

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 96 of 2020

Date of Decision: 18.10.2023

Shri. Tngen Singh Basaiawmoit Vs. State of Meghalaya & 5 Ors.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. S. A. Sheikh, Adv.

For the Respondent(s) : Mr. N. D. Chullai, AAG with
Ms. Z. E. Nongkynrih, GA.

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. Heard Mr. S. A. Sheikh, learned counsel appearing for the petitioner and also Mr. N. D. Chullai, learned AAG appearing for the State-respondents No.1 – 4 & 6. None appeared for the respondent No.5.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the letters dated

28-11-2019 and 21-02-2020 by which the respondents proposed to release provisional pension to the petitioner and withhold the payment of gratuity.

3. The brief fact of the case is that the petitioner, having attained the age of superannuation, retired from service on 31-01-2014 as Accountant from the office of the Block Development Officer, Shella, Bholaganj C&RD Block, Sohra. However, after superannuation of the petitioner, no service benefits like Pension, Gratuity, Leave Salary and GPF has been released to the petitioner by the respondent. The petitioner being aggrieved by the non-released of the retirement benefits, filed WP(C) No.508 of 2018 before this Court and the said writ petition was disposed of by an order dated 23-08-2019 by directing the respondents to take up the representation dated 22-08-2017, which was filed by the petitioner and pending before the respondents, for consideration and to decide the same expeditiously. As the same was not done, the petitioner had to approach this Court by filing a contempt petition and during the pendency of the contempt petition the respondent authorities issued the impugned letters dated 28-09-2018 and 21-02-2020 by which the respondents decided to release provisional pension and withhold the payment of gratuity to the petitioner.

4. The petitioner in his writ petition averred that after his retirement from service on 31-01-2014, he submitted all the required documents/papers to the concerned authority for processing of his pension and other retirement benefits and the same were forwarded by the respondent No.3 vide letter dated 28-04-2014 to the office of the respondent No.5 for completion of the process. However, by another

letter dated 06-05-2014, the respondent No.3 requested the respondent No.5 to stop the process of release of retirement benefits to the petitioner on the ground that the petitioner has overstayed his service. Consequently, the pension papers of the petitioner were returned back by the respondent No.5 with a request to resubmit the same after necessary correction of the date of retirement of the petitioner. The authorities issued for withdrawal of final GPF in respect of the petitioner was also returned by the respondent No.6 by letter dated 10-05-2017 on the ground that the petitioner was placed under suspension prior to the issuance of the authorities. As the petitioner was facing severe financial hardship, he approached the High Court by filing WP(C) No. 508 of 2018 for release of his retiral benefit. The writ petition was contested by the State-respondent by filing an affidavit in opposition wherein a stand was taken that the retirement benefits and pension of the petitioner was kept on hold until investigation is complete and the cases against the petitioner have been closed. It is only at that point of time, the petitioner came to know about the existence of two FIRs against him dated 06-06-2014 and 08-05-2014 (with supplementary FIR dated 13-05-2014) which were lodged against him before the Sohra Police Station. The FIR dated 06-06-2014 culminated in filing of FR which was accepted by the Trial Court vide order dated 31-07-2017. The case initiated on the basis of the FIR dated 08-05-2014 also resulted in acquittal in favour of the petitioner vide Judgment dated 10-03-2023 passed by the Judicial Magistrate First Class, Sohra in G.R Case No. 20 of 2016 (brought into the record by the petitioner vide an affidavit dated 05-04-2023). The WP(C) No.508 of 2019 was disposed of with a direction to the respondent to dispose of the representation filed by the petitioner

which resulted in passing of the impugned letters dated 20-11-2019 and 21-02-2020 by the respondents No.3 & 4 respectively.

5. The State-respondents in their affidavit-in-opposition, inter-alia, has taken a stand that the service benefits of the petitioner could not be released in time because of the contradiction with regard to the date of retirement of the petitioner and also due to the pendency of the case against the petitioner in the Court of the First Class Magistrate, Sohra. It is also the stand of the State respondents that in view of the pendency of the proceedings against the petitioner, the grant of regular pension and gratuity of the petitioner has been withheld in terms of Rule 9 and the provisional pension was granted to the petitioner as per Rule 64 of the Meghalaya Civil Service (Pension) Rules, 1983 (hereinafter referred to as “the Rules”).

6. Mr. S. A. Sheikh, learned counsel appearing for the petitioner submits that the respondents could not have withheld the pension and other retirement benefits of the petitioner as there was no departmental proceeding or judicial proceeding pending against him on 31-01-2014, the date of his retirement. No departmental proceeding was ever initiated against the petitioner and he had never been placed under suspension during the period of his service. The confusion with regard to the date of retirement of the petitioner also stood settled long back in the year 2014 itself with the refund of overdrawn salary by the petitioner to the department. He further contends that both the FIRs were filed after his retirement from service and the respondent authorities could not have acted on the basis of the same for withholding his retirement benefits. He submits that the respondents wrongly resorted to Rules 9 and 64 of the Rules to deny him the retiral

benefits as the said rules were not applicable to the case of the petitioner. He, however, submits that during the pendency of this case, the respondents have issued orders for release of his pension and gratuity. Thus, the claim in the writ petition at present is confined to the grant of interest for late release of retiral benefits to the petitioner. He submits that the delay in release of retiral benefits to the petitioner is not attributable to him and it is the respondents who are liable for the same. The learned counsel further contends that pension is recognized as a right under Article 300A of the Constitution of India and the same cannot be denied to the petitioner without any lawful cause. He submits that as per the provision of Section 7 (3A) of the Payment of Gratuity Act, 1972, the respondents are liable to pay interest for delayed release of gratuity. In support of his contentions, the learned counsel for the petitioner places reliance of the following decisions: -

- i) (2013) 12 SCC 210, State of Jharkhand & Ors Vs. Jitendra Kumar Srivastava. (para -16).*
- ii) (2003) 3 SCC 40, H. Gangahanume Gowda Vs. Karnataka Agro Industries Ltd. (para - 7).*
- iii) (2008) 3 SCC 44, S. K. Dua Vs. State of Haryana and Ors. (para - 14).*
- iv) (2013) 3 SCC 472, Y.K. Singla Vs. Punjab National Bank and ors. (para - 20).*
- v) (2014) 8 SCC 894, D.D. Tiwari (dead) through Legal representative Vs. Uttar Haryana Bijli Vitran Nigam limited and Ors. (para - 4).*

7. Mr. N. D. Chullai, learned AAG appearing for the State-respondents, submits that it is the petitioner who had misrepresented

with regard to his correct date of superannuation and overstayed in service unauthorizedly till 31/03/2014. He also submits that the petitioner was involved in forgery which resulted in filing of FIRs and initiation of criminal proceedings against him. The Judgment of acquittal of the petitioner was passed only on 10-03-2023 meaning thereby that the proceeding was continuing till then. He further contends that the acquittal was on account of benefit of doubt given to the petitioner which would not amount to giving clean chit to the petitioner. The Rule 9 and Rule 64 of the Rules was invoked in view of the pendency of the judicial proceedings against the petitioner and, as such, the delay in release of the retirement benefit of the petitioner cannot be termed as illegal or unjustified. He further contends that Rule 9 (4) of the of the aforesaid rules empowers the authority to withhold the release of service benefit to the petitioner and in such a situation the respondents cannot be held liable. In support of his contentions he relies on:-

(1999) 9 SCC 43, R. Veerabhadram Vs. Govt of A.P. (Paras 6, 7).

8. I have heard the learned counsels for the parties and also have gone through the materials available on record.

9. It is an admitted fact that the petitioner retired from service on 31-01-2014. Though initially there was an allegation that the petitioner overstayed in service and continued till 31-03-2014, the same stood settled by refund of salary received by him which was accepted by the department without any punitive action against the petitioner. The communication dated 06-05-2014, appended as

Annexure-2 to the writ petition makes disclosure of refund of salary by the petitioner. It appears that the dispute was given a quietus.

10. The materials on record reveal that the FIRs against the petitioner were filed on 06-06-2014 and 08-05-2014 (with supplementary FIR dated 13-05-2014) approximately three months after the date of retirement of the petitioner. There is nothing on record to suggest that the petitioner was subjected to any departmental proceedings during his tenure of service. There is also no evidence to remotely suggest that he was ever been placed under suspension. Admittedly, when the petitioner attained the age of superannuation and retired on 31-01-2014, there was no proceedings pending against him. At this stage, to decide whether the respondent was correct in withholding the retirement benefits of the petitioner or not, it would be appropriate to refer to the provisions of rule 9 and rule 64 of the Rules, which reads as follows: -

"Right of Governor to withhold or withdraw pension:

9.(1) The Governor 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 State Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of rule 39.

Note – (1) The term ‘grave misconduct’ is wide enough to include ‘corrupt practice’. IN case where the charge of corruption is proved only after pension has been sanctioned and it is not possible to invoke the provisions of Rule 6 action to withheld or withdraw pension may be taken under rule 9.

(2) (a) The departmental proceedings referred to in sub-rule (1), instituted while the Government servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the Government servant, be deemed to be proceedings under the rule and shall be continued and concluded by authority by which they are commenced in the same manner as if the Government servant had continued in service;

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor that authority shall submit a report its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment –

i) Shall not be instituted save with the sanction of the Governor;

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

iii) Shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to

departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

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

(5) where the Governor decides not to withhold or withdraw pension but orders recovery of the pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) for the purpose of this rule;

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

(b) judicial proceedings shall be deemed to be instituted;

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

ii) *In the case of civil proceedings, on the date the complaint is presented in the court.*

State Government's decision:

(1) As soon as the proceedings of the nature referred to in Rule 9 are instituted, the authority which institutes such proceedings, should without delay, intimate the fact to the Audit Officer concerned responsible for issuing the Pension and Gratuity order.

(2) Grant of provisional pension in the event of proceedings;

Where departmental or judicial proceedings instituted during the service of the Government servant are not likely to be finalized by the date of retirement, action to grant provisional pension should be taken so that the retiring Government servant may not be put to undue hardship. No gratuity, shall, however, be paid either by the Head of Office or by the Audit Officer until the conclusion of the departmental or judicial proceedings and issue of final orders thereon."

"64. Provisional pension where departmental judicial proceeding may be pending – (1) (a) In respect a Government servant referred to in sub-rule (4) of rule 9, the Audit Officer shall authorize the payment of provision pension not exceeding 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 it was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) No gratuity shall be paid to the Government servant until the conclusion of the department or judicial proceeding and issue of final orders thereon.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension reduced or withheld either permanently or for a specific period.

(4) Nothing contained in this rule shall prejudice the operation of the rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.

State Government's decision

In the case of a Government servant who retires from service while on deputation to Government of India or while on foreign service, action to sanction pension and gratuity in accordance with the provisions of this Chapter shall be taken by Audit Officer or the Head of Office as the case may be, of the Government authority which sanctioned the deputation of the Government servant to the State Government or to foreign service."

11. From the aforesaid Rules what emerges is that position with regard to the pendency to the disciplinary proceedings or judicial proceedings is to be seen on the date of retirement. In case there are no proceedings pending against the employee on the date of retirement, respondents do not have the jurisdiction to withhold the pensionary benefits to the employee. It is an admitted fact that on the date when the petitioner attained the age of superannuation and retired on 31-01-2014, there was no proceeding pending against him. Once, there was no proceeding pending against the petitioner on the date of

his retirement, respondents were under obligation to release the pensionary benefits within a reasonable period of time.

12. The opening words of rule 9(1) of the Rules stipulates that the Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period. Unless the Governor exercises such right reserved to himself, pension cannot be withheld or withdrawn permanently or for a specified period automatically. This would be clear from the provisions of rule 9(1) to the effect that powers under rule 9(1) shall be exercisable not only in case of pecuniary loss to the Government but also in all other cases. The aforesaid provisions clearly indicates that it is a power exercisable in a given case and may not be exercised in some cases and the action under rule 9(1) withholding or withdrawing pension permanently or for a specified period of time is not automatic. A further reading of rule 9(1) will show that the right to withhold pension is different from the right to order recovery from pension any pecuniary loss caused to the Government which can be exercised by the Governor only if in a departmental or judicial proceeding the petitioner is guilty of some misconduct or negligence during the period of service, whereas the right of withholding pension can be exercised by the Governor even before the conclusion of the departmental proceeding. Unless, therefore, the competent authority in a given case applies his mind to the facts of the case passes specific order withholding or withdrawing pension or any part of it whether permanently or for a specific period for some good reasons, pension or any part thereof of a government servant cannot be withheld by the authority automatically.

13. Coming now to rule 9(4) of the Rules on which heavy reliance was placed by Mr. N D Chullai for his contention that where a judicial proceeding stands initiated against the government servant immediately after his retirement and the proceeding was continuing, the government servant is only entitled to provisional pension, the said provision entitles a government servant to payment of provisional pension in a case where departmental or judicial proceeding was continued against him, but does not confer any right or power on the Governor to withhold pension of a government servant. The provision in rule 9(4) further does not state that the payment of regular pension of a government servant will be automatically stopped where a judicial proceeding is continued against a government servant. The claim of the petitioner in this writ petition is payment of regular pension and if the State respondents are to take any defence against payment of such regular pension, they can only rely on rule 9(1) of the Rules which confers only a right to the Governor to withhold pension. The said rule does not provide for automatic stoppage of regular pension in case a judicial proceeding is continued against a government servant.

14. Since no orders have been specifically passed by the competent authority under rule 9(1) of the Rules withholding the pension of the petitioner for a specified period, more particularly for the period when the judicial proceeding against the petitioner was continuing, the action of the State respondents in withholding the pension of the petitioner as well as gratuity in terms rule 64 of the Rules is not tenable in law.

15. The Apex Court in the case of the *State of Jharkhand (supra)*, relied on by the counsel for the petitioner, lays down that the right to receive to pension is recognized as a right in 'property'. The decision further lays down that a person cannot be deprived of his pension without authority of law, which is a constitutional mandate enshrined under Article 300A of the Constitution.

17. The other decisions relied on by the learned counsel for the petitioner in the cases of *H. Gangahanume Gowda (supra)*, *S. K. Dua (supra)*, *Y. K. Singla (supra)* and *D. D. Tiwari (dead) through legal representative (supra)*, mandate the employer to pay gratuity within specified time and in the failure to do so, to pay interest on the delayed time. The law laid down in the aforesaid judgments also provides for payment of interest in case of delay in disbursement of pension and other service benefits of a retired employee.

18. The decision of the Apex Court in the case of *R. Veerabhadram (supra)* cited by the learned AAG relates to an employee against whom a judicial proceeding was pending on the date of his retirement. In the present matter, it is admitted position that there were no proceedings pending against the petitioner when he retired. The invocation of Rule 9 of the Rules by the respondents to deny the release of retiral benefit to the petitioner, as such, is wholly unjustified and untenable. That apart, the FIRs against the petitioner were lodged on 06-06-2014 and 08-05-2014 (with supplementary FIR dated 13-05-2014). Even if the petitioner's date of retirement is taken on 31-03-2014, the date till which petitioner overstayed in service, the FIRs were lodged after the said date. The respondents, therefore, were

totally wrong in resorting to the provision of Rule 9 of the Rules to deny the pensionary benefits to the petitioner.

19. Time and again, the Apex Court has emphasized that pension is not a bounty but the same is a right of the person concerned who has retired from service. The pension rules itself has made specific provision for providing pensionary benefits at the earliest opportunity. It needs to be emphasized here that the impugned letters dated 28-11-2019 and 21-02-2020 cannot be termed as orders passed by the competent authority in exercise of powers under Rule 9 (1) of the Rules. On the basis of the said letters, the respondents cannot withhold even a part of the pension or gratuity of the petitioner. The pension is hard earned benefits which accrued to the petitioner and is in the nature of property. This right of property could not have been taken away by the respondents without due process of law.

20. Keeping in view the law cited above, it is clear that the action of the respondents in withholding the pension and the gratuity amount of the petitioner on the basis of the judicial proceeding which commenced after the retirement was beyond their jurisdiction and was contrary to the settled principle of law and therefore, as the amount of pension and gratuity was retained by the respondents without any jurisdiction, the petitioner needs to be compensated for the said illegal action by the grant of interest.

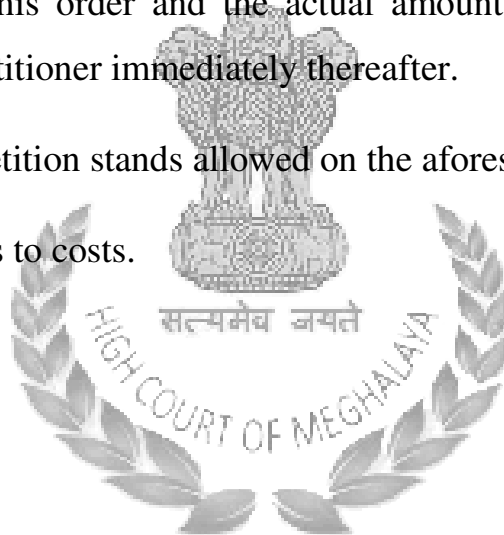
21. For what has been discussed in the foregoing paragraphs, the impugned letters dated 28-11-2019 and 21-02-2020 are set aside and quashed. The petitioner is found to be entitled to grant of interest for delayed release of his regular pension and gratuity. Accordingly, it is

directed that the respondent shall pay simple interest @ 7.25 % per annum on the amount of gratuity and arrear of pension from the date on which those amounts became due till the date on which the same are actually released to the petitioner. Since, it is submitted by the learned counsel for the petitioner that the respondents have already issued orders for the release of regular pension and gratuity to the petitioner, no direction in this regard is required to be passed.

22. Let the calculation of the amount of interest be done by the respondents within a period of two months from the date of receipt of the certified of this order and the actual amount, so calculated, be released to the petitioner immediately thereafter.

23. The writ petition stands allowed on the aforesaid terms.

24. No order as to costs.



JUDGE

Meghalaya
18.10.2023
"Biswarup-PS"