



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8523 OF 2022

Ramchandra Krishna Kamble

... Petitioner

Vs.

The Chief Executive Officer, Pune Zilla Parishad,
Pune & Ors.

...Respondents

Ms. Manisha Devkar a/w. Ms. Anjali Kondvilkar i/b. Mr. Shankar Katkar for the petitioner.

Mr. S.V. Gavand with P.H. Gaikwad for respondent nos. 1 to 3.

Mr. Aditya R. Deolekar, AGP for the State.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.
DATE: 25 AUGUST, 2026.

ORAL ORDER: (PER G. S. KULKARNI, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.
2. We have heard learned counsel for the parties. As a fair stand is taken on behalf of the respondents, we are inclined to dispose of this petition.
3. At the outset, we note the prayers as made in the petition, which read thus:

“a) This Hon’ble Court be pleased to issue a writ of Mandamus or an appropriate writ, order or directions in the nature of Mandamus and thereby quash and set aside the Order dated 2 June, 2021 passed by the Block Education Officer, Bhore Panchayat Samitee, and direct the Block Education Officer to release the pension without insisting on a Caste Validity Certificate.

b) This Hon’ble Court be pleased to issue a writ of Mandamus or an appropriate writ, order or directions in the nature of Mandamus and thereby quash and set aside the order dated 24 May, 2018 passed by the Scheduled Tribe Caste Scrutiny Committee.”

4. Briefly the facts are : The petitioner was appointed on 21 October, 1985 as an Assistant Teacher, following due process of law. An appointment order dated 21 October, 1985 to that effect was issued by the Chief Officer, Zilla Parishad, Pune. The appointment of the petitioner was thereafter duly approved. We find from the appointment order that the petitioner was not appointed against a reserved post, although there is a clause in the appointment order in regard to the candidates belonging to the Economically Backward Class, stipulating that they would be required to furnish adequate proof in that regard.

5. Despite the aforesaid clear position and the petitioner being not appointed on a reserved post, in the year 2015 the petitioner was called upon by the respondents to submit a Caste Certificate and Caste Validity Certificate. The petitioner accordingly obtained a Caste Certificate, which was issued to him on 3 June, 2015 by the Sub-Divisional Officer, Bhore, certifying that the petitioner belonged to "Mahadev Koli Tribe", recognized as a Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950. In such circumstances, the petitioner approached the Caste Scrutiny Committee on 8 February, 2016, seeking validation of the said Caste Certificate. The proceedings were accordingly adjudicated by the Caste Scrutiny Committee, which rendered its decision dated 24 May, 2018 invalidating the Caste Certificate issued in favour of the petitioner. Despite such decision of the Caste Scrutiny Committee, the petitioner was continued in service and ultimately superannuated on 31 July, 2021. The petitioner has, however, been denied pensionary benefits on the ground that the petitioner's caste certificate was invalidated, on the basis of the

impugned communication dated 2 June, 2021, the contents of which are required to be noted, which read thus:

(Translation of a photocopy of a LETTER, typewritten in Marathi)

EXHIBIT-A

Panchayat Samiti Office, Bhore (Education Department)
Taluka Bhore, District Pune.

E-Mail I.D. beobhor1@gmail.com

Telephone No. 02113-222538

O. No. P.S./Education/Estt.-3/976/2021 Date : 02.06.2021

To,

Shri Ramchandra Krishna Kamble,
Assistant Teacher, Z. P. Primary School, Kari,
Taluka Bhore, District – Pune.

Subject : Regarding submitting Caste Validity Certificate.

In connection with the above-mentioned subject, you are hereby instructed that you are retiring on the date 31.07.2021 on superannuation and in view thereof, in the matter of the pension proposal, on verifying the Service book, the entry of Caste Validity Certificate is not found to have been made in the said Service Book. Therefore, upon receipt of this letter, you are requested to immediately submit your Caste Validity Certificate to this Office. However, if you fail to submit the Caste Validity Certificate, you shall be held personally responsible for the delay which would be caused in your pension-case, which may be seriously noted.

(Signature Illegible)
(Ashwini Sonavane)
Group Education Officer,
Panchayat Samiti, Bhore.”

6. Learned counsel for the petitioner has four principal submissions. Firstly, it is submitted that the petitioner was not appointed against a reserved post, which, according to the learned counsel, was clear from the appointment order dated 21 October, 1985. Her second submission is that for almost 30 years, i.e., upto the year 2015, there was no insistence on the petitioner for obtaining a Caste Certificate or a Caste Validity Certificate. Although there was no requirement for the petitioner to obtain a caste certificate, pursuant to the insistence of the respondents, the petitioner obtained the Caste Certificate, which was

subsequently invalidated by the Caste Scrutiny Committee by its order dated 24 May, 2018. It is, therefore, submitted that, in such circumstances, it was not legal and/or it was arbitrary for the respondents to insist for a Caste Certificate and Caste Validity Certificate. The third submission as made by the learned counsel for the petitioner is that, despite the Caste Certificate not being validated by the Caste Scrutiny Committee, the petitioner was continued in service. According to the petitioner, there is also a policy of the State Government whereby even assuming, that the petitioner was appointed on a reserved post belonging to the Schedule Tribe category, the candidates belonging to the Scheduled Tribe category whose Caste Validity Certificates were not validated were decided not to be removed from service and their appointments were to be protected as a one-time measure until their superannuation by creating supernumerary post. It is submitted that such protection was intended to operate for all service purposes, which would include pensionary benefits. The fourth submission is that, in any event, the case of the petitioner would stand covered by the recent decision of this Court in **Ratnamala Anilkumar Swami vs. State of Maharashtra & Anr.** rendered in Writ Petition No. 7684 of 2025 dated 10 August, 2026, in which this Court has taken into consideration the Government policy in respect of Scheduled Tribe and which was also made applicable in the peculiar facts of the case in relation to other categories of Scheduled Tribe and more particularly when the petitioner therein was continued in employment for a long period after the validity was not granted by the Caste Scrutiny Committee. It is her contention that in these circumstances, the petitioner who has retired on 31 July, 2021 is

deprived of pension benefits and retiral benefits till date, needs to be awarded pension and all the retiral benefits are required to be given in favour of the petitioner.

7. Although this petition is pending since 2022 and it appeared before the Court on several occasions, no reply affidavit has been filed. The respondents have accordingly forfeited their right to file reply affidavit. Learned counsel for the respondent has, however, submitted that in the event, the petitioner is making any representation, the same would be appropriately considered and decision would be given.

8. We have accordingly heard learned counsel for the parties. At the outset, we may observe that several orders have been passed in the present proceedings. Considering such order, if the respondents were desirous of contesting the petition, they ought to have filed a reply affidavit. However, they have chosen not to contest the petition on merits. In fact, specific order permitting the respondents to file reply affidavit has not been complied.

9. Be that as it may, in our opinion, the petitioner appears to be correct in all his contention to the effect that admittedly the petitioner had rendered long years of service with the respondent-Zilla Parishad since the year 1985. The appointment order of the petitioner also does not indicate that he was appointed on a post reserved for Scheduled Tribe. Thus, in our opinion, there was no need for the respondents to foist a condition on the petitioner for obtaining a Caste Certificate and thereafter approach the Caste Scrutiny Committee for validation

of the said certificate. In any event, we find that such insistence remained merely an exercise on paper, inasmuch as although the Caste Certificate was invalidated by the Caste Scrutiny Committee on 24 May, 2018, the petitioner was continued in service thereafter since the petitioner was superannuated on 31 July, 2022. It is only just prior to his superannuation, the impugned communication dated 2 June, 2021 is issued to the petitioner and by virtue of which the petitioner is now denied retiral benefits as also the pension. The impugned communication presupposes that the appointment of the petitioner was on a reserved post, which in fact was not on the reserved post as clearly seen from the appointment order dated 21 October, 1985 and thus, there was no warrant in the respondent insisting for any Caste Certificate. Subsequently, there would also be no warrant in the respondents withdrawing the retiral benefits and pension to the petitioner.

10. We are also in agreement when the petitioner contends that reliefs as prayed for by the petitioner, would stand covered by the recent decision of this Court in **Ratnamala Anilkumar Swami** (supra). In the said case, the issue before the Court was similar as in the present case where the petitioner was denied pension and on similar grounds when the Caste Certificate was not validated, although in the said case, the petitioner was belonging to Scheduled Caste category. The Court was considering the principles of law as also the consistent Government policy, as reflected in the Government Resolution dated 27 December, 2019 and more particularly paragraph 4.1 and 4.2 thereof which granted protection to the Scheduled Tribe candidates when it considered it appropriate to award pension to the said petitioner. The present case, in our

opinion, would stand squarely covered by the Government Resolution dated 27 December, 2019, which confers a protection to the Scheduled Tribe candidates on humanitarian grounds. In these circumstances, the Division Bench has considered the settled principles of law surrounding entitlement and grant of pension to the Government employees, when it observed that it is a settled position that pension is neither a charity, nor a gratuitous payment, nor a bounty to be distributed at the sweet will of the executive. It was observed that pension has been conceptualized as an enforceable legal right, grounded in constitutional and socio-economic principles, as also it is regarded as a deferred wages compensation earned by an employee through long, continuous and faithful service rather than paying the full value of labour during active employment. It was also observed that from a social welfare perspective in relation to pension, it is held that three main socio-economic objectives are met, namely, to ensure economic independence and dignity in old age, when physical capacity to earn diminishes, it protects the employee against economic insecurity and post-retirement destitution as also it serves as a reward for past unblemished service. If these are solemn principles on which the right and entitlement to receive pension would arise, we find the basic insensitivity is in denying pension for almost a period of five years. The relevant observations as made by the Court in the said decision are required to be noted, which read thus:

“12. It is not the Respondents' case that Respondent No. 2 in any manner had invoked the provisions of Section 10 to take any action against the Petitioner's husband, on the basis of order dated 06.06.2019 passed by the Caste Scrutiny Committee so as to discharge him from the service. In fact, the Petitioner's deceased husband was continued in the employment, without any action being taken, till he expired in harness on 08.09.2020. Even if we consider that such action was not taken by the Respondents, by virtue of the protection as granted by

this Court vide order dated 27.09.2013 passed in Writ Petition No.9133 of 2013, the fact remains that he was continued in the service. Thus, the legal status as enjoyed by the Petitioner's husband qua the employment in question was that he remained in service till he expired on 08.09.2020. He clearly died in harness.

13. In the peculiar facts and circumstances of the case, the Court cannot be oblivious to the fact, that no action was taken by the Respondents under Section 10 of the said Act during his lifetime. In the event any action against him under the said provision was to be resorted, the husband could have approached this Court to challenge the orders passed by the Caste Scrutiny Committee. All these circumstances, in our opinion, has certainly brought about a situation, which is not governed under the provisions of Section 10 and more particularly, when the Petitioner was granted provisional family pension by an order dated 27.01.2021 and the same was abruptly halted after a period of six months. We also find that the State Government, in regard to the candidates who belonged to the Scheduled Tribe (reserved category) has taken a policy decision to protect their employment in such circumstances on invalidity of the Caste Certificate, as a humanitarian measure, for the long years of service rendered by such employees. Our attention to that effect is drawn to the Government Resolution dated 27.12.2019, more particularly Paragraph Nos.4.1 and 4.2, which read thus:

"4.1 On account of non-submission of the Scheduled Tribe Caste Validity Certificate, all Administrative Departments concerned shall, pursuant to this Government Resolution, create supernumerary posts in the cadre of the posts currently held by such Officers and Employees, equivalent to the number of Officers and Employees whose services are being transferred to supernumerary posts and all the Administrative Departments concerned, on humanitarian grounds and to obviate administrative exigencies, shall appoint such Officers and Employees to the said supernumerary posts on a purely temporary basis for a period of 11 (eleven) months or until the date on which they would have retired, if they had continued in service, whichever is earlier.

4.2 As regards those Officers and Employees who were discharged from service prior to the issuance of this Government Resolution, all Administrative Departments concerned shall create supernumerary posts in the cadre of the post held by such Officers and Employees prior to their termination from the service and shall, on humanitarian grounds and to obviate administrative exigencies, appoint them to the said supernumerary posts on a purely temporary basis for a period of 11 (eleven) months, or until the date on which they would have retired if they had continued in service, whichever is earlier."

14. Thus, it appears that the State Government was concerned, when long years of service was rendered by the employees and a situation of such nature of Caste Validity Certificate being not furnished or invalidated had arisen; such employees, considering their long service, would be protected by creating supernumerary posts.

15. Further from the decisions cited at the Bar, it is clear that such issues had reached the Courts. We find that a Division Bench of this Court in the case Prakash s/ Fulchand Barwal (supra), considered a similar situation, wherein the petitioner therein who belonged to the Scheduled Tribe category, had expired. He was appointed as a peon in the year 1988 against a post reserved for Scheduled Tribes. His Caste Certificate was referred for verification to the Caste Scrutiny Committee, which invalidated his claim vide order dated 30.09.1989.

Consequent thereto, his services came to be terminated vide order dated 10.12.1989. The appeal preferred against the said order was also dismissed. He expired during the pendency of the said petition. It is in these circumstances, the Court recognized the entitlement of the legal heirs for grant of family pension. The relevant observations read thus:

"2] The original petitioner was appointed as Peon by the respondent no.4 by the order dated 11.7.1988. The petitioner's appointment was against a post reserved for scheduled tribe. As such the claim of the petitioner was referred to the scheduled tribe caste verification committee. The said committee invalidated the claim of the petitioner vide order dated 30.9.1989. On the ground of invalidation, the petitioner's services came to be terminated vide order dated 10.12.1989. The appeal preferred by the petitioner against the order of the caste verification committee was dismissed on 27.10.1993. Being aggrieved thereby, the present petition was filed.

3] While granting Rule, this Court had granted interim relief in terms of prayer clause (B). As such in pursuance to the interim order, the petitioner was to work as a Peon with the respondent no.4. Subsequently, Civil Application No. 5571/1994 was filed by the respondent no.4 for vacating the interim relief. The same came to be rejected.

4] During pendency of the writ petition, the original petitioner has died and his legal heirs are brought on record. Since the original petitioner has already died, the question regarding his claim of belonging to scheduled tribe does not arise. The legal heirs of the original petitioner have restricted the claim in the present petition only for grant of family pension.

5] The petitioner was originally appointed on 18.7.1988. By virtue of interim order passed in the year 1994, the petitioner was directed to be reinstated. The original petitioner has died on 5.12.2003. Considering the date of appointment of the original petitioner to be 11/18.7.1988, the original petitioner has rendered the service of more than 15 years. As such the petitioner's widow would be entitled to the family pension. We accordingly extend the benefit of family pension to the widow of the original petitioner i.e. present petitioner no.1 - Smt. Shobhabai w/o Prakash Barwal.

6] We, therefore, dispose of the writ petition by directing the respondents to give the benefits of family pension to the widow of the original petitioner from the date of his death i.e. 5.12.2003. The said benefit be extended to the widow of the petitioner namely Smt. Shobhabai w/o Prakash Barwal within a period of six months from today along with the arrears. No order as to costs."

[emphasis supplied]

16. The aforesaid decision in Prakash s/o Fulchand Barwal (supra), was followed by the Co-ordinate Bench of this Court in the case of Saraswati w/o Nagnath Mupde (supra), in which the husband of the Petitioner therein was working as a teacher and appointed on the post reserved for the Scheduled Tribe category. His Caste Certificate was invalidated by the Caste Scrutiny Committee. Considering the decisions in case of Prakash s/o Fulchand Barwal (supra), the Court made the following observations:

"5. It was held in Prakash Barwal (supra), that the LR's were entitled for the pensionary benefits since the bread earner had passed away while in service. Family pension was, therefore, directed to be paid to the widow from the date of his death. In Sunita W/o Late Pradip Thakar Vs. The State of Maharashtra and Others. 2022 (1) Mh.L.J. 219, this Court dealt with the claim of a widow and following the law laid down in Prakash Barwal (supra), this Court also granted the pensionary benefits. The Petitioner's case is practically identical to both reported judgments.

6. We are informed that the Petitioner was receiving provisional pension, which was subsequently discontinued.

7. In view of the above, this Writ Petition is partly allowed with the following directions:

A) Respondent No. 3/Headmaster would forward the proposal of the Petitioner, as a widow, for receiving the pension, to Respondent No.4/Education Officer (Primary), within 30 days from today.

B) the said proposal would be dealt with by the appropriate Authorities and considering the order of this Court in Prakash Barwal (supra) and Sunita Thakur(supra), the Petitioner shall be entitled for pension from the date of the demise of her husband.

C) The arrears be calculated and be paid to the Petitioner on or before 30.11.2024, if not already paid, and the commencement of payment of pension shall be from the month of June, 2024. In the meanwhile, the provisional pension shall continue and such amounts received by way of provisional pension would be adjusted as against the arrears of pension.

D) Rule is made partly absolute in above terms."

[emphasis supplied]

17. In a recent decision in the case of Manda w/o Prakash Sonawane (supra), the deceased husband of the petitioner therein was the only bread earner. He was selected and appointed on the post, which was reserved for the backward category. He retired on 30.06.2020 and passed away on 18.07.2022. There was no dispute in regard to pensionary and entitlement of retiral benefits. The employer, however, took a stand that the same would not be payable to the legal representatives of the petitioner, since the deceased employee did not tender the Caste Validity Certificate, and since the employee's claim of belonging to the reserved category was not validated, the petitioner would not be entitled for grant of family pension. It is in these circumstances, a Division Bench of this Court in the case of Manda w/o Prakash Sonawane (supra), relying on the decision of this Court in the matter of Kamlabai w/o Shaphadu Salve Vs. the State of Maharashtra & Ors. 4, and also the Supreme Court in the matter of Chairman and Managing Director, Food Corporation of India and Ors. Vs. Jagdish Balaram Bahira and Ors., recognized the entitlement for family pension and other reliefs and made following observations:

"8. In similar set of facts, this Court (Coram: Ravindra V. Ghuge and S.G. Mehare, JJ.) delivered a Judgment on 20 th July, 2021 in Writ Petition No.6485 of 2020 at Aurangabad (Sunita w/o Late Pradip Thakar Vs. State of Maharashtra and Ors.) and by placing reliance on a Judgment of this Court, dated 12 th August, 2010 delivered in Writ Petition No.3718 of 1994 (Prakash Fulchand Barwal since deceased through his Legal Heirs

Smt. Shobhabai Barwal and others Vs. The State of Maharashtra and Ors.), allowed the claim of Sunita and directed the payment of family pension and all retiral benefits as would have been admissible to the deceased employee had he normally superannuated from service. For similar reasons, this Court has delivered several Judgments which are annexed to the Petition paper-book.

9. In the light of the above, this Writ Petition is allowed in terms of prayer clause (A). Necessary papers for releasing the family pension payable to the eligible Legal Representatives of the deceased Employee, shall be moved by the Employer within 30 days and it shall be the duty of the Employer, as well as the Authorities concerned, to ensure that the arrears of pension are paid to the eligible Legal Representatives, within a period of 90 days from today. Gratuity amount shall also be paid within a period of 60 days with admissible statutory interest @ 12% per annum in the light of the Government Notification dated 5th October, 1999 issued by the Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare. Needless to state, that the LR's of the deceased would co-operate with the authorities, if the preparation of the papers.

10. It is made clear that if any of the eligible Legal Representatives of the deceased Employee, desire to seek compassionate employment, the law laid down by the Full Bench of this Court in Om Bhagwanrao Anjanwad vs. State of Maharashtra and Anr., (Full Bench), 2022 (4) Mh.L.J. 723, would be squarely applicable."

18. Considering the aforesaid consistent view, we are of the opinion that the Respondents in the present case would not be correct in their contention that in the facts and circumstances of the case, the Petitioner should be deprived of family pension. We cannot accept the contention that as in Prakash S/o Fulchand Barwal (supra) and in Saraswati w/o Nagnath Mupde (supra), the Petitioners belonged to the Scheduled Tribe, and as in the present case the Petitioner's deceased husband belonged to the Scheduled Caste category, different view needs to be taken to hold that the Petitioner is not entitled for the family pension. Such view would be per se discriminatory when the consideration is entitlement to pension. The reason being that undoubtedly the Petitioner's deceased husband continued in service for a very long period i.e., about 25 years, till he expired. The provisions of Section 10 were not invoked, inasmuch as, no action was taken to discharge the service of the Petitioner's deceased husband, on the ground that the validity was not awarded to his Caste Certificate, moreover, he was continued in service till he expired. In these circumstances, we do not find any warrant in law, and more particularly when the Respondent in the reply Affidavit has confined their opposition only referring to Section 10 of the said Act to disentitle the Petitioner for grant of family pension. It is significant that even the Respondent did not seek vacating the interim protection, which was granted to the Petitioner's husband in the proceedings in Writ Petition No.9133 of 2013 (supra). Thus, the clear legal and unimpeachable status of the Petitioner's deceased husband, on the day he expired, cannot be overlooked so as to refuse the benefit and entitlement of family pension to the Petitioner, who is the wife of the deceased employee. Denying family pension to her in such circumstances would amount to a travesty of justice.

19. Further, we cannot be oblivious to the jurisprudence surrounding entitlement and grant of pension which by now is firmly established. It is well

settled that pension is neither a charity, nor a gratuitous payment, nor a bounty to be distributed at the sweet will of the executive. It has been conceptualized as an enforceable legal right, grounded in constitutional and socio-economic principles. Pension is also regarded as a deferred wages compensation earned by an employee through long, continuous and faithful service rather than paying the full value of labour during active employment. It has been held that the right to receive pension constitutes 'property', earlier under Article 31(1), which was a fundamental right and after its repeal, a constitutional protection guaranteed under Article 300A. Consequently, a pensionary entitlement, once vested in an employee, cannot be taken away merely by an executive order or administrative action. Deprivation of such property must have the authority of law, and therefore requires express statutory sanction or other valid legal authority. From a social welfare perspective in relation to pension, it is held that three main socio-economic objectives are met, namely, to ensure economic independence and dignity in old age, when physical capacity to earn diminishes. It protects the employee against economic insecurity and post-retirement destitution as also it serves as a reward for past unblemished service. Pension is hence held to be a legal right flowing from statutory service rules, and not an act of grace. The government has no discretionary power to arbitrarily withhold, delay or modify it. Any culpable delay in paying retirement benefits attracts an interest penalty as a matter of statutory right."

(emphasis supplied)

11. In making the aforesaid observations, the Division Bench has referred to the principles of law as laid down by the Supreme Court in **Deokinandan Prasad v. State of Bihar**, **D.S. Nakara v. Union of India**, **State of Kerala v. M. Padmanabhan Nair**, **State of Jharkhand v. Jitendra Kumar Srivastava**. The principles in regard to award of pension as laid down by the Supreme Court in the said decisions as referred by the Division Bench are also required to be noted, which read thus:

"20. In the aforesaid context, we may usefully refer to the following decisions:-

20.1 In **Deokinandan Prasad v. State of Bihar**, the Supreme Court was confronted with the question as to whether the right to receive pension could be withheld by the State in the absence of statutory authority. The Court held that the right to receive pension flows from the applicable service rules and does not depend upon any order granting such pension. It further held that the right to pension constitutes "property" and cannot be taken away by a mere executive order. The relevant observations read thus:

"15. The questions that arise for consideration are whether the orders, dated August 5, 1966 and June 12, 1968, are legal and valid. Before we consider that aspect, it is necessary to state that in order to sustain this petition under Article 32, the petitioner will have to establish that either the order, dated August 5, 1966 or June 12, 1968, or both of them affect

his fundamental rights guaranteed to him. The order of August 5, 1966, according to the petitioner, is one removing him from service and it has been passed in violation of Article 311. That the said order is one removing the petitioner from service is also admitted by the respondents in para 11 of the counter-affidavit filed on their behalf by the Assistant Director of Education. Assuming that the said order has been passed in violation of Article 311, the said circumstance will not give a right to the petitioner to approach this Court under Article 32. The stand taken by the petitioner is that his right to get pension is property and it does not cease to be property on the mere denial or cancellation by the respondents. The order, dated June 12, 1968, is one withholding the payment of pension or at any rate amounts to a denial by the respondents to his right to get pension. Either way, his rights to property are affected under Articles 19(1)(f) and 31(1) of the Constitution. His right to pension cannot be taken away by an executive order. In the counter-affidavit, the respondents do not dispute the rights of the petitioner to get pension, but they take the stand that the order, dated June 12, 1968, is justified by Rule 46 of the Pension Rules. This aspect will be dealt with by us later. There is only a bald averment in the counter-affidavit that there is no question of any fundamental right and therefore this petition is not maintainable. As to on what basis this plea is taken, has not been further clarified in the counter-affidavit. But before us Mr B.P. Jha, learned Counsel for the respondents, urged that by withholding the payment of pension by the State, no fundamental rights of the petitioner have been affected.

16. We are not inclined to accept the contention of Mr Jha that no fundamental rights of the petitioner are affected by passing the order, dated June 12, 1968. We will in due course refer to the relevant Pension Rules bearing on the matter also certain decisions. In our opinion, the right to get pension is "property" and by withholding the same, the petitioner's fundamental rights guaranteed under Articles 19(1)(f) and 31(1) are affected. As the matter is being discussed more fully in the latter part of the judgment, it is enough to state at this stage that the writ petition is maintainable. Even according to the respondents the order, dated June 12, 1968, has no independent existence and that order has been passed on the basis of the earlier order, dated August 5, 1966. In our opinion, if the order, dated August 5, 1966, cannot be sustained, it will follow that the order, dated June 12, 1968, will also fall to the ground. Hence we will deal, in the first instance, with the validity of the order, dated August 5, 1966. The full text of the order, dated August 5, 1966, passed by the Director of Public Instruction, Bihar, is as follows:

....

28. According to the petitioner the right to receive pension is property and the respondents by an executive order, dated June 12, 1968, have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on August 5, 1966. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned Counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned Counsel to urge that if the State had passed an

order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned Counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

20.2 In *D.S. Nakara v. Union of India* 7, the Supreme Court dealt with an issue, as to the nature and significance of pension payable to a retired employee. The Court held that pension is not merely compensation for past service, but is also a measure of socio-economic justice intended to provide economic security in old age, particularly when the physical and mental capacity to earn diminishes, and represents deferred compensation for the service rendered. The relevant observations read thus:

"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* 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*.

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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'être* 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.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see *American Jurisprudence*, 2d, 881).

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."

(emphasis supplied)

20.3 Similarly, in *State of Kerala v. M. Padmanabhan Nair*, the Supreme Court was confronted with the issue of delay in the settlement and disbursement of pensionary and other retiral benefits. The Court held that pension and gratuity are valuable rights and property in the hands of the employee and that any culpable delay in their settlement and disbursement must be visited with the payment of interest at the current market rate. The relevant observations of the Supreme Court read thus:

"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and

any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

20.4 Further, in *State of Jharkhand v. Jitendra Kumar Srivastava*, the Supreme Court was confronted with the issue as to whether pension and gratuity could be withheld during the pendency of departmental or criminal proceedings in the absence of any provision in the applicable Pension Rules. The Court, while holding that pension and gratuity constitute "property" within the meaning of Article 300A of the Constitution, observed thus:

"8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in *D.S. Nakara v. Union of India* by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp.319-20, paras 18-20)

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

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) 2 SCC 330 : 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*."

It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

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15. In *State of W.B. v. Haresh C. Banerjee* this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law.--No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

12. In our opinion, in the present case, the respondents have acted in an arbitrary and highhanded manner in regard to pension to be awarded to the petitioner.

13. We are thus of the clear opinion that the impugned communication dated

2 June, 2021 is totally arbitrary in the facts of the case, which cannot be in any manner foisted on the petitioner, to deny the pensionary benefits and more particularly in view of the State Government Policy even if the appointment of the petitioner was to be made from the Scheduled Tribe category the candidate would be entitled to be granted pension.

14. In this view of the matter, we are of the clear opinion that the petitioner has become entitled to pension. The petition is accordingly required to be allowed. It is allowed in terms of prayer clause (a). We direct that all retiral benefits along with interest @8% p.a. be released to the petitioner within a period of four weeks from today. Apart from retiral benefits, the arrears of pension be also disbursed to the petitioner with interest @ 8% p.a. It is also declared that the petitioner henceforth would be paid monthly pension in accordance with law and as per rules.

15. The petition is allowed in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)