

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 441/2009**

MS. MANJU TOMAR AND ORS. Appellants
Through: Mr. Sanjay Parekh, Advocate
with Mr. Abinash K. Mishra,
Ms. Mamta Saxena, Mr. Anesh
R. Shah and Mr. Jettin Sahni,
Advocates

Versus

NCT AND ORS. Respondents
Through: Mr. Pinaki Mishra, Senior
Advocate with Ms. Madhu
Tewatia, Mr. Arjun Pant,
Ms. Sidhi Arora, Advocates for
R-2/NDMC.
Mr. H.S. Phoolka, Senior
Advocate with Mr. Jagjit Singh
Chhabra and Mr. Samar Vijay
Singh, Advocates for R-4.

WITH

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MS. SANTOSH KAUR AND ORS. Appellants
Through: Mr. Sanjay Parekh, Advocate
with Mr. Abinash K. Mishra,
Ms. Mamta Saxena, Mr. Anesh
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Advocate with Mr. Jagjit Singh
Chhabra and Mr. Samar Vijay
Singh, Advocates for R-4.

Reserved on : 09th October, 2009.

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Date of Decision : 09th December, 2009

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J

1 Present Letters Patent Appeals have been filed challenging the judgment dated 13th July, 2009 whereby appellants-petitioners' writ petitions being W.P.(C) 13044-55/2006 were disposed of by directing the Director (Education), New Delhi Municipal Council (in short "NDMC") to pass a fresh speaking order within four weeks stating as to whether "ex-post-facto sanction" in terms of Rule 46 of the Delhi School Education Rules, 1973 (hereinafter referred to as "Rules, 1973") can be granted to Delhi Sikh Gurdwara Managing Committee (hereinafter referred to as "respondent-Management") to close down Khalsa Boy's Primary School at Banglasahib, Akbar Road, New Delhi (hereinafter referred to as the "Primary School"). Till the said decision was taken, respondent-Management was directed to pay pensionary benefits to petitioner nos. 6 to 12 with effect from March, 2006, while petitioner nos. 1 to 5 were held entitled to salary only if they worked in another school of respondent-Management in Municipal Corporation of Delhi (in short "MCD") area.

2 Briefly stated the material facts of the present case are that the petitioners are past, present teachers and non-teaching staff of the Primary School situated in the NDMC area. By letter dated 25th May, 2005, the respondent-Management conveyed that it “had decided” to shift the said Primary School to Guru Mata Sundari School, which falls within MCD area. The petitioners pointed out that prejudice would be caused to them in shifting of the primary school. However, when the respondent-Management persisted, the petitioners filed Writ Petition (Civil) No.9951-52/2005 before this Court for setting aside the said shifting decision dated 25th May, 2005. A learned Single Judge of this Court vide order dated 30th May, 2005 granted stay restraining the respondent-Management from shifting the Primary School. During pendency of the said petition and continuance of the stay order, part of the building from where the Primary School was functioning, was demolished by the respondent-Management and, therefore, the petitioners filed a Contempt Case No.551-52/2005.

3 Both the Writ Petition and the Contempt Petition were decided by a learned Single Judge of this Court on 6th October, 2005. This Court on consideration of facts and the legal provisions applicable, found that though the petitioners, for no fault of theirs, were put in a difficult situation, justice should be done to them after taking note of the ground realities. With regard to the fact whether the Primary School can run from the present location, the Court observed that it was a near impossible situation. In order to ensure that the petitioners

get complete relief, the respondent-Management was allowed to seek “ex-post-facto sanction” of closure from the NDMC authorities. As far as Contempt Petition was concerned, benefit of doubt was given to the respondent-Management. The relevant portion of the judgment dated 6th October, 2005 is reproduced hereinbelow :-

“12. Writ petition was listed on 30.5.2005. While issuing notice to show cause, respondents were restrained from shifting the school from the existing location at Bangla Sahib, Ashoka Road to Mata Sundri College.

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17. In response to the contempt petition, it is stated that the building in which Guru Harkishan Girls Sr.Sec. School was running was demolished. This demolition was done prior to 30.5.2005. It is stated that no demolition has been effected after 30.5.2005. However, it is explained that since primary school was being run from a few rooms in the building which was housing the Girls Sr.Sec. School, substantial damage to the rooms where the primary school was functioning had been occasioned, but same was prior to 30.5.2005.

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19. What relief can be granted in view of the facts as noted above for the reason, the Court is presented with fiat accomply. Whether this is by design or is accidental would be decided by me while dealing with the contempt petition.

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28. The Gurudwara Committee has not allowed the process of law to be completed. Action of the Gurudwara Committee in closing the school is clearly hit by Rules 46 and 55 of Delhi School Education Rules,1973.

29. In the instant case, problem has been compounded for the reason, Mata Sundri College is located outside the territorial limits of NDMC. The Council does not give any grant-in-aid to a school established outside its territorial area. The reason is obvious. The Council funds activities through tax which are levied by it. The Council must spend money on education for those who are residing within it's area. Shifting of the school to the site at Mata Sundri College would mean that not only the school lose its recognition but even gets deprived of the benefit of grant-in-aid which I may note is substantial, being 95% of the budget of the school.

Indeed, this has happened in the present case. Since June 2005 no grant-in-aid has sanctioned from NDMC to the school and the teachers are without salary, save and except part sum which was paid pursuant to the order dated 19.8.2005. passed by the Court.

30. Should the majesty of law be upheld? The answer has to be yes. But justice has not to be in theory. It has to take note of ground realities.

31. The ground realities are that the few rooms which existed at Bangla Sahib, Ashoka Road are not in a fit condition for occupation. Students in the school have been absorbed in NDMC schools in the area. Since July,2005, no classes have been held in the school. To require the school to recommence from the site at Bangla Sahib, Ashoka Road requires clock to be put back. This may be a near impossible situation.

32. But the teachers and non-teaching staff of the school cannot be left at the mercy of the management of the school i.e. Gurudwara Committee. They must get their wages and other statutory benefits. The amounts have to be credited in their provident fund account. They cannot be deprived of benefits of the service rendered by them.

33. Rule 47 of Delhi School Education Rules,1973 states that where as a result of closure of a recognized school or withdrawal of the recognition, staff which becomes surplus may be absorbed as far as applicable in a government school or an aided school. The teachers and the staff would be entitled to the benefit of Section 47 if the school in question is permitted to be closed.

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35. Since an authority has been created to take necessary decision, I dispose of the writ petition with a direction to the Director of Education, NDMC, to decide within a period of 4 weeks from the date of the present order whether ex-post facto sanction can be granted to the Gurudwara Committee to close down the Khalsa Boys Primary School for the reason, shifting of the school to Mata Sundri College being in an area outside the jurisdiction of the Council, and the Council granting grant-in-aid to schools operating only within its area, shifting of the school would amount to closure.

36. If decision is accorded for closure of the school, Director of Education, NDMC shall take the necessary decision pertaining to the staff both teaching as well as non-teaching employees of Khalsa Boys Primary School.

37. Till the Director of Education takes necessary decision, the Gurudwara Committee would pay full wages to the teaching as well as non-teaching staff of the school.

Amounts liable to be deposited or credited in the provident fund account of the employees would be duly credited/deposited.

38. Needless to state, if the decision by the Director of Education, NDMC is not to grant necessary approval, it would be the obligation of respondents 2 and 3 to ensure that the Gurudwara committee complies with the directions issued.”

(emphasis supplied)

4 In pursuance to the aforesaid judgment, NDMC decided respondent-Management’s application seeking ex-post-facto sanction vide order dated 14th February, 2006. By the said order, NDMC invoked Rule 55 of Rules, 1973 and withdrew the recognition as well as grant-in-aid facilities. The relevant portion of the order dated 14th February, 2006 is reproduced hereinbelow :-

“The Khalsa School, which was recognised and qualified for receiving grant-in-aid comprising salary of the staff appointed with the approval of the Director to the extent of the number of posts which have been sanctioned and approved by the Director for the purpose of aid in accordance with the post fixation rules made by the Director from time to time, has been paid grant-in-aid upto First Quarter of Academic Session 2005-06 i.e. 30.6.2005, hence withdrawn from 1.7.2005.

Section 55(1) of the Delhi School Education Act & Rules, 1973 provides that if it recognized school ceases to function or is shifted to a different locality or is transferred to a different Trust, Society, Individual or a group of individuals without the previous approval of the Competent Authority, its recognition shall lapse on such ceaser, shifting or transfer as the case may be, and it shall for the purpose of future recognition be treated as a new school.

Since the Gurudwara Management Committee decided to shift the school to another site owned by it at Mata Sundri College i.e. outside the jurisdiction of NDMC without obtaining prior approval of the Competent Authority, the recognition permission granted to Khalsa School would cease to exist, since the provision of Section 55 (1) of the Delhi School Education Act & Rules, 1973 has been invoked.

Therefore, grant-in-aid facility extended by NDMC to Khalsa School shall also be withdrawn.

In view of the above facts there is no justification or requirement now to seek ex-post facto approval to close down the school for the reasons stated above.”

5 The question of closure particularly, in view of the observations made by this Court in the judgment dated 6th October, 2005 was not considered. Therefore, the present writ petitions were filed seeking quashing of the order dated 14th February, 2006 passed by NDMC and for other reliefs regarding payments of arrears with interest.

6 As mentioned hereinabove, learned Single Judge vide the impugned judgment remanded the matter back to Director (Education), NDMC and made an interim arrangement. However, keeping in view the fact that from 15th February, 2006 none of the appellants-petitioners have received their salary or pension/retiral benefits, we indicated to all the parties that we would like to finally dispose of the controversy between the parties. All the parties agreed that the matter be disposed of so that the case attains finality.

7 Mr. Sanjay Parekh, learned counsel for appellants-petitioners submitted that petitioner nos. 1 to 5, comprising two teachers and three non-teaching staff, were entitled to the benefit of Rule 47 of Rules, 1973 as observed in paragraphs 32 and 33 of learned Single Judge's judgment dated 6th October, 2005. He submitted that petitioner nos. 1 to 5 having rendered their services in a primary aided school were

entitled to be absorbed in NDMC aided school/government school. According to him, for no fault of appellants-petitioners, they had been put to difficulties and the NDMC instead of following Rule 47 of Rules, 1973, had passed the impugned order dated 14th February, 2006. Consequently, he prayed for grant of arrears with interest and continuity in service as well as status in accordance with Rule 47 within a certain time frame.

8 Mr. Sanjay Parekh further stated that petitioner nos. 6 to 12 were entitled to grant of pension as petitioner nos. 6 to 11 had already retired and were receiving their pension regularly while petitioner no. 12 superannuated on 30th September, 2006. He submitted that the right to receive 95% pension from NDMC and 5% from respondent-Management cannot be affected by illegal closure of the Primary School. In this connection, Mr. Parekh relied upon the following three judgments of Supreme Court :-

- i) ***D.S. Nakara & Ors. v. Union of India & Ors.*** reported in (1983) 1 SCC 305
- ii) ***Chairman, Railway Board & Ors. v. C.R. Rangadhamaiah & Ors.*** reported in (1997) 6 SCC 623
- iii) ***U.P. Raghavendra Acharya & Ors. v. State of Karnataka & Ors.*** reported in (2006) 9 SCC 630.

9 On the other hand Mr. Pinaki Mishra, learned senior counsel for respondent-NDMC stated that the Primary School had been granted temporary recognition in 1978-79 which was later on made permanent by virtue of Resolution No. 14 dated 16th May, 1992. According to

him, as the Primary School was situated within NDMC's jurisdiction, NDMC granted 95% financial aid to the said School.

10 Mr. Pinaki Mishra further stated that since respondent no. 4 had subsequently shifted the Primary School to another site owned by it at Mata Sundri College, that means, outside the NDMC's jurisdiction, the grant-in-aid facility extended by NDMC to said School was rightly withdrawn in accordance with Rules 55, 56(1) and 70 of Rules, 1973, which are reproduced hereinbelow :-

“55. Lapse of recognition in other cases – (1) If a recognised school ceases to function or is shifted to a different locality or is transferred to a different trust, society, individual or a group of individuals without the previous approval of the appropriate authority, its recognition shall lapse on such ceasing, shifting or transfer, as the case may be, and it shall, for the purpose of future recognition, be treated, as a new school.

(2) Where on or more of the conditions of recognition, specified in sub-section (1) of section 4 or in rule 50, are not complied with by any recognised school, [the appropriate authority shall, by a written notice, draw the attention of the school to such non-compliance; and, if within [sixty] days from the date of service of such notice, any such condition for the recognition is not complied with, the recognition granted to such school shall, on the expiry of the said period of [sixty days], stand lapsed.

56. Suspension or withdrawal of recognition – *(1) If a school ceases to fulfill any requirement of the Act or any of the conditions specified in rule 50 or fails to provide any facility specified in rule 51, the appropriate authority may, after giving to the school a reasonable opportunity of showing cause against the proposed action, withdraw for reason to be recorded in writing, recognition from the school :.....*

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70. Managing committee to pay its share towards salary and allowances of employees, etc. – *The managing committee of a school, in relation to which aid has been reduced or suspended, shall, if it runs the*

school after such reduction or suspension of aid, discharge the obligation referred to in sub-section (2) of section 10.

11 According to Mr. Pinaki Mishra, on account of an illegal closure of the Primary School by respondent-Management, NDMC cannot be faulted with and fastened with liability. He submitted that petitioners were entitled to relief, if any, only from the respondent-Management.

12 Mr. H.S. Phoolka, learned senior counsel for respondent-Management submitted that appellants-petitioners were not entitled to any relief against respondent-Management because in accordance with Rule 47 of Rules, 1973, it was the duty of NDMC to absorb the staff which had become surplus as a result of closure of any school or withdrawal of its recognition. He further stated that during the pendency of writ petition bearing W.P.(C) 9951-52/2005, respondent-Management had given an offer to petitioner nos. 1 to 5 either to join the Primary School at the relocated place in MCD area or join services at another recognised school under the management of respondent-Management in MCD area. He stated that the respondent-Management did not have another Primary School in NDMC area and, therefore, petitioners could not be adjusted in NDMC area. He submitted that as petitioner nos. 1 to 5 did not opt for these options, therefore, they could not claim any relief against respondent-Management.

13 Mr. Phoolka further submitted that since pensions had been paid in accordance with Section 10 of Act, 1973 read with Rule 64(c) of Rules, 1973, NDMC alone was responsible for making payment of pension. Section 10 of Act, 1973 and Rule 64(c) of Rules, 1973 are reproduced hereinbelow:-

“10. Salaries of employees- (1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

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64. No aid to be given unless suitable undertakings are given by the managing committee – [1] *No school shall be granted aid unless its managing committee gives an undertaking in writing that :*

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(c) it shall deposit its five percent share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator every month;”

14 Having heard the parties and having perused the order dated 14th February, 2006 passed by Director (Education), NDMC, we firstly find

that none of the observations made in the earlier judgment dated 6th October, 2005 have been considered. In fact, NDMC inspite of direction given by this Court did not decide the question of closure but on the other hand withdrew recognition as well as grant-in-aid of the Primary School.

15 We find merit in petitioners' submission that if learned Single Judge's directions in the impugned order are not set aside, they would not be able to get benefit of Rule 47 of Rules, 1973 and they would be compelled to work in an aided private school whereas they have previously worked in a recognised aided school. By virtue of Rule 47 of Rules, 1973, surplus staff of a recognised and aided school has a right to work in a government school or an aided school. The said Rule 47 is reproduced hereinbelow :-

“47. Absorption of surplus [employee] etc. – (1) Where as a result of -

- (a) the closure of an aided school or any class or classes in any aided school; or*
- (b) withdrawal of recognition from an aided school; or*
- (c) withdrawal of aid from an aided school,*

Any student or employee becomes surplus, such student or employee, as the case may be, [may be absorbed] as far as practicable, in such Government school or aided school as the Administrator may specify: ...”

16 We are also of the view that closure of Primary School without prior permission of the Director (Education), NDMC, was illegal and in violation of Rule 46 of Rules, 1973 inasmuch as respondent-

Management had only taken a decision to shift the Primary School which too was stayed by this Court. The said Rule 46 reads as under :-

***“46. Closing down of a school or any class in a school – No managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board.*”**

17 However, in view of the ground level reality that the Primary School in NDMC area does not exist and there is no possibility of Primary School restarting, we grant ‘ex-post facto’ sanction for closure of Primary School on the condition that respondent-Management would reimburse NDMC the amount of pension and retiral benefits payable to petitioner nos. 6 to 12 and would re-employ petitioner nos. 1 to 5 on the same terms and conditions that they were employed when Primary School was running in the NDMC area. In our opinion, respondent-Management cannot take benefit of its own wrongful conduct and cannot change the service conditions of petitioner nos. 1 to 5 to their detriment.

18 As far as petitioner nos. 6 to 12 are concerned, in our opinion, since they have put in the required years of services in the primary school, they have earned their rights to receive pension. We are of the view that closure of school has no nexus to the payment of retiral benefits as a vested right to receive pension has accrued in favour of petitioner nos. 6 to 12. It is settled law that pension is neither a bounty nor a matter of grace dependent on the sweet will of the employer. It

is a payment for past service rendered. It is a social welfare measure having assurance from the employer that the employee in old age would not be left in the lurch. In our opinion, pension is a crystallized property right on the date of retirement. Petitioner nos. 6 to 12 cannot lose their right to receive pension just because the Primary School has either closed or moved out of the NDMC area. Moreover, the right to receive pension cannot be taken away retrospectively. Supreme Court has held so in the following judgments:-

i) ***D.S. Nakara v. Union of India*** (supra) wherein it was held as under :-

“20. 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 Deokinandan Prasad v. State of Bihar (1971 Supp. SCR 634) 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 anyone’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 State of Punjab v. Iqbal Singh [1976 (3) SCR 360].

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27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country.

Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

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29. *Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d’etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.*

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31. *From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.*

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36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life."

ii) ***Chairman, Railway Board v. C.R. Rangadhamaiah*** (supra) wherein

it was held as under :-

25. In these cases we are concerned with the pension payable to the employees after their retirement. The respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the rules are not restricted in their application in futuro. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

26. In Deokinandan Prasad v. State of Bihar [1971 (2) SCC 330] decided by a Constitution Bench it has been laid down: (SCC p. 343, para 31)

"31. ... pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant." [p. 152]

(emphasis supplied)

In that case the right to receive pension was treated as property under Articles 31(1) and 19(1)(f) of the Constitution.

27. In D.S. Nakara v. Union of India [1983 (1) SCC 305] this Court, after taking note of the decision in Deokinandan Prasad, has said: (SCC p. 323, paras 28 and 29)

"28. Pension to civil employees of the Government and the defence personnel as administered in India appears to be a compensation for service rendered in the past. However, as held in Dodge v. Board of Education a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living.

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29. ... Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered.”

28. It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. (See: *Indian Ex-Services League v. Union of India* [1985 (1) SCR 930 at 173].

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33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.”

iii) ***U.P. Raghavendra Acharya v. State of Karnataka*** (supra)

wherein it was held as under :-

“25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement.

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28. The impugned orders furthermore are opposed to the basic principles of law inasmuch as by reason of executive instructions an employee cannot be deprived of a vested or accrued right. Such a right to draw pension to the extent of 50% of the emoluments, computed in terms of the rules w.e.f. 1-1-1996, vested in the appellants in terms of government notification read with Rule 296 of the Rules.

29. As the amount calculated on the basis of the revised scales of pay on and from 1-1-1996 to 31-3-1998 has not been paid to the appellants by the State of Karnataka as ex gratia, and in fact was paid by way of emoluments to which the appellants became entitled to in terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension calculated on the said basis in

terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India.

30. *In Chairman, Rly. Board v. C.R. Rangadhamaiah a Constitution Bench of this Court opined: [1997 (6) SCC 623 at 640].*

“33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.”

31. *The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect.”*

19 In our opinion, NDMC was not justified in not paying the retirement dues/pensions as the said relief had been specifically granted vide paragraph 32 of earlier judgment dated 6th October, 2005. Consequently, NDMC is directed to pay within twelve weeks to petitioner nos. 6 to 12 the entire arrears of salary/retiral benefits with simple interest @ 9% per annum. NDMC is further directed to regularly transfer pensionary amount directly to the bank account of petitioner nos. 6 to 12. However, as stated hereinabove, NDMC would be entitled to seek reimbursement of this entire amount from the respondent-Management as, in our view, respondent-Management had closed the school without prior approval of the appropriate authority.

20 As stated hereinabove, after re-employment, the tenure, seniority, pay scale and perquisites of petitioner nos. 1 to 5 shall not be adversely affected just because of closure of Primary School. However, as during the period 2006-2009 petitioner nos. 1 to 5 have not worked, they would only be entitled to 50% of their pay and perquisites but this period will be counted for the purposes of their seniority and for computing their pensionary and other statutory benefits.

21 With the aforesaid observations, present appeals are allowed.

MANMOHAN, J.

CHIEF JUSTICE

DECEMBER 09, 2009
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