pendency of criminal case or disciplinary proceedings is not sufficient to withhold/or withdraw pension under Article 351.

32. The expression 'grave misconduct' is also used in Article 351-A. The question arises as to what is meant by, the expression 'serious crime' and 'grave misconduct' used in Article 351 and Article 351-A.

33. “Misconduct” is a generic term and means a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms for misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence but not negligence or carelessness.

18. incorporated vide notification dated 27 October 1976

34. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

35. The word "grave" qualifies 'misconduct' is used in many senses and implies seriousness, importance, weight etc. There is, however, a distinction between 'misconduct' and 'grave misconduct'/and 'gravest acts of misconduct' expression used in the State of Punjab. The adjective 'grave' in this context makes the character of the conduct, serious or very serious. One has to apply one's mind to the word and give a meaning in the light of the actual deed, situation and circumstances. 'Misconduct' in order to earn the epithet of gravity has to be gross or flagrant. Consequently, the degree of misconduct to justify dismissal has to be higher or more serious. Single act of misconduct could also be grave. (Refer: **Bhagwat Prasad vs. Inspector General of Police**¹⁹, affirmed by the Supreme Court in **State of Punjab and others vs. Ram Singh Ex. Constable**²⁰)

36. Expression 'serious crime' would include offences having dangerous possible consequences. Black Law Dictionary defines serious offence as violation of law that is significant in effect and carries more than a six months punishment.

19. AIR 1970 Punjab 1981

20. AIR 1992 SC 2188

37. Section 2(54) of Juvenile Justice Act, 2015, defines 'serious offence':

“serious offences” includes the offences for which the punishment under the India Penal Code or any other law for the time being in force, is imprisonment between three to seven years.”

38. The expression 'judicial proceedings' includes civil cases, plausible civil cases where pension can be withheld/withdrawn would include matrimonial disputes, succession cases, right and entitlement of spouses and their children, domestic violence, civil death etc. involving the government servant.

39. The expression 'serious crime' has to be understood in the context of service jurisprudence involving the government servant. It may be any act or omission which in the opinion of the competent authority is serious enough and calls for punitive action in terms of Article 351. It has no bearing with the quantum of sentence but with the nature of the offence and the degree of involvement of the government servant in the commission/omission of the crime.

40. Article 351-A empowers the Governor to withhold or withdraw pension or a part of it permanently or for specified period and order recovery from pension for pecuniary loss caused to the Government if the pensioner in departmental proceedings or in judicial proceedings, has been found: (i) guilty of grave misconduct or (ii) to have caused pecuniary loss to Government by misconduct or negligence during his service. The proviso to the Article spells out the circumstances/conditions in which the departmental proceedings/judicial proceedings is required to be instituted for the purposes of withholding/withdrawing pension. Article 351-A reads thus:

“351-A²¹. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it,

21. substituted vide notification dated 6 September 1961

*whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is **found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government** by misconduct or negligence, during his service, including service rendered on re-employment after retirement:*

Provided that-

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment-

(i) shall not be instituted save with the sanction of the Governor.

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

[Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission].

Explanation-For the purposes of this article-

(a) Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court ; and

(ii) in the case of civil proceedings, on the date on which the

plaint is presented or, as the case may be, an application is made to Civil court

Note- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned.”

41. Explanation to Article 351-A clarifies that departmental proceedings shall be deemed to have been instituted: (i) when charges are framed against the pensioner; or (ii) the officer has been placed under suspension from such date. Further, judicial proceedings is deemed to have been instituted against the pensioner: (i) in the case of criminal proceedings, on date on which complaint is made or charge-sheet is submitted to a criminal court; (ii) in case of civil proceedings on the date on which plaint is presented or as the case may be, an application is made to Civil Court.

42. Now we will refer to the proviso to Article 351-A. The proviso speaks about initiation of disciplinary proceedings or judicial proceedings against the government servant after retirement. For initiating proceedings the conditions specified therein must be satisfied, that is, departmental proceedings as indicated in proviso (a) if not instituted while the officer was on duty then it shall not be instituted except:

- (i). with the sanction of the Governor;
- (ii). it shall be initiated on an event which took place not more than 4 years before the institution of the proceedings;
- (iii). such proceedings would be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

43. On perusal of Proviso and its Explanation, referred to above, deals only with the conditions for initiation for disciplinary

proceedings/judicial proceedings and the limitation within which such initiation of the proceedings can be done has been made explicit.

44. In **State of U.P. vs. Harihar Bhole Nath**²² (Harihar Bhole Nath case), one of the issues involved therein was whether the sanction of the Governor was required to continue the proceedings after retirement. The Court held in negative as follows:

“But the said Rules read with the Proviso and the Explanation appended thereto construed in their entirety clearly postulate that the proceedings initiated before the delinquent officer reached his age of superannuation would be valid.....The question, however, is whether the sanction of the Governor was required even for the purpose of continuance of the proceedings which had already been initiated. Answer thereto must be rendered in the negative.” (Refer: State of U.P. vs. R.C. Misra²³)

45. The issue before the Court in **State of Orissa and others vs. Kalicharan Mohapatra and others**²⁴ was as to whether Rule 6 of All India Service (Death-cum-Retirement Benefits) Rules, 1958, could have been invoked during pendency of a criminal case against the government servant, inasmuch as, the charge against the government servant is not one of causing pecuniary loss to the State Government by misconduct or negligence within the meaning of the Rule. Relevant portion of Rule 6 for our purposes is extracted:

“6. Recovery from pension:- 6(1) *The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered or re-employment after retirement.*

Provided that no such order shall be passed without consulting the

22. 2006 (13) SCC 460

23. (2007) 9 SCC 698

24. AIR 1996 SC 684

Union Public Service Commission:-- Provided further that--

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;

(b)

(c)

Explanation.- For the purpose of this rule:-

(a) a departmental proceeding shall be deemed to be instituted which the charges framed against the pensioner are issued to his or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted--

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death- cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clause (i), (ii) and (iv) of sub-rule 1 of rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or Death-cum-Retirement gratuity shall not be withheld.”

46. The Court negated the view of the Tribunal that unless the charge expressly charges the government servant with causing pecuniary loss to the government, the action under the Rule cannot

be taken. In other words the charge of causing loss is not a condition precedent for exercising power under the Rule. Para 6 and 7 of **Kalicharan Mohapatra** reads thus:

“6. It is thus clear from an analysis of sub-rules (1) and (2) that where a judicial proceeding is pending against a pensioner for grave misconduct, the government is entitled to withhold gratuity amount and/or death-cum-gratuity amount and is also entitled to sanction provisional pension for the period of pendency of the said proceedings. It is not necessary that a judicial proceeding should relate to the charge of causing pecuniary loss to the Central or State Government by misconduct or negligence during his service. Sub-rule (1) of Rule 6 specifies two grounds upon which action thereunder can be taken. One is where the pensioner is found guilty of grave misconduct and the other is where he is found to have caused pecuniary loss to the Central and State Government by misconduct and negligence during his service. Sub-rule (2) provides for orders to be made during the pendency of such proceedings...”

7. The Tribunal was, therefore, in error in holding that unless the charge expressly charges the pensioner with causing pecuniary loss to Central or State Government by his negligence or misconduct during his service, the action under sub-rule (2) of Rule 6 cannot be taken.”

47. The Rule is similarly worded as Article 351-A. The Court on analyzing Sub-Rule (1) and (2) of Rule 6 held that during pendency of proceedings government servant is entitled to provisional pension not exceeding the maximum pension, but no gratuity shall be paid until the conclusion of such proceedings and issuance of final orders thereon. Para 5 reads thus:

“5. A reading of sub-rule (1) of Rule 6 discloses the following features: (a) if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or (b) where a pensioner is found in a departmental or judicial proceeding to have caused pecuniary loss to the Central or State Government by his misconduct or negligence during his service (including the service rendered on re-employment after retirement), (c) the Central Government is entitled to withhold or withdraw pension

or any part of it whether permanently or for a specified period. The Central Government is also entitled to order recovery from pension of the whole or part of any pecuniary loss caused to the Central or State Government. Sub-rule (2) says that (a) where a departmental or judicial proceeding is instituted under sub-section (1) or (b) where a departmental proceeding is continued under clause (a) of the proviso to sub-rule (1), (c) such employee shall be sanctioned by the government which instituted such proceedings a provisional pension not exceeding the maximum pension admissible to him during the period of pendency of such proceeding, (d) but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issuance of final orders thereon.”

48. On joint reading of Article 351 and 351-A of the Civil Service Regulations clearly indicates that the State Government/Governor reserves to itself the power and right to withhold or withdraw pension or part thereof, whether permanently or for specified period or to order recovery from pension of the whole or part of any pecuniary loss caused to the government in the following eventualities:-

- i. pensioner be convicted of serious crime;
- ii. pensioner be guilty of grave misconduct;
- iii. pensioner having caused pecuniary loss to the government by misconduct or negligence, during service including service rendered on reemployment after retirement;
- iv. The power under Article 351 and 351-A can be invoked by the Governor/State Government upon conclusion of disciplinary/judicial proceedings and not at the inception of the proceedings. In other words, the condition precedent for exercise of power under these Articles is on conclusion of the proceedings and order being passed thereon by the competent authority.

Article 351-AA/Article 919-A:

49. Article 351-AA came to be incorporated entitling provisional pension as against full pension (commutation of pension) to government servant against whom departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement, such government servant may be sanctioned provisional pension as provided in Article 919-A.

50. Article 351-AA reads thus:

*“[351-AA²⁵. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings or any enquiry by Administrative Tribunal is **pending** on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned.”*

51. On plain reading of Article 351-AA, it transpires that in the eventuality of proceedings/enquiry, referred therein, is pending against a government servant on the date of superannuation, the government servant shall be entitled to provisional pension. In other words, pendency of departmental/judicial proceedings or any enquiry or enquiry to be instituted after retirement would not empower the State Government to withhold pension, but the government servant may be sanctioned provisional pension, computed as per Rules. It follows that the full pension has to be computed on conclusion of the proceedings/enquiry as the case may be.

52. PART X relates to '**Procedure Relating to Pensions**' and Chapter XLVII is on '**Application for Grant of Pension**'. For the purpose of this Chapter 'gratuity' means 'death-cum-retirement gratuity'; and includes 'service gratuity' if any. Article 905 reads thus:

25. inserted vide notification dated 24 October 1980

“905. (1) The rules in this Chapter apply to all officers under the rule making control of the State Government.

(2) Unless there is anything repugnant in the subject or contest, for the purposes of this Chapter “gratuity” means death-cum-retirement gratuity and includes service gratuity, if any.

53. Under this Chapter, Article 351-AA/919-A came to be inserted at the same point of time. Article 919-A clarifies that the provisional pension admissible to a government servant in view of Article 351-AA would be authorized for the period commencing from the date of retirement up to and including the date on which after conclusion of departmental/judicial proceedings or the enquiry by the Administrative Tribunal, as the case may be, final orders are passed by the competent authority. Article 919-A reads thus:

*“[919-A²⁶. (1) In case referred to in Article 351-AA the Head of Department authorize the provisional **pension equal to the maximum pension** which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date and retirement up to the date immediately preceding the date on which he was placed under suspension.*

(2) The provisional pension shall be authorized for the period commencing from the date of retirement up to and including the date on which after conclusion of departmental or judicial proceeding or the enquiry by the administrative Tribunal; as the case may be, final orders are passed by the competent authority.

*(3) **No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings, judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.***

(4) Payment of provisional pension made under clause (1) above shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceeding or enquiry referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than

26. vide notification dated 19 January 1983, made effective with effect from 28 October 1980

the provisional pension or withheld either permanently or for special period.”

54. At this stage, it was brought to our notice that most of the books/commentaries on Civil Service Regulations applicable to the state of Uttar Pradesh, do not contain the correct provision of Article 919-A. The expression 'judicial proceedings' in Sub-clause (3) of Article 919-A does not appear in the textbooks/commentaries in circulation. The decisions that came to be rendered in ignorance of the correct provision renders the decision per-incuriam, therefore, not a binding precedent.

55. Regulation 351-AA/919-A was made effective much after the enactment of U.P. Liberalized Pension Rules, 1961 and U.P. Retirement Benefit Rules, 1961. The said Rules contain specific provision, *inter alia*, empowering the competent authority to make recovery from gratuity and family pension sanctioned in the same circumstances contemplated under Article 351-A.

56. Sub-Clause (3) to Article 919-A is negatively worded, it categorically mandates that gratuity shall not be paid to the government servant until conclusion of the departmental/or judicial proceedings or enquiry by the Administrative Tribunal. On plain reading, it is clear that in the event of pending proceedings/enquiry there is an embargo mandating that government servant shall not be entitled to gratuity until conclusion of the pending proceedings and final orders being issued thereon by the competent authority. That what was subservient/inert in the definition of pension that “pension includes gratuity” (Article 41) was made explicit and in contradiction to pension that gratuity is not payable to government servant pending disciplinary proceedings/or judicial proceedings, but the provision {Sub Clause (1)} is positively worded entitling the government servant provisional pension equal to maximum pension, admissible to the government servant on the basis of the

qualifying service up to the date of retirement or suspension as the case may be. The provision (Sub-clause (3)) employs the word 'shall' thus making it mandatory. Article 351-AA uses the word 'may', thus leaving it to the competent authority to sanction provisional pension. We have not come across any provision in the Civil Service Regulations that prohibits or imposes restriction on sanction of provisional pension. The government servant in our opinion is entitled to provisional pension pending proceedings/enquiry.

57. Article 351-AA and 919-A get invoked in the event of pending departmental/judicial proceedings or an enquiry by Administrative Tribunal against the government servant. As against Article 351 and 351-A is invoked upon the outcome of the disciplinary/judicial proceedings. It follows that where the government servant retires on attaining the age of superannuation or otherwise and against whom any departmental/judicial proceedings or any enquiry by the Administrative Tribunal is pending on the date of retirement or to be instituted after retirement, the following consequences flow: (i) government servant is entitled to provisional pension equal to maximum pension; (ii) no gratuity is payable pending departmental/judicial proceedings or the enquiry; (iii) full pension (commutation of pension) and gratuity is payable upon conclusion of the pending departmental/judicial proceedings/enquiry and final order being passed thereon by the competent authority.

58. At this stage reference may be made to Rule 10 of the U.P. Liberalized Pension Rules, 1961 and Rule 9 of the U.P. Retirement Benefit Rules, 1961. The Rules provide that the 'Governor will have the right to effect recoveries from a gratuity or family pension sanctioned in the same circumstances as recoveries can be effected from ordinary pension under Article 351A of the Civil Service Regulations'.

59. Rule 10 of the U.P. Liberalized Pension Rules, 1961 and Rule 9 of the U.P. Retirement Benefits Rules, 1961 make it clear that recovery can also be made from the sanctioned gratuity and family pension in the same circumstances as recovery can be effected from ordinary pension under Article 351-A.

60. These Rules have no application while interpreting Article 351A/351AA/919A. The Division Bench in **Bhagwati Prasad Verma** upon referring to the Rules held that the term 'pension' would not include 'gratuity' within the meaning of Article 351A, therefore, was of the view that 'gratuity' in no circumstances can be withheld during pendency of proceedings/enquiry under Article 351-A.

61. In view of the foregoing discussions, with respect, we do not approve of the reasoning in **Bhagwati Prasad Verma**. Article 351AA/919A was not brought to the notice of the Court in **Bhagwati Prasad Verma**. The Articles apply during pendency of the proceedings. Further, the Rules apply where the gratuity and family pension has been 'sanctioned' and does not deal with the situation where sanction has been made subject to outcome of the pending proceedings/enquiry at the time of retirement of the pensioner (Article 351-A). The decision in **Bhagwati Prasad Verma** is manifestly erroneous and is overruled.

62. Similarly, the Division Bench in **Ram Murti Pandey vs. State of U.P.**²⁷, held that there is no provision in the Regulations to withhold pension during pendency of criminal case. The Court was referring to Article 351. The provision of Article 351-AA and Article 919-A was not brought to the notice of the Division Bench. The decision is not binding precedent being per-incurium.

63. In view of the specific provision viz. Article 351-AA and 919-A, a government servant against whom disciplinary/judicial proceedings is pending on retirement or to be instituted, the government servant is not entitled to gratuity, but to provisional

27. 2017 (6) ADJ 494

pension subject to the outcome of the proceedings/enquiry. It is not open to the government servant at that stage/or during pendency of the disciplinary/judicial proceedings to contend that since allegations of 'grave misconduct' or pecuniary loss to the Government, prima facie, is not made out from the charge(s), therefore, he is entitled to full pension and gratuity. The stage to entertain such a plea has not arisen yet.

64. We are in agreement with and approve the ratio of **Sri Pal Vaish** and **Jai Prakash** on the proposition of law that government servant is not entitled to gratuity but to provisional pension during pendency of proceedings/enquiry.

65. We accordingly hold that during pendency of proceedings/enquiry government servant shall be sanctioned provisional pension and no gratuity is payable for the period upto conclusion of the proceedings/enquiry and orders being passed thereon by the competent authority.

Stage at which government servant is entitled to full pension/gratuity:

66. The question that arises is whether the government servant/pensioner can seek intervention at a stage before the competent authority has had the occasion to pass appropriate order upon conclusion of the disciplinary/judicial proceedings/or enquiry by Administrative Tribunal. We are of the opinion that such a course is not available to the pensioner and if allowed would entail serious consequences, otherwise not mandated by the Regulations. It is not open to the government servant/pensioner, in view of the conjoint reading of the Articles to preempt the pending proceedings/enquiry by walking away with pension/gratuity without awaiting the outcome/conclusion of the disciplinary/judicial proceedings/enquiry. The competent authority

upon conclusion of the proceedings would be in a position to apply its mind on the outcome of the proceedings/enquiry and pass order thereon either withholding/withdrawing/reduction of pension or directing recovery of pecuniary loss from pension under Articles 351/351-A of the Civil Service Regulations.

67. Article 351-AA/919-A came to be incorporated later (1980), the rule making authority was fully aware of the existing provisions, in particular, Article 351/351-A, but the rule making authority, in view of the plain and unambiguous language used therein (Article 351-A), while incorporating Article 351-AA/919-A, did not consider it appropriate to mandate the release of full pension/gratuity to the government servant until conclusion of the proceedings. The entitlement to provisional pension and deferment of gratuity during pendency of the proceedings was not made subject to any further conditions at that stage. The stage was deferred until orders thereon was required to be passed by the competent authority recording satisfaction or otherwise upon conclusion of the proceedings/enquiry.

68. The principle of statutory interpretation requires that while interpreting a provision, the scope/ambit and impact of any other provision or the same provision should not be rendered inoperative or made redundant. It, therefore, follows that in cases where a government servant is allowed to receive full pension/gratuity during pendency or before conclusion of the proceedings, the competent authority is denuded of its power to take a call thereon upon conclusion of the proceedings/enquiry. The decision/order required to be passed by the competent authority upon conclusion of the proceedings may include: (i) whether misconduct tantamounts to grave misconduct; (ii) whether conviction is of serious crime; (iii) judicial proceedings includes civil cases involving the government servant which may or may not involve

'grave misconduct', therefore, the decision thereon is set at naught; (iv) a government servant under suspension at the time of retirement walks away with full pension, treating the period of suspension computable towards pension, without the competent authority having an occasion to pass order, whether the period of suspension would count towards computation pension or not, etc.

69. It, therefore, follows that the stage of passing appropriate order under Article 351/351-A by the competent authority is mandated at the conclusion of the proceedings and certainly not at the stage during pendency of the disciplinary/judicial proceedings. The cause to the pensioner would arise after the order is passed by the competent authority upon conclusion of the proceedings and findings returned thereon. In the opinion of the competent authority if the pensioner is guilty of grave misconduct, or convicted of serious crime, or caused pecuniary loss, the consequence under Article 351/351-A would follow. The government servant/pensioner would have to wait until such an order is passed before claiming full pension and gratuity. In other words the cause to the government servant of taking remedy would arise after order of the competent authority is passed upon conclusion of the proceedings/enquiry and not during pendency of the proceedings/enquiry.

70. It is not open to the government servant to contend that he is facing 'hardship' due to the prolonged pendency of the proceedings. The Regulations entitles the government servant provisional pension 'equal to maximum pension' (Article 919-A(1)) during the period until conclusion, thereby, taking care of the likely hardship, and that what is postponed is commutation of pension and gratuity.

71. We are fortified in taking the view from the observations made in **Nazrual Islam vs. Union of India and others**²⁸, wherein

28. 2018 (13) SCC 190

the Supreme Court while considering Rule 6(1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958²⁹ (extracted in the earlier part of the judgment), a plea was raised by the appellant therein that there is no finding of any misconduct and, therefore, the proceedings cannot be continued under Rule 6(1). The Court rejected the contention observing that the stage has not arisen yet. It is for the disciplinary authority to consider all matters being raised by the appellant while passing final orders. Relevant portion of the paragraph 6 reads thus:

*“6. Now that the Inquiry Report has been submitted, it is for the Central Government to take a decision as per the procedure prescribed under the Rules. **Ultimately if the Appellant is found guilty of a grave misconduct, then only the question of impact on pension arises and that stage has not arisen yet. These are all matters for the disciplinary authority to consider while passing final orders.**”*

72. In **Faini Singh and Ram Babu Sahu vs. State of U.P.**³⁰ (Ram Babu case), the Division Bench on facts therein, held that mere pendency of any judicial proceedings cannot be a ground to exercise power under Article 351-AA read with Article 919-A for withholding the retiral dues. The nature and the gravity of charge has to be taken into consideration by the competent authority before making an order or withholding the retiral dues. In other words, it was held that the existence of the power by itself did not justify the exercise of power. Enquiry can continue only if there are charges of grave misconduct or of causing financial loss to the government, i.e. in absence of allegation of seriousness of the misconduct cannot become a ground of punishment of the government servant. With due respect, we are not in agreement with the view expressed in **Faini Singh and Ram Babu** to entitle the authority to examine the nature of the allegations of misconduct or the charge in criminal trial at the stage before

29. Rules, 1958

30. 2012 (2) ADJ 561

conclusion and outcome of the proceedings. Having regard to the provisions of the Civil Service Regulations, in our view, **Faini Singh** and **Ram Babu** do not lay down the correct proposition of law, accordingly, in view of the discussion herein above we do not approve it.

73. There may be instances where the departmental proceedings against the government servant may have to be kept in abeyance pending criminal case. In the given facts of a case where charges and evidence in both the proceedings are same and based on same evidence, if the disciplinary proceedings is continued and not kept in abeyance it could adversely prejudice the government servant/pensioner in the criminal case. It is always open to the competent authority to continue the disciplinary proceedings after decision of the criminal case including upon acquittal of the pensioner. The order of the competent authority would follow the outcome of the criminal case.

74. In **Corporation of the City of Nagpur vs. Ramchandra**³¹, Supreme Court observed that it may not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, where the accused has been acquitted honourably and completely exonerated of the charges. At the same time, it is pointed out that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered. The same principle is reiterated in **Commissioner of Police vs. Narender Singh**³² and **Capt. M. Paul Anthony vs Bharat Gold Mines Ltd. & Anr**³³.

75. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a

31. (1981) 2 SCC 714

32. (2006) 4 SCC 265

33. 1999(3) SCC679

clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In **R.P. Kapur vs. Union of India**³⁴ Supreme Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

“This Court observed that the expressions “honourable acquittal”, “acquitted of blame” and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted”.

76. The Regulations, as discussed in preceding paragraphs, do not mandate the competent authority to examine the gravity of the charge or the nature of the allegations during pendency of the proceedings. The stage at which the decision is to be taken by the competent authority is upon conclusion of the proceedings and not at an earlier point of time. The stage to examine the nature/role of the involvement of the government servant in the commission or omission of the offence or whether allegations constitutes grave misconduct or pending disciplinary proceedings is to be continued after conclusion of criminal trial or not, would arrive later and not during pendency of the judicial proceedings.

77. We accordingly hold that the stage for exercise of powers having impact on pension under Articles 351, 351-A of the Civil Service Regulations arises upon conclusion of the proceedings and the competent authority passing an appropriate order thereon.

Conclusion:

78. In view of the foregoing discussions, we arrive at the following conclusions:

34. AIR 1964 SC 787

- (i) Future good conduct is implied condition of ever grant of pension. Full pension is not to be given as a matter of course, or unless the service rendered has been thoroughly satisfactory. (Article 351/351-A)
- (ii) Article 351 and/or 351-A can be invoked by the State Government or the Governor, as the case may be, if the pensioner (a) be convicted of serious crime; (b) be guilty of grave misconduct (c) caused pecuniary loss to the government in service. The power can be exercised in either of the eventualities. The action thereunder is punitive.
- (iii) Pendency of disciplinary/judicial proceedings on the date of retirement, or instituted after retirement, provisional pension equal to maximum pension as mandated under Article 919-A may be sanctioned to the government servant for the period upto conclusion of the proceedings. (Article 351-AA/Article 919-A(1)/(2))
- (iv) No gratuity is payable to the government servant during pendency of disciplinary/judicial proceedings/enquiry by Administrative Tribunal, until conclusion of the proceedings/enquiry and orders being passed thereon by the competent authority. [Article 919 A(3)]
- (v) The Regulations mandates that government servant is entitled to provisional pension equal to maximum pension during pendency of the proceedings until conclusion. The Regulations does not mandate the entitlement of full pension/gratuity on the ground of 'hardship' being faced by the pensioner pending proceedings.
- (vi) The nature of the charge/allegations against the government servant cannot be gone into during pendency of the proceedings. The government servant whether guilty of 'serious crime' and/or 'grave misconduct' in the opinion of

the competent authority can be assessed/considered while passing final orders upon conclusion of the disciplinary/judicial proceedings.

- (vii) On combined reading of Article 351, 351-A, 351-AA and 919-A, the impact on pension/gratuity would arise after the competent authority has had the occasion to consider and issue final orders upon conclusion of the proceedings. The cause to the government servant arises thereafter and not at the stage pending proceedings/enquiry.

79. The decisions rendered by the learned Single Judge and the Division Bench of this Court taking a contrary view that is inconsistent and in contradiction to the proposition of law stated herein above shall stand overruled.

Answer to the question of law:

80. We accordingly proceed to answer the reference in the following terms:

- (i) Question No. 1 is answered in the negative. Government servant is not entitled to full pension/death-cum-retirement gratuity on/or during pending judicial proceedings against the government servant.
- (ii) Question No. 2 is answered in the negative. Entitlement to full pension/death-cum-retirement gratuity to the government servant is subject to the outcome of the disciplinary/judicial proceedings and issue of final orders thereon by the competent authority.
- (iii) The broad principle of law, which has been formulated in **Jai Prakash** lays down the correct law, the view expressed in **Faini Singh** and other decisions referred to in the referring order being in contradiction to the proposition of law held by us, is not approved.

81. Reference to the Full Bench, shall accordingly stand answered.

82. The writ petition shall now be placed before the regular Bench according to the roster for disposal in light of the questions so answered

83. Before parting, I would like to record my appreciation for Ms. Shaivya Johri, attached Law Clerk, for the assistance rendered by her in research work.

Pankaj Mithal, J.

1. These petitions have been referred for the opinion of the Larger Bench. I have the advantage of reading the opinion expressed by one of my brother Judges. I am in complete agreement with the concluding opinion expressed by him but would prefer to write briefly the same opinion in my own words.

2. In the above six writ petitions one of the controversies raised is with regard to entitlement of the petitioners to receive gratuity on retirement pending criminal cases.

3. The learned Single Judge vide order dated 26th February 2016 in view of the conflicting Division Benches in *Jai Praksh*³⁵ on the one hand and of *Faini Singh*³⁶ and some other decisions on the other hand referred the matter to the larger Bench.

4. Upon reading the reference order and hearing the parties, I am of the opinion that the following two points arise for consideration:-

- (i) Whether the gratuity admissible to a civil servant on retirement can be withheld simply for the reason that some judicial proceedings viz., a criminal case is pending against

35. 2014 (1) ADJ 207 State of U.P., and others Vs. Jai Prakash.

36. State of U.P., and others Vs. Faini Singh Special Appeal Defective No. 416 of 2014 decided on 25.4.2014.

him; and

(ii) Whether the view expressed in the case of *Jai Prakash* lays down the correct law or that expressed by the other decisions cited on behalf of the petitioners is correct.

5. The pension and death cum retirement gratuity are both admissible to a government servant on his retirement as of right and not as a bounty. Therefore, neither the pension nor the death cum retirement gratuity of a retired employee can be curtailed, denied or withheld unless it is provided by the Statutes and that too only in the manner prescribed.

6. The Civil Service Regulations (hereinafter 'Regulations' only) in its application to the State of U.P., which have been framed in exercise of powers under Article 309 of the Constitution of India governs the payment of pension to the government employees.

7. Generally speaking pension and gratuity are distinct except that both are reitral benefits. They are distinct as gratuity is a consolidated amount payable on retirement whereas pension is a recurring periodical payment after retirement for the rest of the life.

8. Article 366 (17) of the Constitution of India defines 'pension' to include *inter alia* gratuity.

9. Regulation 41 defines 'pension' to include gratuity except when it is used in contradistinction to gratuity. Thus ordinarily gratuity is a component of the pension but where the term pension and gratuity are used in contradiction to each other, they are separate.

10. Regulations 351 & 351-A provides for the power of the State Government/Governor to withdraw pension or any part thereof either temporarily or for specific period. They are as under:-

“351. Future good conduct is an implied condition of ever

grant of pension. The State Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the State Government on any question of withholding or withdrawing the whole or any part of pension under this regulation shall be final and conclusive.”

“351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement.”

11. Regulation 351 as amended vide notification dated 27.10.1976 envisages future good conduct as an implied condition for grant of pension and authorizes the State Government to reserve to itself the right of withholding or withdrawing the pension or any part of it, if the pensioner be convicted of serious crime or be found guilty of grave misconduct. In other words, the State Government has a right to withhold or withdraw pension or any part of it of a retired government servant on his conviction in a serious crime or being held guilty of grave misconduct.

12. Regulation 351-A which was substituted vide notification dated 6.1.1961 empowers the Governor to reserve to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period and to order recovery from the pension whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Government by

misconduct or negligence during his service rendered on re-employment after retirement. It simply authorises the Governor to withhold or withdraw pension or any part of it if the pensioner is found guilty of grave misconduct in departmental or judicial proceedings subject to certain other conditions enumerated in the later part of the above regulation which are not relevant for the purposes of this case.

13. A conjoint reading of both the above provisions reveal that the State Government and the Governor have the right to withhold or withdraw pension, if the pensioner is convicted of a serious crime or is held guilty of grave misconduct in departmental or judicial proceedings.

14. The aforesaid provisions make it as clear as crystal that conviction and holding the pensioner guilty of misconduct are essential for withholding or withdrawing the pension or any part of it either by the State Government or by the Governor. Thus mere pendency of departmental or judicial proceeding are not at all sufficient for exercising any power under Regulation 351 or 351-A to withhold or withdraw pension or any part of it.

15. Now comes Regulation 351-AA which was inserted vide notification dated 19th July 1983 w.e.f. 28th October 1980. The said regulation reads as under:-

“351-AA. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned.”

16. The aforesaid regulation contemplates for the payment of provisional pension as provided under Regulation 919-A if at the

time of his attaining the age of superannuation a departmental or judicial proceeding or enquiry by the Administrative Tribunal is pending or is to be instituted against the pensioner after his retirement.

17. The aforesaid regulation does not speak about the conviction or holding a retired employee guilty of misconduct for the purposes of provisional pension rather for payment of provisional pension to him, if at the time of his attaining the age of superannuation any departmental, judicial proceedings or any enquiry by the Administrative Tribunal is pending against him or is to be instituted.

18. A combined reading of all the aforesaid three provisions ie. Regulation 351, 351-A and 351-AA would make it clear that the earlier two provisions for withholding or withdrawing pension comes into play where the Government Servant is convicted in a crime or is found guilty of misconduct and not on mere pendency of any departmental or judicial proceedings or any enquiry whereas the last provision for payment of provisional pension applies where any departmental or judicial proceedings or any enquiry by the Administrative Tribunal is pending or is contemplated.

19. In short, pension of a government servant can be withheld or withdrawn, if he is convicted in a crime or is found guilty of misconduct, but if he is neither convicted nor found guilty of misconduct but a departmental or judicial proceedings or any enquiry by the Administrative Tribunal is pending against him at the time of his retirement or is likely to be instituted, he would be entitled to provisional pension in accordance with Regulation 919-A. Thus, pending a departmental or judicial proceedings or any enquiry pension can not be withdrawn, withheld or stopped.

20. This being the position with regard to pension we move

forward to the death cum retirement gratuity with which alone we are concerned in this case.

21. Gratuity is ordinarily included in pension as one of its component but is otherwise separate from it. There exists separate statutory provisions for payment of pension and gratuity in cases where a government servant has been convicted of a crime or has been found guilty of misconduct and in cases where a departmental enquiry or judicial proceedings or any enquiry by the Administrative Tribunal is pending against him. Therefore, payment of pension and gratuity has to be dealt with independently and separately according to the specific provisions governing each of them.

22. In this context, Regulation 919-A (3) is very relevant and material. The aforesaid Regulation has been inserted by the U.P., Civil Service (X Amendment), 1983 notified on 19th January 1983 w.e.f. 28.10.1980.

23. The aforesaid Regulation reads as under:-

“919-A. (1). In cases referred to in Article 351, the Head of Department shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceeding the date on which he was placed under suspension.

(2) The provisional pension shall be authorised for the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceeding or the enquiry by the Administrative tribunal, as the case may be, final order are passed by the competent authority.

(3) No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings or the enquiry by the Administrative

tribunal and issue of final order thereon.

(4) Payment of provisional pension made under clause (1) above, shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceedings or in unity referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

24. Sub-clause 3 of Regulation 919-A in very clear and unequivocal terms lays down that no death cum retirement gratuity shall be paid to the government servant until the conclusion of the departmental or **judicial proceedings** or the enquiry by the Administrative tribunal and issue of the final order thereon.

25. The use of the words “judicial proceedings” clearly envisages where such proceedings which includes both civil and criminal or of any nature are pending against the government employee who is retiring/retired, death cum retiral gratuity shall not be paid to him till the conclusion of the said proceedings.

26. In view of the above provision it is as certain as death that gratuity is not payable to the government employee, if judicial proceedings of either nature, civil or criminal are pending against him. This has also been held by the Division bench of this Court in ***Shri Pal Vaish***³⁷ wherein it has been clearly observed that gratuity is not payable during pendency of the criminal case.

27. The relevant finding to this regard contained in the above decision is quoted below:-

“ So far as the present case is concerned it is clear that under the provisions of regulation 919-A the petitioner is not entitled to payment of gratuity during the pendency of the criminal case.”

28. Another Division Bench of this Court headed by Dr. D.Y.

³⁷ 2009 (9) ADJ 45 (DB) *Shri Pal Vaish Vs. U.P. Power corporation Limited and another.*

Chandrachood, CJ. (as he then was) in *Jai Prakash* elaborately dealt with the above problem and on consideration of Article 351-A, 351-AA and 919-A (3) held that there is an express prohibition on the payment of death cum retirement gratuity to a government servant until the conclusion of the departmental or judicial proceedings or an enquiry by the Administrative Tribunal.

29. The Division Bench in laying down the above principle distinguished the Supreme Court decision in the case of *Jitendra Kumar Srivastava*³⁸ by observing that it was a case from Jharkhand where the provisions of Rule 43 (b) of the pension Rules of Jharkhand were under consideration which were para materia to Rule 351-A of the Civil Service Regulations as applicable to the State of U.P., and the said decision is limited to the pension Rules of Jharkhand which had no provision similar to that as Regulation 919-A (3) of the Civil Service Regulations as applicable in U.P. Therefore, in view of the regulation 919-A (3) no death cum retirement gratuity would be admissible to a government servant until the conclusion of the departmental or judicial proceedings or any enquiry by the Administrative Tribunal which includes the pendency of a criminal case.

30. In *Faini Singh* the Division Bench taking note of *Jai Prakash* opined that Regulation 919-A(3) contains an express prohibition on the payment of death cum retirement gratuity to a government servant until the conclusion of the departmental or judicial proceedings or an enquiry by the Administrative Tribunal, as the case may be. It further observed that the aforesaid Regulation which contains bar on the payment of gratuity till the conclusion of the departmental or judicial proceedings or an enquiry by the Administrative Tribunal at the same time allows the payment of provisional pension to the government servant. Subsequently, on the facts and circumstances of the case weighing

38 JT 2013 (1) SC 351 State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another.

the equities between the parties the Court held that continuance of embargo on the payment of gratuity and denial of pension amounts to injustice to the petitioner and thus held that withholding of gratuity and denial of pension is not justified merely for the pendency of the judicial proceedings.

31. The decision of the above Division Bench as contained in the later part is based upon equitable principle and is not the law that has been laid down. The decision on equity is confined to the fact situation of that case. Moreover, equity has no place where the provisions of law are express.

32. The decision in the case of *Bal Krishna Tiwari*³⁹ has been rendered simply following the equitable principle of *Faini Singh (Supra)* in context with the fact situation of the said case wherein the government servant had retired 10 years ago but was not getting his gratuity as a case was pending against him. The said decision also does not lay down any binding precedent.

33. The decision given in *Bangali Babu Misra*⁴⁰ is of no avail to the petitioners for the simple reason that it has been rendered without considering the provisions of Regulation 919-A in issuing direction for payment of gratuity, pension and other dues only for the reason that there is no Statutory rule or law providing withholding the retiral dues during the pendency of the criminal case.

34. Similar is the position with the decision of the Division Bench in *Narendra Singh*⁴¹. The said decision does not refer to any of the above Regulations much less Regulation 919-A. It appears that the aforesaid provisions were not brought to the notice of the Court which resulted in the issuance of direction for payment of retiral dues including gratuity despite pendency of a criminal case against the concerned government servant.

39 State of U.P., and others Vs. Bal Krishna Tiwari Special Appeal Defective No. 440 of 2014 decided on 8.5.2014.

40 2003 (3) AWC 1760 (Lucknow Bench) Bangali Babu Misra Vs. State of U.P.

41 Narendra Singh Vs. State of U.P., Writ Petition No. 12574 of 2013 dated 5.10.2013.

35. In the case of *Dr. Chandra Prakash*⁴² the Court held that as there is no good reason for with-holding the retiral benefits of the government servant merely for the pendency of criminal cases, he is entitle for the release of his pensionery benefits. In the said case also the matter of gratuity was not independently dealt with in the light of Regulation 919-A and as such is *per-in-curium*.

36. The decision dated 5.10.2013 in Writ No. 12574 of 2013 (Narendra Singh Vs. State of U.P., and others) is also of no consequence as it again fails to take into consideration the specific provision of Regulation 919-A with regard to with-holding of gratuity during the pendency of the judicial proceedings.

37. The last decision which is said to be conflicting is dated 10.9.2007 passed in Writ Petition No. 52482 of 2003 Bhagwati Prasad Verma Vs. State of U.P., and others. This decision also is not specifically in reference to the gratuity. It does not deal with Regulation 919-A and as such can not be said to be in conflict.

38. In view of the aforesaid facts and circumstances, the two questions which had come up for our opinion are answered as under:-

(i) A government employee is not entitled to death cum retiral gratuity unless the conclusion of the departmental proceedings or the enquiry by the Administrative Tribunal or judicial proceedings which includes both civil and criminal.

(ii) The law as laid down in *Jai Prakash (Supra)* is the correct law whereas all other decisions said to be in conflict with it are actually not in conflict rather do not address to the legal position with which we are concerned in these writ petitions but with pension alone or if with gratuity on the basis of the equity and that too without reference to regulation 919-A and as such would not apply in the matter

42 2013 (2) UPLBEC 1185 Dr. Chandra Prakash Vs. State of U.P., and others.

of payment of gratuity to the government employee.

39. Let files be sent to the appropriate Court for decision of the writ petitions on their own merits.

Order date:- 08.05.2019
S.Prakash/SKS

(Pankaj Mithal,J.)

(Suneet Kumar,J.)

(Rohit Ranjan Agarwal,J.)