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P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 13.04.2017

JUDGMENT

1. The facts at issue falling within the prayer clause (a), no more remain for determination because the demand therein made has been complied with. The only issue that now survives for judicial determination is as to whether under the defined Contribution Pension Scheme introduced by the Government of Maharashtra by way of G.R. in Finance Department dated 31st October, 2005, the claim for gratuity has ceased to be there for the asking.

2. It is an admitted position that the Applicant having been appointed after his discharge from Army post 1st November, 2005 is governed by the said Scheme. The perusal of the said Scheme which is at Page 66 of the Paper Book (PB) would make it clear that in line with the Central Government Service Rules, the said Scheme was introduced for the State of Maharashtra. That has been described as new Contribution Scheme and the earlier existing Pension Scheme enshrined *inter-alia* in the Maharashtra Civil Services (Pension) Rules, 1981 came to be replaced by the said Scheme. It was applicable to those who were recruited on or after 1st November, 2005 in State

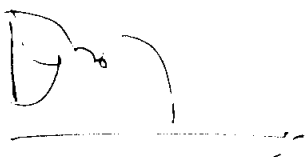


Government service. The Government would join the said Scheme. Vide Para 2(c) of the said Scheme, the following was provided.

“2(c): The Government is also pleased to decide that the provisions of,-

- (i) the existing pension scheme (i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984) and
- (ii) the existing General Provident Fund Scheme (GPF) would not be applicable to the Government servants, who are recruited on or after 1st November, 2005 in State Government Service.”

It would thus become very clear that thereby the Pension Rules as well as Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing Scheme of the GPF ceased to be in force for those employees who were governed by the said Scheme. As I mentioned above, the only fact at issue is as to whether gratuity also would come within the ambit of the said Clause 2(c) or whether the gratuity would still be claimable and payable.



3. I have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

4. The 1st Respondent is the State of Maharashtra in Home Department through Additional Chief Secretary, the 2nd Respondent is the Commissioner of Police, the 3rd Respondent is the District Treasury Office and the 4th Respondent is the Additional Chief Secretary, Finance Department.

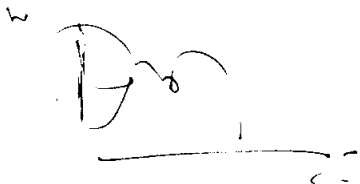
5. Now, it is very clear from the above discussion that Clause 2(c) above quoted is clearly exhaustive and on its plain reading, no room is left for any interpretation. In the other words, the items excluded therefrom on its plain reading can certainly not be read thereinto and if that be so, then in my opinion, to read the head of gratuity therein would be an instance of Rule making rather than interpretation of the Rule. It is very pertinent to note that therein the provisions of the Commutation of Pension Rules have been specifically mentioned and so also, the existing Pension Scheme and the GPF Scheme. On its plain reading, there is no scope left to include something which is quite clearly excluded thereby.



6. The order herein impugned is at Exh. 'M' (Page 35 of the Paper Book (PB)). It was addressed on behalf of the 2nd Respondent to the Applicant. It was therein mentioned (in Marathi) that the provisions of the Pension Rules, 1982 and Commutation Rules, 1984 were not applicable in his case, and therefore, gratuity would not be payable to him.

7. Finance Department has filed the Affidavit-in-reply of Shri Narayan B. Ringne, Deputy Secretary. There also broadly, the same stand is adopted viz. the non-application of Pension Rules and as some kind of consequence, the gratuity also being not payable. Mrs. Gaikwad, the learned PO for the Respondents invited attention to the provisions of the dictionary clause in Rule 9 (37) of the Pension Rules which reads as, "37. Pension includes Gratuity".

8. The learned PO, therefore, contended that if the pension includes gratuity and if no pension is payable, the gratuity would also not be payable. I am not in a position to agree with the learned PO in so far as that submission is concerned. The governing Rule would be of the new Scheme and as already mentioned above, if gratuity was to be read *ipso-facto* therein and if there was a new Scheme



for pension introduced, then there was no need for specifically providing the exclusionary clause for commutation of Pension Rules. As I mentioned above, the provisions of Rule 2(c) are exhaustive and admit to inclusion of no other head of post retiral benefits.

9. In this view of the matter, therefore, I hold that the impugned order in so far as it relates to the issue of grant of gratuity is unsustainable. The Respondents will have to pay gratuity in accordance with the prevalent Rules to the Applicant.

10. The impugned order in so far as it declines to grant gratuity to the Applicant stand hereby quashed and set aside and the Respondents are directed to pay to the Applicant the gratuity in accordance with the relevant Rules within a period of six weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
13.04.2017

13.04.17

Mumbai
 Date : 13.04.2017
 Dictation taken by :
 S.K. Wamanse.