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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4006 OF 2013

Rikhi Ram Thakur aged about 65 years S/o Late Shri Lotan Prasad Thakur Patwari (Retired) R/o Shivagi Ward No.21 Dongargarh Pin 491445 Tah Dongargarh District Rajnandgaon (CG)

---Petitioner

Versus

1. State of Chhattisgarh through Principal Secretary Finance and Planning Department Govt. of Chhattisgarh Secretariat Mahanadi Bhawan Raipur Pin 491881 Tah and Distt Raipur (CG)
2. Collector (Revenue Branch) Collectorate Rajnandgaon Pin 491441 Tah and Distt Rajnandgaon (CG)
3. Sub-Divisional Officer (Revenue) Khairagarh Pn 49881 Distt Rajnandgaon (CG)

----Respondents

For Petitioner	: Mr. V.G. Tamaskar, Advocate
For Respondents/State	: Mr. Ajit Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/01/2016

1. Learned counsel for the petitioner would submit that petitioner is facing criminal trial for the offence punishable under Sections 409, 467, 468 and 471 of the Indian Penal Code. He would further submit that petitioner neither granted pension nor granted gratuity whereas in accordance with Rule 9(4) and Rule 64(1)(a) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter called as “Pension Rules”), he is entitled for provisional pension and gratuity. He relied upon the judgment of this Court in **Writ Petition (S) No.352 of 2014** (*Ramlal Sharma v. State of Chhattisgarh and Others*) decided on 27/11/2015.

2. On the other hand, learned counsel for the State would submit that petitioner is facing trial, therefore, petitioner is being paid 90% of his due and admissible pension. He would further submit that on account of pendency of criminal case, petitioner is not entitled for gratuity.

3. I have heard learned counsel appearing for the parties.

4. It is not in dispute that the petitioner has retired from service on 31/08/2009 and he is facing trial for the offence punishable under Sections 409, 467, 468 and 471 of the Indian Penal Code.

5. At this stage, it would be appropriate to notice Rule 9(4) and Rule 64 (1) (a) of the Pension Rules which provides as under:-

> "9 (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 and death-cum-retirement gratuity as provided in rule 64, as the case may be, shall be sanctioned.
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> 64 (1) (a) In respect of Government servants refer to in sub-rule (4) of rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date of immediately preceding the date on which he was placed under suspension."

6. A conjoint reading of the aforesaid Rules would show that the State/competent authority is entitled to withhold the amount of pension and gratuity not exceeding 50% and the concerned government servant is entitled for a provisional pension and gratuity not exceeding 50% subject to consideration the gravity of charges levelled against such government servant admissible on the basis of qualifying service up to the date of retirement.

7. In the matter of **State of Jharkhand and others v. Jitendra Kumar Srivastava and another**[1], it has been held by Their Lordships of the Supreme Court that gratuity and pension are not bounty and 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. It has been held following the decisions of the Supreme Court in the matters of **Deokinandan Prasad v. State of Bihar**[2] and

1 **(2013) 12 SCC 210**
2 **(1971) 2 SCC 330**

D.S. Nakara v. Union of India[3]. The report states as under:-

> "It is an accepted position that gratuity and pension are not the 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 and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words: (SCC pp.319-20, paras 18-20)
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> "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?
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> 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?

3 **(1983) 1 SCC 305**

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 gratituous 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 Deoki Nandan Prasad v. State of Bihar and Ors. 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 any one'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 and Anr. V. Iqbal Singh (1976) 2 SCC 1."

It is thus 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.

14. The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in Deokinandan Prasad v. State of Bihar."

8. Thus, it appears that by virtue of aforesaid Pension Rules, petitioner is entitled for provisional pension and 50% gratuity subject to consideration the gravity of charges leveled against such government servant.

9. In *Ramlal Sharma (supra),* this Court has held as under:-

"13. Consequently, order dated 16.1.2014 (Annexure P/1) passed by the respondent No.3 declining to grant gratuity in terms of Rule 64 of the Pension Rules is hereby set aside. The respondent No.3 is directed to consider the case of the petitioner for grant of 50% of gratuity in terms of Rule 64 of the Pension Rules within thirty days from the date of receipt of certified copy of this order."

10. In view of the above, the writ petition is allowed in part. The respondent No.3 is directed to consider the case of the petitioner for grant of 50% of gratuity in terms of Rule 64 of the Pension Rules within thirty days from the date of receipt of certified copy of this order.

11. It is stand of the respondents that 90% pension are being paid to the petitioner, therefore no order is passed with respect to pension. However, petitioner is at liberty to make an appropriate petition, if occasion so arises.

12. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

Tiwari