

THE SECRETARY, LOCAL SELF GOVERNMENT
DEPARTMENT & ORS. ETC.

v.

K. CHANDRAN ETC.

(Civil Appeal Nos.7437-7438 of 2021)

MARCH 15, 2022

[SANJAY KISHAN KAUL AND M. M. SUNDRESH, JJ.]

Service Law – Death-cum-Retirement Gratuity (DCRG) – Kerala Service Rule – Rules 3 & 3A – Interpretation of – On conviction in a criminal case for violation of integrity norms in performance of official duties and an appeal pending before the High Court, whether the employee is still entitled to the release of his DCRG – Held: Rule 3A cannot be read in isolation nor the latter part of it struck down – Rule 3, Note 2, Ruling 3, and Rule 3A have to be read in conjunction as they provide for the treatment of the DCRG in case of disciplinary or judicial proceedings pending at the stage of retirement – Even in absence of these proceedings in certain eventualities the amounts can be recovered from the DCRG – An appeal is a continuation of the proceedings in trial and would be, thus, a continuation of judicial proceedings – Pendency of the appeal cannot disentitle the State from withholding the DCRG, considering that it is a hiatus period within which certain arrangements have to be made which would be dependent on the outcome of the appeal – It cannot be opined that the DCRG would have to be released pending consideration of the criminal appeal.

Allowing the appeals, the Court

HELD:1. The very objectives of holding back pension or the DCRG must be kept in mind. One can be to recover the amounts found due from the delinquent employee of any nature whatsoever after appropriate notice and proceedings. The second eventuality is if an employee is dismissed from service. It can hardly be doubted that in the second eventuality of the dismissal from service the employee would lose all retirement benefits.
[Para 28][303-B-C]

- A 2. The important aspect is whether Rule 3A is to be construed in the context of Rule 3 or should be read independently of itself. The High Court seeks to take a view that Rule 3A is in a sense assisting Rule 3 and does not have any independent existence. One is unable to agree to this line of reasoning. Rule 3 commences where the Government reserves to themselves the right to withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and all its ramifications. Certain protective provisions have been made even in that eventuality. This provision is applicable to pension is clarified by Note 2, as it is stipulated that the word 'pension'
- B would not include DCRG. Thus, DCRG and pension have been dealt with as separate aspects. However, Note 2 provides that the liabilities fixed against an employee or a pensioner can be recovered from DCRG without the departmental/judicial proceedings referred to in this Rule but after giving an employee or pensioner concerned a reasonable opportunity to explain. Rule 3A starts which refers to the grant of provisional pension not exceeding the maximum pension which would have been admissible on retirement where departmental or judicial proceedings have been initiated under Rule 3. It is clearly stipulated that no gratuity or DCRG shall be paid to him until the
- C conclusion of such proceedings and the issuance of final order thereof. [Paras 31-35][304-B, E-G; 305-B-C]
- D 3. The High Court has introduced a new legislation by undertaking the exercise of reading down. There is absolutely no need to do so when the language of the rule is so clear
- E conveying its intended meaning without any ambiguity. Rule 3A cannot be read in isolation nor the latter part of it struck down as done by the High Court. Rule 3, Note 2, Ruling 3, and Rule 3A have to be read in conjunction as they provide for the treatment of the DCRG in case of disciplinary or judicial proceedings
- F pending at the stage of retirement. Even in the absence of these proceedings in certain eventualities the amounts can be recovered from the DCRG. [Paras 36 & 37][305-C-E]

4. Also, it is a very restrictive view to disburse DCRG on account of the proceedings against a pensioner coming to an end, even where a conviction has arisen. This is especially so where the convicted person has availed of the remedy of appeal. The pendency of the appeal cannot disentitle the State from withholding the DCRG, considering that it is a hiatus period within which certain arrangements have to be made which would be dependent on the outcome of the appeal. It cannot be opined that the DCRG would have to be released pending consideration of the criminal appeal. [Paras 39 and 42][307-D, E-F; 308-A-B]

Chairman-cum-Managing Director, Mahanadi Coalfields v. Rabindranath Choubey (2020) 18 SCC 71 – relied on.

Case Law Reference

(2020) 18 SCC 71 **relied on** **Para 24** D
CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7437-
7438 of 2021.

From the Judgment and Order dated 08.09.2020 of the High Court of Kerala at Ernakulam in O.P. (KAT) Nos.78 of 2015 and 428 of 2019.

With

Civil Appeal Nos. 7440 and 7441 of 2021.

C. K. Sasi, Abdulla Naseeh V. T., Ms. Meena K. P., Roy Abraham, Ms. Reena Roy, Akhil Abraham, Himinder Lal, Deepak Goel, Kamal Kr. Pandey, Ms. Madhvi Gupta, P. K. Manohar, Renjith B. Marar, Ms. Lakshmi N. Kaimal, M. J. Santhosh, Ms. Surabhi Santosh, Arun Poomulli, Ms. Srilakshmi Nair, Ms. Aiswarya Thankachan, Anil Sharma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. On the conviction in a criminal case for violation of integrity norms in performance of official duties and an appeal pending before the High Court, is the employee still entitled to the release of his Death-

H

- A cum-Retirement Gratuity (for short 'DCRG') is the moot point arising for consideration in the present appeals. We are, in fact, examining a Full Bench judgment of the Kerala High Court which resolved the conflict of view of the Division Benches and ruled in favour of the employees. The controversy having been set down, the Government of Kerala, which is naturally aggrieved by the decision of the Full Bench is before us on the aforesaid issue.
- B

Factual Background:

- 2. In the main appeal before us, the question of law is the same but the facts differ in the two cases of the two employees.
- C 3. (A) **K. Chandran**, the respondent in the appeal was working as Village Extension Officer, Noolaphuza. In the course of his employment the Vigilance Department registered a crime under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1998 (hereinafter referred to as the 'PC Act') alleging that he had received Rs.500 as bribe from one K.K. Mohanan. Mr. Chandran was suspended from service on 27.10.2006 and was reinstated in service on 01.03.2008. He retired from service on 31.03.2011 on superannuation while working as the General Extension Officer in Wayanad.
- D
- E 4. The Inquiry Commissioner and Special Judge, Kozhikode convicted K. Chandran vide judgment dated 29.07.2011 in CC No.13/2008 and sentenced him to undergo rigorous imprisonment (for short 'RI') for 2 years and a fine of Rs.5,000. Aggrieved by the same, K. Chandran filed an appeal before the High Court of Kerala, which was registered as Crl. A. No.6053/2013. The appeal was admitted and the sentence was suspended in the meantime.
- F
- G 5. K. Chandran submitted a request before the Accountant General to release his DCRG in 2014. On not receiving a favourable response, he filed an application numbered O.A.(EKM) No.104/2014 before the Kerala Administrative Tribunal (for short 'KAT'), which dismissed his application on 09.12.2014 on the ground that judicial proceedings had been concluded and K. Chandran had been convicted. The issue which arose pertained to the intent and purport of Rule 3A of Part III of the Kerala Service Rules (for short 'KSR'), which was stated to require the outcome of departmental or judicial proceedings to be concluded for the release of DCRG. Thus, if the criminal case
- H

went against K. Chandran, it had to be withheld or otherwise it had to be released. It was opined that K. Chandran being a convict and that too for receiving a bribe, could not claim entitlement to the DCRG and, thus, accepting his application would defeat the very purpose of the Rule. A

6. (B) **D. Alexander**, another respondent in this matter allegedly committed an offence punishable under Section 120B of the Indian Penal Code, 1860 (hereinafter referred to as the ‘IPC’) and Sections 7, 13(1)(d) read with Section 13(2) of the PC Act while he was in service and a vigilance case was initiated against him. He was suspended from service on 28.11.2003 and was reinstated in service on 29.03.2004. He retired from service on 30.04.2004 on superannuation while working as the Taluk Supply Officer of Mukundapuram, Irinjalakuda. B C

7. The Inquiry Commissioner and Special Judge, Thrissur convicted D. Alexander vide judgment dated 11.07.2014 in CC No.07/2006 and sentenced him to undergo RI for 2 years and a fine of Rs.2,000. An appeal was filed before the High Court of Kerala, being Crl. A. No.672/2014, the same was admitted and the sentence suspended pending the disposal of the appeal which is still pending before the High Court of Kerala. D

8. D. Alexander was also aggrieved by the non-issuance of the DCRG and, thus, filed O.A. No.300 of 2015 before the KAT. E

9. He submitted that the DCRG can only be withheld only until the proceedings against an employee are concluded. The vigilance case against him had already been concluded in terms of the judgment dated 11.07.2014. The KAT, however, observed that the pensionary claims of D. Alexander had been duly admitted but only provisional pension was granted to him since a vigilance inquiry was pending against him at the time of retirement. F

10. It was opined that the appeal instituted by D. Alexander was not capable of being treated as a proceeding against him and therefore, no judicial proceedings were pending against him. The KAT directed the State to release the DCRG and other pensionary benefits of D. Alexander without any delay, within a period of three months from the date of receipt of the order. G H

- A 11. We thus set forth the factual matrix of the two cases wherein different conclusions were reached on the interpretation of the rules. We may also note here that the Government of Kerala had issued specific guidelines on 27.03.2002 directing the authorities to finalise departmental action or vigilance inquiries within one year of the retirement. That period
 - B expired a long time ago. Thus, there is no issue here of any future departmental proceedings being initiated irrespective of the results of the criminal appeals. The result of the appeals or any proceeding arising further would determine the fate of the respondents insofar as the charge against them is concerned. The only issue, thus, to be examined by the High Court was whether pending criminal appeal, and with the sentence
 - C being suspended, could the DCRG be directed to be released on the construction of the applicable rules.
12. In the two factual matrices referred to, K. Chandran approached the High Court of Kerala in O.P.(KAT) No.78/2015 seeking to set aside the order and requiring the disbursement of DCRG within a
- D fixed time, while the State in the latter matter of D. Alexander approached the High Court of Kerala in O.P.(KAT) No.428/2019 for setting aside of the relief which had been granted to the employee.
13. In view of there being a divergence of opinion, the Division Bench considered it appropriate to refer the matter to a larger Bench as
- E the two applications before the KAT had produced different results.

The High Court proceedings:

14. The State of Kerala sought to advance a plea that normally there cannot be any proceedings continued against a Government servant
- F after retirement as the employer-employee relationship does not subsist. However, Rule 3 in the KSR deems continuation of service in the case of a delinquent servant even after superannuation if any departmental or judicial proceedings are initiated, for the limited purpose of their finalisation. A punishment under Rule 3 could be for grave misconduct or negligence which may also lead to dismissal. In the event of an order G of dismissal being passed, even after retirement, the Government servant would have to forfeit his pension and DCRG.
15. On the other hand, the counsel for K. Chandran and D. Alexander sought to canvas the valuable right of a Government servant flowing from service rules. As a consequence, any action could only be
- H

taken against pension and not against DCRG. There was contended to be no enabling provision allowing automatic forfeiture of DCRG on conviction in a criminal proceedings and hence it cannot be withheld even if the proceedings culminate adversely against the employee.

16. The High Court in terms of the impugned judgment dated 08.09.2020 opined in favour of the respondent-employees. Rule 3 of the KSR was read as empowering the Government to punish the delinquent employee by withholding, withdrawing or reducing, for a specified period or permanently, the pension payable or to order recovery for any pecuniary loss, but again only from the pension. The same could not be done from the DCRG. Rule 3A of the KSR was opined to be only tailored towards the effective implementation of Rule 3 and could not have any separate or distinct consequences. Rule 3A having two parts, it was opined that the first part dealt with certain conditions on the disbursal of pension in the cases of a continuing proceeding while the second part allowed DCRG or gratuity to be withheld until the conclusion of the proceedings. The second part was held to have an unnecessary penalising effect on an employee while proceedings are pending and would have onerous consequences if the proceedings ended in exoneration. This was so as the provision did not contemplate any modality for recompensation if the DCRG is paid after a long period of time.

17. The High Court also referred to Ruling Nos. 2 & 3 under Rule 3 of the KSR providing that the disciplinary authority was only empowered to reach a finding and the ultimate action could only be taken by the Public Service Commission. The conclusion, thus, sought to be drawn was that it showed that the Government was conscious of the deleterious effect of withholding of pension on an employee. Note 2 to Rule 3 provided that the word 'pension' did not include DCRG and, thus, liabilities could be recovered from DCRG only after giving the employee a reasonable opportunity to explain. Ruling 3 clarified that consent was not necessary from the employee before recovering the same and only a communication of such liability was necessary.

18. In view of the aforesaid, it was held that the recovery under Rule 3 could only be against pension and not DCRG, and Rule 3A insofar as it permitted DCRG to be withheld was struck down.

A

B

C

D

E

F

G

H

A

The Rules:

19. The relevant Rules of the KSR read as under:

“THE KERALA SERVICE RULES**PART III**

B

PENSION**CHAPTER I****SECTION 1 – General Rules”**

xxxx

xxxx

xxxx

xxxx

C

“3 The Government reserve to themselves 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 government if in a departmental or judicial proceeding, 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 –

E

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

F

(b) such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his reemployment,-

(i) shall not be instituted save with the sanction of the Government;

G

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

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made in relation to the employee during his service;

H

(c) no such judicial proceedings, if not instituted while the employee was in service whether before his retirement or during his reemployment, shall be instituted, save with the sanction of the Government, in respect of a cause of action which arose or an event which took place more than four years before such institution and;

A

(d) The public Service Commission shall be consulted before final orders are passed.

B

Explanation: - For the purpose of this rule –

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the employee or pensioner or if the employees has been placed under suspension from an earlier date, on such date; and

C

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

(i) in the case of a criminal proceeding, on the date on which the complaint or report of police officer on which the Magistrate takes cognizance, is made, and

D

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

E

Note1.- As soon as proceedings of the nature referred to in this rule are instituted the authority which institutes such proceedings should without delay intimate the fact to the Audit Officer. The amount of pension withheld under this rule should not ordinarily exceed one-third of the pension originally sanctioned. In fixing the amount of pension to be so withheld regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

F

Note2.- The word ‘pension’ used in this rule does not include death-cum-retirement-gratuity. Liabilities fixed against an employee or pensioner can be recovered from the death-cum-retirement-gratuity payable to him without the departmental / judicial proceedings referred to in this rule, but after giving the employee or pensioner concerned a reasonable opportunity to explain.

G

H

- A Note-3 The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement within a period of three years on becoming pensioner. The liabilities of pensioner should be quantified and intimated to him.

RULING No. 1

- B Amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with his consent in writing.

C RULING No. 2

- D According to proviso (a) under this rule, departmental proceedings, if instituted while the employee was in service, whether before his retirement or during his reemployment, shall after the final retirement of the employee be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. A doubt was raised as to whether in the case of an employee whose case falls within the purview of the proviso and proceedings against whom were instituted by an authority subordinate to Government, order for withdrawal/withholding of pension can be passed by the subordinate authority on the conclusion of the proceedings. The function of the Disciplinary Authority is only to reach a finding on the charge and to submit a report recording its findings to the Government. Government will then consider the findings and take a final decision.
- E In case Government decide to take further action under Rule 3 the Government will serve the person concerned with a show-cause notice specifying the action proposed to be taken under this rule and the person concerned will be required to submit his reply to the show-cause notice within such time as may be specified by the Government. The Government will consider the reply in consultation with the Public Service commission and pass necessary orders in the name of the Governor.
- F The above procedure in regard to the issue of show-cause notice will also apply to a case where the Governor functions as the Disciplinary Authority.

H

RULING No. 3

A

The note 2 above does not mean that the employee's or pensioner's consent should be obtained for recovering the liabilities from the death-cum-retirement gratuity payable to him. What it contemplated is only a communication of such liabilities to him so as to enable him to submit his explanation before the recovery is effected. It should be specifically stated in the communication that if no reply is received within 30 days of its issue, it will be presumed that the employee or pensioner has no explanation to offer and that further action will be taken on that basis.

B

3-A. (a) Where any departmental or judicial proceedings is instituted under Rule 3 or where a departmental proceeding is continued under clause (a) of the proviso thereto, against an employee who has retired on attaining the age of compulsory retirement or otherwise he shall be paid 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 up to the date of retirement, or if he was under suspension on the date of retirement up to 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 proceeding and the issue of final orders thereon.

C

(b) Payment of provisional pension made under clause (a) shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding, 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.

D

Note:- The grant of pension under this rule shall not prejudice operation of Rule 59 when final pension is sanctioned upon conclusion of the proceeding.”

E

F

G

The Appellant's submissions:

20. Learned counsel for the appellant contended that Rule 3 reserves with the Government the right to withhold or withdraw pension and the proviso stipulates that if such departmental proceedings are

H

- A instituted while an employee was in service, they are to be deemed to be proceedings under this Rule even post retirement. Note 2 to Rule 3 of the KSR states that the liabilities against an employee or pensioner can be recovered from the DCRG without any departmental or judicial proceedings but after giving such a person a reasonable opportunity to explain. Thus, DCRG can be utilised to compensate the losses of the department. Ruling 1 to Rule 3 states that the amounts due from a Government employee or pensioner may be recovered though not treated as Government dues. It was, thus, contended that Rule 3 allows recovery of amounts due to the Government from DCRG even as recovery from pension is restricted so as to enable the pensioner to
- B maintain themselves.

- C
- D 21. Rule 3A was contended to be applicable to departmental/judicial proceedings which had not concluded. Thus, it provided for payment of provisional pension to an employee and was independent of what has been observed in Rule 3. His contention was that the High Court proceeded on a wrong premise that Rule 3A was only for effective implementation of Rule 3.

- E 22. A reference was also made to Clause 303A(4) of the Kerala Financial Code, Volume I, which provides that a loss sustained by the Government can be recovered from the DCRG. The relevant portion reads as under:

**“General principles and procedure for fixing and
enforcing responsibility for losses**

- F 303A. The following general principles should be followed in enforcing the personal responsibility of the Government servant or servants concerned for a loss sustained by the Government through fraud or negligence on his part or on the part of any other Government servant to the extent he contributed to the loss by his own action or negligence and of any person for a loss sustained by the Government on account of a criminal offence committed by him:—”
- G

XXXX XXXX XXXX XXXX

- H “(4). (a) In cases where a competent authority holds that a Government servant is responsible for a loss sustained by the Government and orders that any amount should be recovered from him and he is about to retire from service, the amount should be

recovered as far as possible by deduction from the last pay and allowances or leave salary due to him. If the amount due to Government exceeds the amount payable to the Government servant, the excess shall be recovered from his claim for death-cum-retirement-gratuity after giving the officer a reasonable opportunity to explain. If the amount proposed to be recovered exceeds the death-cum-retirement-gratuity, the excess over death-cum-retirement-gratuity can be recovered from the arrears of pension, if any, due to the officer if written consent is obtained from him as pension (as distinct from death-cum-retirement-gratuity) enjoys the protection of the 'Pension Act'. A written consent is valid only to the extent it covers the amount of pension earned by him till the date of such written consent.

(b) If, however, the liabilities could not be finalised but could be estimated at the time of retirement, either the estimated amount of the outstanding dues plus 25 per cent thereof should be withheld from death-cum-retirement-gratuity or a surety bond or cash deposit not exceeding the estimated amount of the outstanding dues plus 25 per cent thereof should be accepted before releasing pension and death-cum-retirement gratuity.

(c) If disciplinary proceedings are being continued against an officer under the Service Rules on the date of retirement, only a provisional pension should be sanctioned to him withholding however, the entire death-cum-retirement-gratuity due to him.

(d) In cases where the liabilities could not be estimated the pension and death-cum-retirement-gratuity will be released provisionally after withholding from the death-cum-retirement gratuity the amount noted below:

- | | |
|---|--|
| (1) Officers in charge of cash or stores | The full amount of death-cum-retirement gratuity. |
| (2) Gazetted Officers other than those in (1) above | 10 per cent of the death-cum-retirement gratuity or Rs. 2,000 whichever is higher. |
| (3) Non-Gazetted Officers other than (1) | 10 per cent of the death-cum-retirement gratuity or Rs. 600 whichever is higher |

H

- A In all cases where the liabilities could not be assessed and fixed before retirement of the Government servants, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement of the Government servant concerned. If in any case, the liability could not be assessed and adjusted within one year, the amount withheld from the death-cum-retirement gratuity or the surety bond or cash deposit accepted under paragraph (c) or (d) above will be released. Disciplinary action shall be taken against the officers responsible for the failure to assess and adjust the liabilities within the prescribed period.
- B (e) If in any case the amount withheld from the death-cum-retirement gratuity or the cash deposit, or the surety bond taken from the officer is not adequate to cover the liabilities finally fixed, action should be taken against him under the Service Rules to make up the loss by withholding, withdrawing or effecting recoveries from the pensions sanctioned. If action under the Service Rules is not possible due to the expiry of the time limit prescribed for such action or due to any other reason, the retired officer will be proceeded against through a Civil Court for recovering the pecuniary loss caused to Government.
- C (f) When a retired Government servant whose pension has already been sanctioned is held to have caused a loss to the Government by fraud or negligence while in service and it appears likely that the amount could be recovered by bringing a suit against him, the matter should be reported to the Government for orders. If in any particular case, it is not found feasible to take action against a retired Government servant in regard to a loss sustained by the Government on account of any fraud or negligence found to have been committed by him while in service, this should not be made an excuse for absolving any other Government servants who are also responsible for the loss and are still in service. Similarly, the fact that it is not possible to fix responsibility on the officials who initiated or acquiesced in the initiation of any irregularity resulting in loss to Government will not exonerate those who subsequently acquiesced in the continuation of the irregularity. It is the duty of all Government officials to look after the financial interests of Government and Government will hold their officers responsible for such irregularities, not only those who originated them but also those who subsequently permitted their continuance.”

23. In view of the aforesaid provision, it was contended that Rule 3A is necessary for temporary forfeiture of DCRG during pendency of departmental proceedings. Another contention sought to be raised was that Section 4(6)(b) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the ‘Gratuity Act’) enables forfeiture of gratuity if the service of an employee has been terminated. Thus, unless a provision for forfeiture of DCRG during pendency of proceedings is maintained, no forfeiture at all can be effected after the disciplinary proceedings are complete and the observations of the High Court would render Section 4(6)(b) otiose. The relevant provision reads as under:

“4. Payment of gratuity. – (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:”

xxxx xxxx xxxx xxxx

“(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited] -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

24. Learned counsel for the appellant submitted that the issue was really no more *res integra* in view of the judgment of this Court in

A

B

C

D

E

F

G

H

- A *Chairman-cum-Managing Director, Mahanadi Coalfields v. Rabindranath Choubey*¹ opining that an employer can withhold payment of gratuity even after retirement due to pendency of disciplinary proceedings until the same are concluded and that the High Court had incorrectly distinguished the judgment on the ground that the KSR did not have a provision for recovery of gratuity.
- B **The Respondent's submissions:**

- 25. Learned counsel for the respondent, on the other hand defended the High Court's judgment and submitted that *Chairman-cum-Managing Director, Mahanadi Coalfields*² of this Court interpreted the provisions of the Conduct, Discipline and Appeal Rules, 1978, which are the rules of a private company and provided for withholding of gratuity. The KSR stood on a different footing and did not empower the Government to withhold or recover any amount from the DCRG. Further, the Gratuity Act did not apply to Government employees of the State. In this behalf a reference was made to the definition of "employee" under Section 2(e) of the Gratuity Act, which reads as under:

“**2. Definitions.**—In this Act, unless the context otherwise requires, -”

xxxx	xxxx	xxxx	xxxx
------	------	------	------

- E “(e) “employee” means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].
- F
- G 26. It was submitted that there is a specific exclusion of a person who holds the post under the Central or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

¹ (2020) 18 SCC 71

H ² (supra)

Our View:

27. We have given thought to the matter and find it difficult to sustain the judgment of the High Court on the interpretation of the Rules.

28. We must keep in mind the very objectives of holding back pension or the DCRG. One can be to recover the amounts found due from the delinquent employee of any nature whatsoever after appropriate notice and proceedings. The second eventuality is if an employee is dismissed from service. It can hardly be doubted that in the second eventuality of the dismissal from service the employee would lose all retirement benefits.

29. In the present case separate departmental proceedings have not been concluded within the given timeframe. The State in its wisdom has deemed it appropriate to await the outcome of the criminal proceedings. The result of this would mean that the State would still be empowered to dismiss an employee from service based on the conviction in the criminal case. The State cannot have an opportunity to have separate disciplinary proceedings even if the acquittal takes place. If this were the intention, the departmental proceedings should have been concluded in the stipulated time. We are conscious of the fact that a mere acquittal in a criminal case would not imply that no action can be taken in departmental proceedings. However, the choice was with the State Government as to whether they would like to hold separate departmental proceedings or go by the final view of the criminal court, the latter is naturally based not on preponderance of probabilities but on proof beyond reasonable doubt. It is the latter course which the State has followed. Thus, an employee's entitlement to all benefits and the right not to be now dismissed from service all inure if the criminal proceedings conclude in favour of the employee. However, were these proceedings to be concluded against the employee and the conviction upheld it cannot be said that the department would still be required to pay all the retirement benefits. The department can also pass an order of dismissal based solely on the criminal conviction.

30. The aforesaid being the position, the question is as to what should be done in the hiatus period as per the Rules.

31. The KSR do provide for a provisional pension so that the economic sustenance requirements of an employee are taken care of. The provisional pension cannot be more than the actual pension. It is nobody's case that the respondents-employees are not getting provisional

A

B

C

D

E

F

G

H

- A pension. Note 1 to Rule 3 clarifies that even if the pension is finally withheld, ordinarily the withheld portion should not be more than 1/3rd of the pension originally sanctioned, as the issue of sustainability comes to the fore. However, there is no such limitation on the DCRG. The important aspect is whether Rule 3A is to be construed in the context of Rule 3 or should be read independently of itself. The High Court seeks to take a view that Rule 3A is in a sense assisting Rule 3 and does not have any independent existence.
- B

32. We are unable to agree to this line of reasoning.

- C 33. Rule 1 to Part III of the KSR begins with the entitlement of pension of all employees to whom the service rules apply. Rule 2 stipulates that future good conduct shall be an implied condition of every grant of a pension and there is entitlement to withhold or withdraw a pension or part thereof whether permanently or for a specified period. In terms of Rule 2(b), where a pensioner is convicted of a serious crime by a court of law, action under clause (a) shall be taken in the light of the judgment of the court relating to such conviction. In the facts of the case it can hardly be said that the conviction on the ground of corruption would not be classified as a serious crime for a person holding a public post. In terms of clause (c) of Rule 2, in case of *prima facie* guilt of grave misconduct, a procedure has been prescribed to be followed, which
- D
- E includes as per clause (d) of Rule 2 consultation with the Public Service Commission. It is after the aforesaid Rules that Rule 3 commences where the Government reserves to themselves the right to withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and all its ramifications. Certain protective provisions have been made even in that eventuality. This provision is applicable to pension is clarified
- F by Note 2, as it is stipulated that the word ‘pension’ would not include DCRG. Thus, DCRG and pension have been dealt with as separate aspects. The three Notes are followed then by Rulings 1, 2, & 3.

- G 34. However, Note 2 provides that the liabilities fixed against an employee or a pensioner can be recovered from DCRG without the departmental/judicial proceedings referred to in this Rule but after giving an employee or pensioner concerned a reasonable opportunity to explain. If any part of DCRG was not supposed to be available for recovery of amounts, there would be no reason of inclusion of this aspect of DCRG in Note 2 and a view to the contrary would make the latter part of Note 2 otiose.
- H

35. The aforesaid Note 2 is further clarified by Ruling No. 3, which stipulates that Note 2 does not mean that the employee's or pensioner's consent should be obtained for recovering the liabilities from DCRG. What has been contemplated is only a communication of such liabilities to him so as to enable him to submit his explanation. Thus, this Ruling No.3 also deals with the DCRG. It is thereafter that Rule 3A starts which refers to the grant of provisional pension not exceeding the maximum pension which would have been admissible on retirement where departmental or judicial proceedings have been initiated under Rule 3. It is clearly stipulated that no gratuity or DCRG shall be paid to him until the conclusion of such proceedings and the issuance of final order thereof.

36. The High Court, in our view, has introduced a new legislation by undertaking the exercise of reading down. We do believe that there is absolutely no need to do so when the language of the rule is so clear conveying its intended meaning without any ambiguity.

37. We are, thus, of the view that Rule 3A cannot be read in isolation nor the latter part of it struck down as done by the High Court. Rule 3, Note 2, Ruling 3, and Rule 3A have to be read in conjunction as they provide for the treatment of the DCRG in case of disciplinary or judicial proceedings pending at the stage of retirement. Even in the absence of these proceedings in certain eventualities the amounts can be recovered from the DCRG.

38. We are of the view that the principle as enunciated in *Chairman-cum-Managing Director, Mahanadi Coalfields*³ would apply even though it is in the context of a different set of Rules. It would be suffice to reproduce paragraphs 11 & 11.2 and 46 & 47 of the said judgment as under:

“11. Once it is held that a major penalty which includes the dismissal from service can be imposed, even after the employee has attained the age of superannuation and/or was permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, sub-section 6 of Section 4 of the Payment of Gratuity Act shall be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded.”

....

....

....

....

³ (supra)

A

B

C

D

E

F

G

H

- A “11.2. It is required to be noted that in the present case the disciplinary proceedings were initiated against the respondent-employee for very serious allegations of misconduct alleging dishonestly causing coal stock shortages amounting to Rs.31.65 crores and thereby causing substantial loss to the employer. Therefore, if such a charge is proved and punishment of dismissal is given thereon, the provisions of sub-section 6 of Section 4 of the Payment of Gratuity Act would be attracted and it would be within the discretion of the appellant-employer to forfeit the gratuity payable to the respondent. Therefore, the appellant-employer has a right to withhold the payment of gratuity during the pendency of the disciplinary proceedings.”

....

- B “46. Several service benefits would depend upon the outcome of the inquiry, such as concerning the period during which inquiry remained pending. It would be against the public policy to permit an employee to go scot-free after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can be imposed. Various provisions of the Gratuity Act discussed above do not come in the way of departmental inquiry and as provided in Section 4(6) and Rule 34.3 in case of dismissal gratuity can be forfeited wholly or partially, and the loss can also be recovered. An inquiry can be continued as provided under the relevant service rules as it is not provided in the Payment of Gratuity Act, 1972 that inquiry shall come to an end as soon as the employee attains the age of superannuation. We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct committed and does not deal with punishments to be imposed and does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of Section 4(6) of recovery of loss provided under Section 4(6)(a) and forfeiture of gratuity wholly or partially under Section 4(6)(b) is

H

furthered by the Rules 34.2 and 34.3. If there cannot be any A
dismissal after superannuation, intentment of the provisions of
Section 4(6) would be defeated. The provisions of section 4(1)
and 4(6) of Payment of Gratuity Act, 1972 have to be given
purposive interpretation, and no way interdict holding of the
departmental inquiry and punishment to be imposed is not the
subject matter dealt with under the Act.

47. Thus considering the provisions of Rules 34.2 and 34.3 of the B
CDA Rules, the inquiry can be continued given the deeming
fiction in the same manner as if the employee had continued in
service and appropriate punishment, including that of dismissal
can be imposed apart from the forfeiture of the gratuity wholly
or partially including the recovery of the pecuniary loss as the
case may be.”

39. We also believe that it is a very restrictive view to disburse D
DCRG on account of the proceedings against a pensioner coming to an
end, even where a conviction has arisen. This is especially so where the
convicted person has availed of the remedy of appeal. An appeal is a
continuation of the proceedings in trial and would be, thus, a continuation
of judicial proceedings. For example, if no appeal had been filed, can it
be said that despite conviction in the criminal case, the State is without
authority of forfeiting the DCRG or pension for that matter? If it is not
so, as we believe, then the pendency of the appeal cannot disentitle the
State from withholding the DCRG, considering that it is a hiatus period
within which certain arrangements have to be made which would be
dependent on the outcome of the appeal.

40. Learned counsel for the respondent did seek to contend before F
us that if the appeals are pending over a long period of time it should not
prejudice the respondents. That is a matter for them to take up before
the High Court for disposal of the appeals, which are undoubtedly quite
old.

41. We have aforesaid also clarified that there is no question of G
any other departmental proceedings arising independently against the
respondents, as the conclusion of the criminal proceedings would entitle
the State to pass appropriate orders based solely on the result of the
aforesaid proceedings.

H

A **Conclusion:**

42. We are, thus, of the view that the impugned judgment of the Full Bench of the Kerala High Court cannot be sustained, and it cannot be opined that the DCRG would have to be released to the respondents pending consideration of the criminal appeal.

B 43. The impugned judgment is set aside and the appeals are accordingly allowed leaving the parties to bear their own costs.

Devika Gujral
(Assisted by : Shubhanshu Das, LCRA)

Appeals allowed.