

Court No. - 33

Case :- WRIT - A No. - 1829 of 2019

Petitioner :- Navendra Singh Chauhan

Respondent :- Kanpur Development Authority, Kanpur Nagar, And 2 Others

Counsel for Petitioner :- Manoj Kumar Kushwahah,M.P. Srivastava

Counsel for Respondent :- Rajesh Kumar Singh,S.C.,Shashi Shekhar Mishra

Hon'ble J.J. Munir,J.

Parties have exchanged affidavits.

Admit.

Heard forthwith.

Heard Mr. M. P. Srivastava, learned counsel for the petitioner and Mr. Shashi Shekhar Mishra, learned counsel appearing on behalf of the respondents.

The petitioner was a Clerk Grade-I, who retired from the service of the Kanpur Development Authority on 30.06.2018. While in service, the petitioner was placed under suspension pending enquiry *vide* order dated 01.12.2017, which he says was founded on vague allegations. No proceedings were thereafter taken for a considerable period of time. The order of suspension was put in abeyance by this Court in Writ-A No. 9460 of 2018, *vide* order dated 16.04.2018. This Court, by that order, disposed of the writ petition directing on one hand that the suspension order be put in abeyance, and on the other, the enquiry be concluded and final orders made.

The case of the petitioner is that the departmental enquiry never ended or concluded. The petitioner was re-instated in service on 29.05.2018. As already said, he retired soon thereafter, on 30.06.2018.

The petitioner states that he was paid post retiral benefits to the tune of Rs. 9,33,254/- and a pension sanctioned for him at the rate of Rs. 19,600/- *per mensem*. He was paid his pension with effect from 01.07.2018 up to the month of September, 2018.

The grievance is that the petitioner's pension was suddenly stopped in the month of October, 2018. The petitioner says that this sudden stoppage of his pension came by without a written order passed by the respondents. The petitioner went to the respondents seeking cause but none was assigned. Accordingly, this writ petition was instituted raising a grievance that the petitioner's pension has been unlawfully stopped from the month of October, 2018.

The petitioner has prayed for the issue of a writ, order or direction in the nature of *mandamus* to release and pay his pension with effect from October, 2018 together with interest and ensure month to month payment without hindrance.

On 11.02.2019, when this petition came up, this Court passed the following order:

"Heard Sri M.P. Srivastava, learned counsel for the petitioner and Sri Shashi Shekhar Mishra for respondent nos. 1 to 3.

The grievance of the petitioner is that his pension has been stopped w.e.f. October, 2018. He was an employee of the Development Authority and retired on 30.06.2018. All his retiral dues was paid by the Development Authority but his pension had been abruptly stopped from October, 2018.

By order dated 07.02.2019, counsel for the respondent was directed to seek instructions in the matter. Today, Sri Mishra has placed before the Court the instructions received by him from the Joint Secretary, Kanpur, Development Authority. It is submitted that the first information report No. 0232 under Section 409 dated 04.12.2017 was lodged at Police Station- Swaroop Nagar against the petitioner in which charge-sheet has been filed before the Chief Judicial Magistrate, Kanpur who has taken cognizance in the said matter.

Sri Mishra, prays for and is granted two weeks' time to file counter affidavit. A week's time thereafter is granted to file rejoinder affidavit.

List this matter immediately after expiry of the aforesaid period."

A counter affidavit has now been filed. In the counter affidavit it is averred that disciplinary action was taken against the petitioner wherein he was found guilty of not providing documents relating to Writ Petition No. 20999 of 2002. It is on that account that the suspension order was passed on 01.12.2017. However, nothing is mentioned as to what happened to those disciplinary proceedings. There is no terminus of those proceedings indicated in the counter affidavit. It is admitted to the respondents that the petitioner was re-instated on 29.05.2018. It was also admitted that he was paid a part of his post retiral benefits in the figure of Rs. 9,33,254/-. It is also not disputed that the petitioner was sanctioned and paid monthly pension of Rs. 19,600/- with effect from July, 2018.

It is the respondents' case that Crime No. 232 of 2017 was registered against the petitioner under Section 409 I.P.C. at Police Station Swaroop Nagar, District Kanpur Nagar, wherein after investigation a chargesheet has been filed. The charge sheet is said to have been filed on 05.07.2018. The stand, which the respondents have taken in paragraph No. 9 of their return is that since the petitioner has been chargesheeted on 05.07.2018, "the Authorities concerned have stopped the pension of the accused petitioner till conclusion/ disposal of the aforesaid criminal case pending against the accused petitioner".

Upon hearing learned counsel for the parties and perusing records, this Court finds that it is indeed strange that in the counter affidavit no order stopping the

petitioner's pension in the terms mentioned in paragraph No. 9 thereof has been annexed. Even otherwise, there is no law or service rule brought to this Court's notice that a retired employee, against whom a chargesheet after investigation is filed by the Police, may be, on an F.I.R. lodged by the employer themselves, entitles the employer to stop the payment of pension due under the rules. There is no rule brought to this Court's notice by the respondents relating to payment of pension which may entitle them to stop the petitioner's pension. It is not in dispute that the petitioner holds a pensionable post.

Law by far is well settled that the right to receive pension is an employee's property and not a bounty in the employer's hands. It is a right protected under Article 300-A of the Constitution of India. The principle is one, settled as long back as the decision of the Supreme Court in **State of Kerala and others Vs. M. Padmanabhan Nair : (1985) 1 SCC 429**.

It is indeed most unacceptable that pension payable to the petitioner under the rules should be suddenly stopped on the filing of a chargesheet without notice; even without an order stopping that pension. In the counter affidavit also, the respondents have pleaded in most callous terms, saying that the petitioner's pension has been stopped by the 'Authorities concerned'.

The respondents have not cared to disclose the designation of the Authority, so called, who has passed this kind of an order or the date of the order, by which the petitioner's pension has been stopped.

Apparently pension has been stopped under some oral instructions. The respondents, being a Statutory Body, governed by law and discharging public functions, cannot in the discharge of those functions, act in this arbitrary fashion. They cannot, by oral orders, direct stoppage of pension payable to a retired employee under the rules merely because it is their fancy that a chargesheeted employee ought not to be paid his pension. This cause is fancy because we have not been shown any rule or Authority by the respondents, authorizing stoppage of an ex-employee's pension upon being chargesheeted in a criminal case.

In this view of the matter, this petition **succeeds** and is **allowed with costs**, which we quantify in the sum of **Rs. 25,000/-**.

Let a *mandamus* be issued ordering the Vice Chairman, the Secretary and the Accounts Officer, Kanpur Development Authority, Kanpur to forthwith pay arrears of pension due to the petitioner, together with added dearness relief within a month of the receipt of a copy of this order along with simple interest at the rate of 8% per annum.

It is further ordered that the current pension, to which the petitioner is entitled, shall be paid regularly month by month in the same manner as paid to any other retired employee of the Kanpur Development Authority. The costs awarded, shall be

remitted in the account of the petitioner within a month.

In the event, the costs are not remitted to the petitioner in his bank account, it is open to the petitioner to make an application before the Registrar General of this Court supported by an affidavit, who will then issue a recovery certificate to the Collector, Kanpur Nagar to realize the same from the respondents as arrears of land revenue and remit the same to the petitioner's account forthwith.

Let this order be communicated to the Vice Chariman, the Secretary, the Accounts Officer, Kanpur Development Authority, Kanpur and the Collector, Kanpur Nagar by the Registrar (Compliance).

Order Date :- 12.10.2023

Mustaqeem.