

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1187 of 2014**

- Smt. Sukanti Bhoi Wd/o Late Rameshwar Bhoi Aged About 65 Years
R/o Village & Post Baloda, Police Station Saraipali District
Mahasamund CG

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary School Education Department
Mahanadi Mantralaya New Raipur Cg
2. Director Public Instructions Raipur Cg
3. The District Education Officer Mahasamund Cg
4. The Block Development Education Officer Baloda Bazar Dist. Raipur
Cg
5. Head Master Primary School Bharseli District Mahasamund Cg

---- Respondent

For Petitioner : Shri Pankaj Agrawal, Advocate.
For Respondents : Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****10/05/2017**

1. The petitioner has called in question the legality and validity of the order dated 19.5.1992 (Annexure-P/3) and the order passed by the Pension Redressal Committee on 9.9.2009 (Annexure-P/7) whereby the petitioner's late husband Rameshwar Bhoi was brought to the lowest grade in the scale of Assistant Teacher and has been denied pensionary

benefits by the Pension Redressal Committee. For brevity the petitioner's late husband would be referred hereinafter as 'the petitioner'.

2. Bare minimum facts as would be necessary for disposal of the writ petition are that the petitioner was appointed as Assistant Teacher on 20.9.1959 in the School Education Department of the State Government and was posted at Kendra Shala, Jhalak Taurenga, District Mahasamund. He was later on transferred to the Primary School, Bharseli, District Raipur on 30.7.1980, however, the said post was occupied by another teacher, therefore, the petitioner was not allowed to assume charge at Bharseli. The petitioner returned without joining and made representation but when no action was taken, he threatened to go on hunger strike. Therefore, in a haste, his services were terminated on 7.3.1991 without holding enquiry.
3. The order of termination was successfully assailed in OA No.1810/91, in which the Tribunal passed an order on 23.9.91 to quash the order of termination. The petitioner was allowed to join on 19.5.92 (Annexure-P/3), however, it was directed that the petitioner shall get minimum of the pay scale of Assistant Teacher.
4. The documents available on record either filed with the writ petition or in the return would not throw much light as to what happened to the petitioner's service after he was allowed to join on 19.5.92 except for the averments made in the petitioner's earlier writ petition

No.4475/2005 that in the year 1995-96 the petitioner was not allowed to perform his duties at Primary School, Bharseli and another person was posted in his place without there being any order in respect of the petitioner. Be that as it may, the return filed by the respondents would not reveal as to initiation of any proceeding including any departmental enquiry against the petitioner when he allegedly failed to attend duties after submission of joining on 19.5.92. In the absence of any enquiry by the respondents against the petitioner for remaining unauthorizedly absent or terminating his services in accordance with the procedure prescribed under the CG Civil Services (Classification, Control and Appeal) Rules, 1966, it is to be assumed that the petitioner remained in service till he attained the age of superannuation i.e. till 62 years.

5. When the petitioner preferred WP No.4457/2005 seeking payment of retiral duties, the same was disposed of directing the Pension Redressal Committee to consider his grievance. The Committee has thereafter passed the impugned order, however, unfortunately neither the Committee sought for the entire service record of the petitioner nor it adverted to essential facts to ascertain about the petitioner's status as on the date of superannuation. The Committee has merely noted that he attained the age of superannuation while he was absent from duties but consequences in law as to the admissible pension or as to whether the petitioner has rendered the qualifying service for being entitled to pension has not been addressed by the Pension Redressal Committee.

6. Ordinarily, this Court would have remitted the matter back to the Committee but having found that the petitioner's late husband was involved in litigation from 1991 onwards and the previous directions for settlement of retiral dues were issued by this Court about 7 years back, it would be wholly improper to remit the matter back, therefore, this Court proceeded to dispose of the writ petition.
7. It needs to be mentioned that regularly appointed Government servant is entitled to pension when he renders the required length of qualifying service in accordance with the Civil Service Pension Rules. When the Government servant is appointed to a post, his status as on the date of superannuation would depend upon the order passed in respect of his superannuation or in a properly constituted departmental enquiry while he was in service or under the Pension Rules, if any departmental enquiry is constituted after his superannuation.
8. The order passed by the Pension Redressal Committee has not referred to any such eventuality or proceeding by which her husband's services were terminated or he was dismissed holding him to be not entitled to any pensionary benefits.
9. In **State of Jharkhand & Others Vs. Jitendra Kumar Srivastava & Anr.** {AIR 2013 SC 3383}, the Supreme Court has observed that pension and gratuity are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished

service. Pension is 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 300A of the Constitution of India. The Supreme Court then proceeded to hold thus in paras- 11 & 12:-

11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.

12. Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in Deokinandan Prasad v. State of Bihar (1971) 2 SCC 330 : (AIR 1971 SC 1409), as is apparent from the following discussion: (Paras 28 to 34 of AIR)

"28.

.....

 The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

29. 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.

30. 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 quantifying 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 petitioner to receive pension under the circumstances mentioned therein.

31. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in *Bhagwant Singh v. Union of India*, AIR 1962 Pun 503. It was held that such a right constitutes "property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in *Union of India v. Bhagwant Singh*, ILR 1965 Pun 1 approved the decision of the learned single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "prop-

erty" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

32. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. The State of Punjab*, ILR 1967 P and H 278 : (AIR 1967 Punj 279). The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the 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. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion

regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant.

33. This Court in *State of Madhya Pradesh v. Ranojirao Shinde and Anr.*, MANU/SC/0030/1968 : [1968] 3 SCR 489 : (AIR 1968 SC 1053) had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

34. 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 a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law".

10. Therefore, the Writ Petition deserves to be and is hereby allowed. The orders (Annexure-P/3 and P/7) are set aside. The petitioner's husband is held entitled to full pension by treating him to have retired while in Government service on the date he attained the age of superannuation. The entire arrears of pensionary benefits as admissible to the petitioner's

late husband be paid along with interest at the rate of 12% per annum. The petitioner's late husband having died on 12.9.2009, thereafter the petitioner would be entitled to receive family pension which shall be fixed by the respondents within a period of 3 months. The petitioner shall also be entitled to entire arrears of family pension along with interest at the rate of 12% per annum from the date it fell due till the date of payment.

Sd/-
Judge
(Prashant Kumar Mishra)

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