

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13051 of 2019

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Vinayak Pandey Son of Brihaspati Pandey Resident of Village- Dilipur, P.S.-
Dhangai, District- Bhojpur, retired District Programme Officer, Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Primary Education, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary Department of Primary Education, Government of Bihar, New Secretariat, Patna.
3. The Director Department of Primary Education, Government of Bihar, New Secretariat, Patna.
4. The Director Administration-cum-Additional Secretary Department of Primary Education, Government of Bihar, New Secretariat, Patna.
5. The District Magistrate- cum- Collector Buxar.
6. The District Education Officer Buxar.
7. The Accountant General Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Nr. Parbat, Sr. Advocate Mr. Ved Prakash Srivastva
For the State	:	Smt. Shilpa Singh (GA-12) Mr. Ram Vinay Pd. Singh, AC to GA-12
For the A.G.	:	Mr. Ajit Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 09-09-2019

The present writ petition has been filed to direct the respondents to forward the pension papers of the petitioner herein for sanction and payment of the gratuity amount, earned leave and balance amount of pension.

The brief facts of the case are that the petitioner retired from the post of District Programme Officer, Buxar with effect from 30.06.2017. It is the further case of the petitioner



that while he was posted as Area Education Officer, Buxar, in between the period July, 2008 to March, 2010 and was holding charge of Mid Day Meal Scheme, he had received a letter from the District Superintendent of Education, Buxar dated 09.01.2010 to the effect that it had been informed by the Block Education Officer, Rajpur that in the C.R.C. Building of Middle School, Rajpur, huge quantity of rice of Mid Day Meal had been kept under lock by the then Block Education Officer since several years and had become rotten as also was smelling and the Headmaster was insisting for vacating the building. It is also stated that at that moment of time one Shri Ramesh Paswan had just been posted as the Sub-Divisional Education Officer with effect from 10.12.2009 and as per the direction of the R.D.D.E., Patna and the District Education Officer, Buxar, the petitioner had handed over the charge of Mid Day Meal Scheme to the said Ramesh Paswan, whereafter the said Ramesh Paswan had filed one complaint before the learned Lokayukta on 05.03.2010 with mala fide intentions, leveling false allegations against the petitioner herein leading to registration of Complaint No. 1/Lok (Shiksha) 45/2010 whereupon investigation was also ordered by the learned Lokyakuta. Subsequently, the said Ramesh Paswan had also sent a complain to the District Magistrate, Buxar, who



had got the allegations enquired through the Deputy Collector, Land Reforms, Buxar and after enquiry, the Deputy Collector, Land Reforms, Buxar had submitted a report vide letter dated 31.01.2011 stating therein that the rice was kept under lock in the hall of the school since 2006 while one Shri Ravindra Ram was posted there as the Block Education Officer, Rajpur and after his transfer in the year 2007 one Shri Suresh Kumar Singh had taken charge, whereafter in the month of July, 2008, the petitioner was posted as Area Education Officer, Buxar and he was made In-Charge of the Mid Day Meal Scheme of the District. Later on, the District Magistrate, Buxar held that Shri Ravindra Ram and Shri Suresh Kumar Singh, the then Block Education Officer, Rajpur, respectively were responsible for rotting of the rice apart from the various Area Education Officers posted at Buxar from time to time, including the petitioner herein. Thereafter, a show cause notice was also issued to the petitioner dated 16.02.2011, as to why the amount of loss, on account of rotting of rice be not realized from the petitioner, to which the petitioner had filed his reply, however, thereafter no action was taken against the petitioner.

In the meantime, pursuant to the complaint lodged before the learned Lokayukta, the District Education Officer,



Buxar got the matter investigated through the then In-Charge Officer, Mid Day Meal Scheme, who submitted his enquiry report dated 25.06.2014 to the District Education Officer, Buxar and in the said enquiry report, the petitioner was absolved of all the charges levelled against him but he mischievously mentioned that the petitioner was responsible for rotting of the rice stored in the school despite the fact that no such allegation had been levelled against the petitioner in the complaint made before the learned Lokayukta. The learned Lokayukta vide his order dated 20.11.2017, had adjourned the matter so as to enable the respondent State authorities to realize the loss amount from the petitioner and one Shri Suresh Prasad Singh, whereafter the petitioner had approached the learned Lokayukta for modification of the said order dated 20.11.2017, whereupon the learned Lokayukta by his order dated 16.02.2018, had made an observation that deposit of price of damaged rice by the petitioner would be subject to any order being passed by the competent authority and in case the same is in favor of the petitioner, the amount so deposited shall be refunded to the petitioner. The petitioner had then deposited a sum of Rs. 1,82,448/- and simultaneously had challenged the order and jurisdiction of the learned Lokayukta by filing a writ petition



bearing CWJC No. 20894 of 2018, which is pending adjudication before this Court. The petitioner has further stated in the writ petition that on account of local politics and enmity, the petitioner was made accused in a criminal case bearing Vigilance P.S. Case No. 87 of 2017, on the basis of false and frivolous allegations and the petitioner has already filed a petition bearing Criminal Misc. No. 40001 of 2018 for quashing of the same.

It is the case of the petitioner that though after his retirement, he has been paid 90 per cent pension, group insurance amount and provident fund amount, however, he has not been paid earned leave of 300 days and gratuity apart from other dues admissible to him without any rhyme or reason.

The learned counsel for the petitioner has relied upon a judgment rendered in the case of *Shambhu Saran vs. State of Bihar*, reported in *2000(1) PLJR 665* as also upon a judgment rendered by the Hon'ble Apex Court in the case of *State of Jharkhand & Ors. vs. Jitendra Kumar Shrivastava & Anr*, reported in *(2013) 12 SCC 210*, to contend that despite pendency of criminal or departmental proceeding, no amount of leave encashment, gratuity and pension can be withheld by the respondent State.



The learned counsel appearing for the respondent State has submitted that 10 per cent of pension amount, gratuity amount and the leave encashment amount has not been paid to the petitioner herein on account of pendency of a criminal case against the petitioner herein bearing Vigilance P.S. Case No. 87 of 2017 as also on account of pendency of a departmental proceeding against the petitioner herein. The learned counsel for the respondent-State has further relied upon a Notification dated 21.01.2019, whereby and whereunder a new provision has been added in the Bihar Pension Rules, 1950 by way of Rule 43(gh), whereby and whereunder in case any departmental or judicial proceeding is pending against a government servant on the date of his retirement, the full amount of gratuity shall not be paid till the final conclusion of the departmental/judicial proceeding. Thus, it is submitted that the petitioner is not entitled to grant of the gratuity amount.

I have heard the learned counsel for the parties and perused the materials on record. At the outset, this Court would rely on a Full Bench Judgment of this Court reported in **2018(2) PLJR 933 (Arvind Kumar Singh vs. the State of Bihar & Ors.)**, paragraph Nos. 23 to 30 whereof are reproduced herein below:-

“23. Now, when we analyse the entire sequence of events, we find that the pension rule when it was initially enforced on



20th of January, 1950 provided that pension shall include gratuity, meaning thereby that wherever the word "pension" is used in the pension rule, it would also include gratuity i.e. without any iota of doubt, the intention of the rule maker in incorporating Rule 27 by saying that pension includes gratuity. Rule 43, as it originally stood, had only sub rule (a) and (b) and these rules pertain to withholding or withdrawing of the pension in part or full after an employee has retired, subject to future good conduct and the effect of pecuniary loss caused to the State Government, pendency of departmental and judicial proceedings etc. Rule 43(b) was, therefore, only applicable in such cases where the employee is convicted or found guilty of misconduct. It is only after a finding of guilty is recorded in the departmental proceeding or the judicial proceeding that action could be taken for withholding the pension in part or full. That being the position, the field with regard to action to be taken in cases where finality is not attained to the departmental proceedings or the criminal case, a decision was taken to release certain pension and withhold gratuity and leave encashment by virtue of the initial two circulars issued in the year 1974 i.e. 22 nd of August, 1974 and 31st of October, 1974 and finally in the form of the so-called statutory amendment brought into force on 31st of July, 1980. Even though in the circulars of 1974 there is specific stipulations for withholding gratuity and leave encashment, but in the notification dated 31st of July, 1980, the provision is that the amount of provisional pension, as per rule, shall not be less than the maximum amount of pension admissible but it shall not be less than 90 per cent in any circumstances. Now, while incorporating this provision, in this circular (i.e. 31st July, 1980), the word "gratuity" is absent and if provisional pension as per rule is directed to be paid and if the meaning of pension as contemplated under Rule 27 is to include gratuity, it is very



clear that the circular does not contemplate withholding of gratuity. However, learned Advocate General referred to sub-clause (c) of Clause 7 of this circular to say that it is only in furtherance to the circulars of 22.08.1974 and Patna High Court CWJC No.15328 of 2016 dt.02-05-2018 31.10.1974 and, therefore, the word "gratuity" having been used in the circulars of 1974, withholding of gratuity as per the circular of 1974 is permissible because it is incorporated in a statutory form while issuing the circular dated 31st of July, 1980.

24. Even if we, for a moment, accept this contention of the learned Advocate General then also we find that with regard to payment of provisional pension and gratuity the field was initially occupied by two circulars and one notification i.e. 22.08.1974, 31.10.1974 and 31st of July, 1980 respectively, the State Government in its own wisdom thought it appropriate to amend the pension rules again and incorporated [Section 43 \(c\)](#) on 19th of July, 2012 and when [Section 43\(c\)](#) was incorporated on 19th of July, 2012 in the matter of fixing the amount of provisional pension to be paid in cases where an employee is facing a departmental proceeding or a criminal case, the provision incorporated for the sake of repetition reads as under:-

"43(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).

This will come into force with immediate effect."



25. When this amendment was incorporated on 19th of July, 2012, the State Government was aware of the earlier statutory circular dated 31st of July, 1980 and the administrative circulars of 1974, but while incorporating a provision in the rule itself by amending it, i.e. Rule 43(c), the rule maker consciously used the word "pension" only without carving out an exception with regard to withholding of gratuity. The omission of the word "gratuity" in the amended provisions of Rule 43(c), in our considered view, is a deliberate and conscious omission on the part of the rule maker. The rule maker knew that pension includes gratuity and when they speak about payment of provisional pension, the rule of interpretation mandates us to hold that it would mean payment of not only provisional pension but also gratuity until and unless the rule specifically provides for withholding of gratuity. That being so, once Rule 43(c) was incorporated into the statute and when Rule 43(c) does not empower the Government to withhold gratuity and when gratuity includes pension, in view of the provisions of Rule 27, the contention of the State Government and the learned Advocate General cannot be accepted. We have to hold that once Rule 43(c) was incorporated in the statutory rule, the effect of the earlier statutory notification dated 30th of July, 1980 is wiped out, nullified or deemed to have been repealed. Incorporation of Rule 43(c) on 19th of July, 2012 will have the effect of annulling the earlier notification dated 30th of July, 1980 or the circulars of 1974 and therefore, once a statutory provision- Rule 43(c) is incorporated in the rule itself, it has to be given its full and complete meaning, by adopting a literal meaning to each and every word used therein, and if this principle of statutory interpretation is followed, the contention of the State Government has to be rejected and we have no hesitation in holding that after coming into force



of the amendment to the Pension Rules by incorporating Rule 43(c) on 19th of July, 2012, an employee who is facing departmental inquiry or judicial proceeding on the date of his superannuation would be entitled to provisional pension which would include gratuity to the tune of an amount not less than 90 per cent.

26. Having held so, with regard to pension and gratuity, we are now required to consider the next question pertaining to grant of leave encashment to a retired employee.

27. As far as leave encashment is concerned, we find that there is no statutory provision, rule or regulation providing for encashment of Earned Leave. During the course of hearing, we had asked specific questions to the counsel appearing in the matters and we were informed that there is no statutory rule governing grant of leave encashment. It was stated that it is based on executive instructions and the statutory provision is only for granting Earned Leave to a Government employee.

28. The Bihar Service Code, Chapter-VI deals with general conditions of leave and from Rule 149 onwards, provisions have been made for grant of various kinds of leave like Casual Leave, Special Leave, Medical Leave, Extraordinary Leave, Hospital Leave etc. and under this Chapter from Rule 227 onwards provisions have been made for grant of Earned Leave. Under Rule 227 (1) it is stipulated that the Earned Leave admissible to a Government servant in permanent employment shall be in accordance to Clause (a) and (b) stipulated therein and under sub-[section 2](#) it is contemplated that a Government servant shall cease to earn such leave when the Earned Leave due to him has reached a particular level. The method and principle for calculating Earned Leave etc. are provided in the Rule. Nowhere in this rule is there a



provision for permitting leave encashment. It is for the first time by an executive instruction bearing No. 4564 dated 6th of July, 1993, that a provision has been made for encashment of unused Earned Leave after retirement and in this circular in Paragraph 2 the following stipulations have been made:-

“2. उपर्युक्त संदर्भ में अधोहस्ताक्षरी को पुनः यह स्पष्ट करने का निर्देश हुआ है कि छुट्टी स्वीकृत करने के लिए सक्षम पदाधिकारी स्वविवेक से सम्पूर्ण नगद राशि अथवा उसके निश्चित अंश के भुगतान को वैसे मामले में रोक सकते हैं, जिसमें सेवा-निवृत्त कर्मचारी के विरुद्ध सेवा-निवृत्ति की तिथि तक किसी भी तरह की विभागीय कार्यवाही, फौजदारी मुकदमा अथवा न्यायिक जाँच का अन्तिम निष्पादन नहीं हो पाया हो और जिसमें जाँच के फलाफल के रूप में वसूली की क्षीण संभावना भी विद्यमान हों। जाँच के अन्तिम निष्पादन होने पर रोके गये भुगतान को विमुक्त कर दिया जायेगा। परन्तु जाँच के परिणाम स्वरूप यदि कोई वसूली करने का निर्णय हो, तो वसूली करने के बाद ही शेष राशि विमुक्त की जायेगी।” (Emphasis supplied)

29. From the aforesaid, it is clear that as far as leave encashment is concerned, leave encashment is not provided for in the Pension Rule. Under the Bihar Service Code, a provision has been made for grant of Earned Leave and by an executive instruction issued on 6th of July, 1993, a provision is made for encashment of Earned Leave and while making the said provision a condition is stipulated that an employee shall not be granted encashment of Earned Leave till finalization of the departmental inquiry or the judicial proceeding. When the terms and conditions with regard to encashment of leave is not governed by any statutory provision and when the same is granted by an executive or administrative decision of the State Government so long as the administrative decision to withhold encashment of Earned Leave subsists, then on the happening of such circumstances, as are contemplated, we see no reason to



hold that leave encashment can be granted even in cases where the employee at the time of retirement is facing departmental or judicial proceeding. The law laid down in this regard in the cases referred to hereinabove do not consider this aspect of the matter, all the cases proceeded under the mistaken assumption that the leave encashment is provided for in the Pension Rules, and, therefore, we have no hesitation in holding that when an employee is facing a criminal case or a departmental proceeding, at the time of his retirement, the Government is well within its power in withholding leave encashment.

30. Accordingly, we answer the questions referred to us in C.W.J.C. No. 15328/2016 in the following manner:-

(1). The law laid down by the Bench of this Court in the case of Vijay Kumar Mishra (supra) holding that Leave Encashment of a Government employee can be withheld, is a correct proposition of law, however, we clarify that withholding of the leave encashment is not by virtue of the provisions of the Bihar Pension Rules or the leave rules, but, encashment of leave, being governed by executive instructions, its withholding by executive instruction is permissible and is in accordance with law. To that effect, the findings recorded and the observations made in the case of Vijay Kumar Mishra (supra) may be treated as incorrect and not indicating the correct position.

(2). As far as the second question is concerned, we answer it by holding that the law laid down by the Bench of this Court in the case of State of Bihar and others Vs. Mozaffar Hassan (supra) and by the learned Single Judge in the case of Ram Prakash



Yadav (supra) and the law laid down in the case of Vijay Kumar Mishra (supra) to hold that gratuity can also be withheld under the provisions of the Bihar Pension Rules is an incorrect proposition of law. It has not been correctly held. Gratuity cannot be withheld in view of the provisions of Rule 43(c) of the Bihar Pension Rules and the discussion made by us hereinabove, to that extent the law laid down in the case of Vijay Kumar Mishra and Mozaffar Hassan (supra) by the coordinate Division Bench stand overruled."

Taking into account the aforesaid judgment rendered by the learned Full Bench of this Court in the case of ***Arvind Kumar Singh (Supra)***, it is clear that during the pendency of a departmental/judicial proceedings against a government servant, though he/she would **not** be entitled to payment of 10 per cent of the pension amount, 10% gratuity amount and 100 % of the leave encashment amount, nonetheless such a person, including the petitioner herein, would definitely be entitled to 90% pension and 90% gratuity amount apart from the other admissible retiral benefits.

Now, coming to the Notification dated 21.01.2019, referred to by the learned counsel for the respondent State, no provision thereof has been shown to this Court which can demonstrate that the said Notification is retrospective in its operation, whereas on the contrary, the said Notification dated



21.01.2019 postulates, under clause-1 (iii) thereof that the amendment would come into force with immediate effect, hence this Court is of the opinion that the said Notification would apply to cases of such government employees who superannuate/retire on or after 21.01.2019 and not prior to the said date and the cases of the government employees, retiring prior to the said date of 21.01.2019 would be governed by the aforesaid judgment rendered by the learned Full bench in the case of *Arvind Kumar Singh (supra)*. It is a well recognized rule of interpretation that in absence of express words or appropriate language from which retrospectivity may be inferred, a notification comes into effect from the date of its issuance (publication in the official gazette) and not from any prior date. It is equally a well settled principle of law that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which are complete at the time the amending Act came into force. It is also a well settled law that publication in the official gazette is the ordinary method of bringing a rule of subordinate legislation/amendment thereof to the notice of the persons concerned. At this juncture, it would be relevant to refer to a judgment rendered by a Seven Judges' Bench of the Hon'ble



Apex Court in the case of ***Keshavan Madhava Menon vs. State of Bombay***) reported in ***AIR 1951 SC 128***, paragraph No. 15 whereof is reproduced herein below:-

“15. It is well known that formerly the practice in England used to be to insert in most of the repealing statutes a clause saving anything duly done or suffered under the repealed statutes and any pending legal proceeding or investigations. Ultimately, to dispense with the necessity of having to insert a saving clause in almost every repealing Act, [section 38](#) (2) was inserted in the Interpretation Act, 1889, which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigations, legal proceedings or remedies may be instituted, continued or enforced in respect of rights, liabilities and penalties under the repealed Act, as if the repealing Act had not been passed.”

It would be relevant to refer to yet another judgment rendered by the Hon'ble Apex Court, reported in ***(1994) 4 SCC 602 (Hitendra Vishnu Thakur vs. State of Maharashtra)***, paragraph no. 26 whereof is reproduced herein below:-

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the [Amendment Act](#) came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not



exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

- (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*
- (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.*
- (iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.*
- (iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.*
- (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

It would also be useful to refer to yet another judgment rendered by the Hon'ble Apex Court, reported in **(2012) 11 SCC 1 (Monnet Ispat And Energy Ltd vs Union of**



India and Ors.); paragraph nos. 153 and 154 whereof is reproduced herein below:-

“153. Having carefully considered [Section 17A](#), I have no hesitation in holding that the said provision is prospective. There is no indication in [Section 17A](#) or in terms of the [Amending Act](#) that by insertion of [Section 17A](#) the Parliament intended to alter the pre-existing state of affairs. The Parliament does not seem to have intended by bringing in [Section 17A](#) to undo the reservation of any mining area made by the State Government earlier thereto for exploitation in public sector. The Parliament has no doubt plenary power of legislation within the field assigned to it to legislate prospectively as well as retrospectively. As early as in 1951 this Court in [Keshavan Madhava Menon v. State of Bombay](#)[44] had stated about a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only. In Principles of Statutory Interpretation (Seventh Edition, 1999) by Justice G.P. Singh, the statement of Lord Blanesburg in Colonial Sugar Refining Co. v. Irving[45] and the observations of Lopes, L.J. in Pulborough Parish School Board Election, Bourke v. Nutt[46] have been noted as follows :

“In the words of Lord Blanesburg, “provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.” “Every statute, it has been said”, observed Lopes, L.J., “which takes away or impairs vested rights acquired under existing laws, or creates



a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect”.

154. *Where an issue arises before the Court whether a statute is prospective or retrospective, the Court has to keep in mind presumption of prospectivity articulated in legal maxim nova constitutio futuris formam imponere debet non praeteritis, i.e., ‘a new law ought to regulate what is to follow, not the past’. The presumption of prospectivity operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication.”*

It would equally be useful to refer to one another judgment rendered by the Hon’ble Apex Court, reported in ***(2014) 4 SCC 657 (Suhas H. Pophale v. Oriental Insurance Co. Ltd.)***; paragraph nos. 44 to 54 and 70 whereof is reproduced herein below:-

“44. There is another aspect of the matter. Mr. Raval, learned senior counsel for the respondents has contended that the appellant’s submission that he was protected under the Bombay Rent Act, and that protection has been continued under the Maharashtra Rent Control Act, 1999, is not available before the Estate Officer. The question, therefore, comes to our mind as to what happens to the rights of the appellant made available to him under the [State Act](#) at a time when the erstwhile company had not merged in the first respondent Government Company? Can it be said that he was occupying the premises without the authority for such occupation? Can it be said that with the application of the Public Premises Act to the premises



occupied by the appellant, those rights get extinguished?

45. It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in Janardan Reddy Vs. The State reported in AIR 1951 SC 124). In the instant case, the appellant was undoubtedly protected as a 'deemed tenant' under Section 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A 'deemed tenant' under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a 'tenant' under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

46. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in Garkiapati Veeraya Vs. N. Subbiah Choudhry reported in AIR 1957



SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

47. Similarly, in Mahadeolal Kanodia Vs. The Administrator General of West Bengal reported in AIR 1960 SC 936, this Court was concerned with the retrospectivity of law passed by the West Bengal legislature concerning the rights of tenants and in paragraph 8 of the judgment the Court held that:-

“8. The principles that have to be applied for interpretation of statutory provisions of this nature are well- established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication.....”

48. In Amireddi Raja Gopala Rao Vs. Amireddi Sitharamamma reported in AIR 1965 SC 1970, a Constitution bench was concerned with the issue as to whether the rights of maintenance of illegitimate sons of a sudra as available under the Mitakshara School of Hindu Law was affected by introduction of Sections 4, 21 and 22 of the Hindu Adoption and [Maintenance Act](#), 1956. The Court held that they were not, and observed in paragraph 7 as follows:-

“7.....a statute has to be interpreted, if possible so as



to respect vested rights, and if the words are open to another construction, such a construction should never be adopted.”

49. The same has been the view taken by a bench of three Judges of this Court in J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad Vs. Induprasad Devshanker Bhatt reported in AIR 1969 SC 778 in the context of a provision of the [Income Tax Act](#), 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could re-open the assessment under [Section 297\(2\)](#) (d) (ii) and 148 of the [Income Tax Act](#), 1961, although the right to re-open was barred by that time under the earlier [Income Tax Act](#), 1922. This Court held that the same was impermissible and observed in paragraph 5 as follows:-

“5..... The reason is that such a construction of [Section 297](#) (2) (d) (ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time.”

50. In Arjan Singh Vs. State of Punjab reported in AIR 1970 SC 703, this court was concerned with the issue of date of application of [Section 32KK](#) added into the Pepsu Tenancy and Agricultural Lands Act, 1955. This Court held in paragraph 4 thereof as follows:-

“4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care



should be taken not to extend its retrospective effect beyond what was intended.”

51. In Ex-Capt., K.C. Arora Vs. State of Haryana reported in 1984 (3) SCC 281, this Court was concerned with a service matter and with the issue as to whether an amendment in the law could take away the vested rights with retrospective effect. The Court held that such an amendment would be invalid if it is violative of the present acquired or accrued fundamental rights of the affected persons.

52. In K.S. Paripoornan Vs. State of Kerala reported in AIR 1995 SC 1012, a Constitution Bench of this Court was concerned with the retrospective effect of [Section 23\(1A\)](#) introduced in the [Land Acquisition Act](#). While dealing with this provision, this Court has observed as follows:-

“64. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly,



provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See: Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926).”

53. In *Gajraj Singh Vs. State Transport Appellate Tribunal* reported in AIR 1997 SC 412, the Court was concerned with the provisions of [Motor Vehicle Act](#) and repealing of some of its provisions. In para 29 referring to *Southerland on Statutory Construction* (3rd Edition) Vol.I, the Court quoted the following observations:-

“29.....Effect on vested rights

Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.

In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition.....”

54. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the appellant’s status as



a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in “unauthorised occupation”. His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the respondent No. 1, i.e until 1.1.1974. The corollary is that if the respondent No. 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act.

70. For the reasons stated above, we allow this appeal and set- aside the impugned judgment and order dated 7.6.2010 rendered by the High Court of Bombay in Writ Petition No. 2473 of 1996. The said Writ Petition shall stand allowed, and the judgment and order dated 17.1.1996 passed by the City Civil Court, Mumbai, as well as the eviction order dated 28.5.1993 passed by the respondent No. 2 against the appellant will stand set aside. The proceedings for eviction from premises, and for recovery of rent and damages initiated by the first respondent against the appellant under the Public Premises Act, 1971, are held to be bad in law, and shall therefore stand dismissed. We however, make it clear, that in case the respondents intend to take any steps for that purpose, it will be open to them to resort to the remedy available under the Maharashtra Rent Control Act, 1999, provided they make out a case therefor. The parties will bear their own costs.”



Thus it is a cardinal principal of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. This, principle of law follows from the legal maxim ***“nova constitutio futuris formam imponere debet non praeteritis”*** i.e. a new law ought to regulate what is to follow, not the past.

Having regard to the Law laid down by the Hon'ble Apex Court on the subject matter, as discussed here in above in the preceding paragraphs and considering the language/phrasing of the aforesaid Notification of the State Government dated 21.01.2019, this Court holds that the aforesaid Notification dated 21.01.2019 is not retrospective but prospective in its operation and the amendment sought to be made would come into force with effect from the date of publication of the said notification in the official gazette, hence the said Notification dated 21.01.2019 will not apply to the case of the petitioner herein, who stood superannuated as far back as on 30.06.2017.

Considering the facts and circumstances of this case as also having held that the aforesaid Notification of the State Government dated 21.01.2019 is not applicable in the present case, the legal consequence would be that the case of the



petitioner shall be governed by the aforesaid judgment rendered by the learned Full Bench of this Court in the case of *Arvind Kumar Singh (Supra)*, hence the petitioner herein, would definitely be entitled to 90% pension and 90% gratuity amount apart from the other admissible retiral benefits, which has already stood paid to him. It is directed accordingly.

The writ petition stands partly allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08.08.2020
Transmission Date	

