IN THE HIGH COURT OF TRIPURA
A G A R T A L A

In W.P.(C) No.372 of 2015

Sri Mihir Kumar Roy,
son of late Anath Bandhu Roy, new Bodhjung Chowmuhani, North Banamalipur, Agartala, P.O. Agartala, P.S. East Agartala, District- West Tripura, PIN-799001

..... **Petitioner**

– V e r s u s –

1. **Agartala Municipal Corporation,**
to be represented by its Chief Executive Officer, City Centre, Paradise Chowmuhani, P.S. West Agartala, P.O. Agartala, PIN-799001, District- West Tripura

2. **The Municipal Commissioner,**
Agartala Municipal Corporation, having its office at City Centre, Paradise Chowmuhani, P.S. West Agartala, P.O. Agartala, PIN-799001, District- West Tripura

3. **The Secretary,**
Urban Development Department, Government of Tripura, having his office at Secretariat Complex, P.O. Secretariat Complex, P.S. New Capital Complex, PIN-799010, Agartala, West Tripura

4. **The Director,**
Urban Development Department, Government of Tripura, Gurkhabasti, Agartala, West Tripura, PIN-799006

..... **Respondents**

For the petitioner (s)	**:**	Mr. K. Nath,Adv.
For the respondent (s)	**:**	Mr. K.K. Pal, Adv.
Date of hearing	**:**	05.11.2019
Date of delivery of Judgment & order	**:**	**21.01.2020**
Whether fit for reporting	**:**	**YES** ✓ / **NO**

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

This is the second round of litigation by the petitioner. Earlier the petitioner filed a writ petition being W.P.(C) No.305 of 2014 seeking directions *inter-alia* for releasing the pension and other retiral benefits w.e.f. 01.11.2003 inasmuch as the petitioner had retired from the post of Executive Engineer under Agartala Municipal Corporation on 31.10.2003 [afternoon]. The said writ petition was disposed of by the judgment and order dated 17.12.2014 on observing that the benefits of the pension and other retiral benefits of the petitioner ought to have been released on his retirement. But since that was not done despite numerous representations, Agartala Municipal Corporation Ltd.-respondents were directed to release the pension and pensionary benefits to the petitioner within a period of 3[three] months from the date of judgment with interest @12% per annum w.e.f. 01.09.2003 till such payment is made. The other reliefs were not pressed by the petitioner in that writ petition.

[2] By filing this writ petition, the petitioner has urged to quash the sanction order No.692-95/VII-39170 dated 11.11.2014 issued by the Municipal Commissioner, Agartala Municipal Corporation [Annexure-P/3 to the writ petition]. It has been further urged to direct the respondents to release/sanction full and final payment of gratuity in favour of the petitioner with interest

@12% per annum w.e.f. 01.04.2003. The petitioner has averred that by the sanction order dated 11.11.2014, a sum of Rs.1,50,000**/-** as pension and 75% of the total gratuity payable to the petitioner was sanctioned and from the said amount, a sum of Rs.1,06,431/- has been shown to be outstanding dues on the following heads:

Recovery of Outstanding	**Outstanding dues**
i. H.B. loan	**Rs.52,124/-**
ii. LTC	**Rs.21,000/-**
iii. HUDCO Loan	**Rs.11,397/-**
iv. General Advance	**Rs.21,060/-**
v. Sulabh Loan	**Rs.850/-**
	Total Rs.1,06,431/-

Thus, the petitioner is only entitled to get a sum of Rs.43,569/-.

[3] In terms of the Payment of Gratuity Act, 1972 the petitioner was entitled to get the gratuity within 30 days from the date of retirement but that was not done. Now, even though they have released 75% of the gratuity but out of that, deduction of sum of Rs.1,06,431/- has been made inappropriately inasmuch as the petitioner has claimed that he had no outstanding dues which might have warranted recovery. The petitioner has stated that Rs.35,400/- was sanctioned to him as a house building loan by the letter dated 11.09.1995 issued by the Accounts Officer, Agartala

Municipal Corporation. Out of the total loan amount of Rs.35,400/- , a sum of Rs.17,395/- had been recovered from his salary during the period from 31.03.1979 to 31.08.1985. The petitioner has further stated that *"the rest amount of house building loan had been also recovered from his monthly salary".* In support of that claim, according to the petitioner, he had submitted the pay slip to the respondents. By a letter dated 05.05.2015, it had been asserted by the petitioner that a sum of Rs.45,000/- which was given to him as HUDCO loan was repaid by him by 108 monthly instalments. That apart, Rs.12,000/- was given to him as the general advance but his total expenditure was Rs.13,373/- and as such, there cannot be any question of outstanding due. The petitioner has further asserted that even on the account of Leave Travel Concession [LTC] advance that was taken by him has been adjusted with the final bill. So far the Sulabh loan is concerned, the petitioner has paid the entire loan amount. Thus, the deduction of a sum of Rs.1,06,431/- is grossly untenable. Hence, the petitioner did not accept the cheque of Rs.43,569/- which was tendered to him. The respondents did not make any response to his letter dated 05.05.2015. Despite that they had deducted the said amount from his due amount of gratuity. The petitioner has submitted that even though the entire HUDCO loan was repaid, an outstanding of Rs.11,397/- has been shown as outstanding against the HUDCO loan [see the table above]. The petitioner, to

buttress his contention, has further stated that in the counter affidavit filed by the respondents in W.P.(C) No.305 of 2014, there was no whisper of any outstanding against him. Even there was no contemplation of deducting any outstanding due from his gratuity. The petitioner has however admitted that by the order dated 14.05.2015 [Annexure-P/7 to the writ petition] the Drawing & Disbursing Officer, Agartala Municipal Corporation accorded a sum of Rs.22,733/- as the refund of excess recovery from the provisional retirement gratuity of the petitioner. It would indicate that the entire deduction was based on no foundation. Finally, the petitioner has stated that no part of gratuity can be taken away by the respondents on the ground of recovery of outstanding dues. Even though the petitioner had served a demand notice dated 03.08.2015 [Annexure-P/8 to the writ petition] but the respondents did not release the full and final payment of the gratuity without deduction, to which the petitioner was entitled. Having made a reference to Section 23 of the Payment of Gratuity Act, 1972 it has been stoutly contended by the petitioner that no amount can be recovered from the gratuity of the petitioner.

[4] The respondents by filing the reply have acceded that for inaccurate calculation, an excess amount to the extent of Rs.22,733/- was deducted wrongly. The said amount was refunded to the petitioner but the petitioner refused to accept the

said amount. On the fresh calculation, the petitioner had the liability as described below:

i. H.B. loan	**Rs.52,124/-**
ii. LTC	**Rs.9,117/-**
iii. HUDCO Loan	**Rs.11,397/-**
iv. General Advance	**Rs.11,060/-**
Total	**Rs.83,698/-**

Thus, the total amount for recovery came down to Rs.83,698/-. In the reply, they have further stated that the full and final payment of all pensionary benefits has been sanctioned to the petitioner in terms of the judgment and order dated 17.12.2014 as delivered in W.P.(C) No.305 of 2014. Since the petitioner was having outstanding on account, the said sum of Rs.83,698/- was deducted from his provisional retirement gratuity. They have categorically stated that in the reply to the demand notice, the respondents have shown how the petitioner was liable to adjust a sum of Rs.83,698/-. In the reply, the detailed account has been provided. Even thereafter, in terms of the order dated 18.01.2016, the respondents by filing an additional affidavit have explained how the petitioner is liable to pay a sum of Rs.83,698/- and how that amount is liable to be adjusted or to be recovered from his entitlement. With the said additional affidavit, a statement [Annexure-R/3] in respect of the

deduction has been enclosed. The said statement of advance/loan etc. are excerpted hereunder:

Statement

The details of advance/loan paid to Sri M.K. Roy, Retd. EE, AMC and deductions thereon are as follows :

(A) H.B. Loan:

H.B. Loan (Ref.No.9075-76/VII-39/GS/70 dt. 18/01/77 Rs.11,700/- (1st Instalment)

H.B. Loan (Ref.No.9181-83/VII-39/GS/70 dt. 31/01/77 Rs.23,400/- (2nd Instalment)

H.B. Loan (Ref.No.3569-71/II-74/77 dt. 01/03/88 Rs.17,550/- (3rd Instalment)

H.B. Loan (Ref.No.8207-09/II-74/Gs/70 dt. 28/07/92 Rs.22,350/- (4th Instalment)

Total Rs.75,000/-

Principal amount of Rs.75,000/- (Rupees Seventy five thousand) only recovered from monthly salary bills of Sri. M.K. Roy, retd. EE, AMC and interest amount of Rs.52,124/- (Rupees Fifty two thousand one hundred twenty four) only is remaining outstanding.

(B) L.T.C. Advance :

(i) An amount of Rs.4,000/- (Rupees Four thousand) only was sanctioned and paid vide this office orders No.26401-04/XVIII-25/III/81 dated 16/12/86 for availing L.T.C. which have duly been adjusted and there is no outstanding against said L.T.C. Advance.

(ii) Further an amount of Rs.21,000/- (Rupees Twenty one thousand) only was sanctioned and paid vide this office order No.1080-83/VII-3/90(Part-2) dated 24/02/2003 and an amount of Rs.11,883/- only duly been adjusted and the balance amount of Rs.9,117/- (Rupees Nine thousand one hundred seventeen) only is remaining outstanding.

(C) HUDCO Loan:

A total amount of Rs.45,000/- (Rupees Forty five thousand) only in 3 (three) nos. instalments was sanctioned and paid as per sanction memo dated 14/10/93. It appears that the entire amount would be recovered in 10(ten) years i.e. 120 Nos. of instalments but the said amount was recovered only 108 Nos. instalments. It also appears from the records that the total amount of HUDCO loan including interest and additional interest comes to Rs.86,997/- out of which Rs.75,600/- recovered and remaining Rs.11,397/- only lying as outstanding.

(D) General Advance:

Out of general advance of Rs.21,600/- only an amount of Rs.10,000/- adjusted and remaining amount of Rs.11,060/- only is outstanding.

(E) Sulabh Loan:

As per records it appears that Sulabh loan of Rs.850/- deposited and there is no outstanding dues against Sulabh loan.

(F) After receipt of representation from Sri M.K. Roy, retd. EE, AMC the AMC authority re-examined the outstanding and deduction. It is found that there is some discrepancies in calculation. Subsequently the excess deducted amount of Rs.22,733/- [Rupees Twenty two thousand seven hundred thirty three] only was refund to Sri M.K. Roy, Retd. EE, AMC, but he refused to accept the same. The breakup is as follows:

[Rs.1,06,431-Rs.83,698= Rs.22,733/-]

The actual outstanding status are as follows:

i. H.B. loan	**Rs.52,124/-**
ii. LTC	**Rs.9,117/-**
iii. HUDCO Loan	**Rs.11,397/-**
iv. General Advance	**Rs.11,060/-**

Total Rs.83,698/-"

[5] The petitioner did not file any reply to the said statement as incorporated in the additional affidavit or to the averments made on the basis of such statement of outstanding dues prepared jointly by the Accountant, Accounts Officer and the Drawing and Disbursing Officer of AMC on 11.03.2006.

[6] On the face of such development, Mr. K. Nath, learned counsel appearing for the petitioner has submitted that a short question that falls for consideration is whether AMC can recover the dues from the gratuity payable to the petitioner. There is no dispute over the date of retirement. Mr. Nath, learned counsel has submitted that in the judgment dated 17.12.2014 delivered in

W.P.(C) No.305 of 2014 this court held that there had been no ground whatsoever to hold back the pension and other retiral benefits of the petitioner. After the judgment, the said order dated 11.11.2014 was issued. But the petitioner has not admitted the account of outstanding. Mr. Nath, learned counsel has submitted that the recovery is barred under Rule 9 of CCS (Pension) Rules, 1972 and Section 13 of the Payment of Gratuity Act, 1972. Section 13 of the Payment of Gratuity Act, 1972 makes it abundantly clear that gratuity will not be liable to attachment in execution of any decree or order of any civil, revenue and criminal court. Section 60(g) of the Cr.P.C. provides that the stipends and gratuities are not liable to attachment and sale in execution of decree. Mr. Nath, learned counsel has further submitted that the employer is statutorily obligated vide Section 73 of the Payment of Gratuity Act, 1972 to release the amount of gratuity within 30[thirty] days from the date it becomes payable. According to Mr. Nath, learned counsel unless the conditions laid down in Rule 9 of the CCS (Pension) Rules, 1972 is conformed to the amount of the gratuity or pension cannot be withheld. It has been submitted that Rule 71 of CCS(Pension) Rules, 1972 provides that it shall be the duty of the Head of Office to ascertain and assess the government dues payable by Govt. servant due for retirement. Rule 71(2) of the CCS (Pension) Rules, 1972 provides further that the government dues as ascertained and assessed by the Head of

Office shall be adjusted against the amount of death retirement gratuity which became payable. Rule 73(1) of the CCS (Pension) Rules, 1972 provides that the Head of Office shall take steps to assess the dues 2 years before the date on which government servant is due to retire on superannuation, or on the date on which he proceeds on leave, preparatory to retirement, whichever is earlier. Rule 73(2) of the CCS (Pension) Rules, 1972 provides further that assessment of government dues referred to in Sub-Rule 1 shall be completed by the H.O, 8 months prior to the date of retirement. According to Mr. Nath, learned counsel, those provisions were not complied with. Section 14 of the Payment of Gratuity Act, 1972 makes it further clear that provisions of Payment of Gratuity Act, 1972 or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment or any instrument or contract having effect, by virtue of any enactment other than the Act, 1972. Reading of Section 14 of the said Act, according to Mr. Nath, learned counsel, leaves no room for any doubt that the Payment of Gratuity Act is a special statute and so far the determination of payment on account of gratuity is concerned, that will overrule the other statutory provisions which are inconsistent with the provisions of the Payment of Gratuity Act, 1972. Gratuity is a property. Right to property cannot be taken away without the due process of law. Article 300A of the Constitution of India mandates

that no person shall be deprived of his property save and except by authority of law.

Thus, Mr. Nath, learned counsel has contended that recovery of the said amount of Rs.83,698/- is grossly illegal and such recovery cannot be sustained. Consequently, the amount that has been recovered be refunded.

[7] In reply, Mr. K.K. Pal, learned counsel appearing for the AMC-respondents has submitted that the petitioner cannot say that the recovery was grossly illegal in view of the judgment dated 17.12.2014. By the judgment dated 17.12.2014 this court had directed to release pension and pensionary benefits. Obviously that direction has to be understood as the direction to release the amount due in accordance with the provisions of law. Mr. Pal, learned counsel has further submitted that the detailed account in terms of the order dated 19.11.2016 [Annexure-R/3 to the reply] has been furnished by an additional affidavit which is exhaustive and any part of the said calculation leaves no room for confusion. Rule 73(3) of the CCS (Pension) Rules, 1972 provides that:

> **"Adjustment and recovery of dues other than dues pertaining to government accommodation.**
>
> **(3) <u>The dues as assessed under sub-rule (2) including those dues which come to the notice subsequently and which remain outstanding till the date of retirement of the government servant, shall be adjusted against the amount of (retirement gratuity) become payable to the government servant on his retirement</u>."**
>
> **[Emphasis added]**

In this perspective, Mr. Pal, learned counsel has submitted that Rule 73(3) of the CCS (Pension) Rules, 1972 has authorized the respondents to recover the amount that is payable by the government servant on his retirement.

[8] Mr. Pal, learned counsel has relied on a decision of the apex court in **State of Haryana & Ors. vs. K.N. Dutt,** reported in **AIR 1996 SC 183,** where the apex court while examining a question whether the deduction of the government due from death cum retirement gratuity can made, has observed that such deduction cannot be stated to be patently unsustainable, improper and illegal. However, the decision has the perspective fact very special to that case.

[9] Reference has been made to a decision of this court in **Narendra Chandra Das vs. The State of Tripura** [the judgment and order dated 26.08.2015 delivered in W.P.(C) No.169 of 2015] where this court having referred to Rule 9(1) of the CCS (Pension) Rules has made certain observations which appear relevant for the present controversy. For convenient appreciation, Rule 9(1) of CCS (Pension) Rules, 1972 is extracted beforehand:

> **"9.(1) <u>The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the</u>**

> **pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon reemployment after retirement:**
>
> **Provided that the Union Public Service Commission shall be consulted before any final orders are passed:**
>
> **Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of (Rupees Three thousand five hundred) per mensem."**
>
> **[Emphasis added]**

[10] **I**n **Narendra Ch Das** (supra), it has been observed that pension and gratuity can only be withheld if circumstances contemplated under Rule 9 exist. It is only if in any departmental or judicial proceedings, the petitioner is found guilty of misconduct or negligent during the period of service, his retiral benefit can be withheld but when there is no such proceeding pending, such authority cannot be exercised for withholding retiral benefits. An illustration has given in the said decision referring to Rule 39(3) of CCS (Leave) Rules where it has been provided that the authority competent to grant leave may withhold whole or part of the cash equivalent of earned leave in the case of a government servants who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him. If, in view of such authority there is possibility of some money becoming recoverable from him on conclusion of the proceedings against him and if the employee becomes eligible to the amount so withheld, be paid after

adjustment of government dues, if any. It has been further observed in **Narendra Ch Das** (supra) as follows:

> **7. This language of this Rule is similar to the language of 9(1) of the CCS Pension Rules and we are of the considered view that keeping in view the language of Rule 39(3) unless there are disciplinary or criminal proceedings pending against the employee wherein some amount is recoverable from him, the amount cannot be withheld. Furthermore, we are clearly of the view that the amount should be recoverable by the Department and not by any third authority. In this view of the matter, we are clearly of the view that the respondents have illegally and arbitrarily withheld the amount of gratuity and leave encashment.**
>
> **[Emphasis added]**

[11] It is an accepted position that gratuity and pension are not the bounties, an employee earns these benefits by dint of long, continuous, faithful and unblemished service. In **D.S. Nakara and others vs. Union of India**, reported in **(1983) 1 SCC 305** it has been observed as follows:

> **"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?**
>
> **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.**
>
> **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.[1971] Su. S.C.R. 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**

> **<u>those rules is entitled to claim pension</u>. 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 maters 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) IILLJ 377SC".**

[12] Thus, pension and gratuity are hard earned benefits which accrue to an employee and are in the nature of properties. The 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. In this regard in **State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Anr.,** reported in **(2013) 12 SCC 210**, where reference has been made to Rule 43(b) of Bihar Pension Rules as adopted in the state of Jharkhand. The said Rule 43 (b) reads as follows:

> **(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.**
>
> **(ii) This provision does not empower the State to invoke the said power while the department proceeding or judicial proceeding are pending.**
>
> **(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.**
>
> **(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.**

[13] The said Rule 43(b) has unique resemblance with Rule 9(1) of the CCS (Pension) Rules as referred earlier. From a reading of the aforesaid Rule 43(b) or for that matter Rule 9(1) of the CCS (Pension) Rules as adopted in the State of Tripura it

emerges that-(i) the State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding; (ii) this provision does not empower the State to invoke the said power while the department proceeding or judicial proceeding are pending; (iii) the power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings and (iv) this power can be invoked only when the proceedings are concluded finding guilty and not before.

[14] In **Jitendra Kumar Srivastava** (supra) **Deokinandan Prasad vs. State of Bihar,** reported in **(1971) 2 SCC 330** has been approvingly referred for reliance on the passage as under:

> **"30. 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 A.I.R. : 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 : I.L.R. 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 'property' 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.**
>
> **31. 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 : I.L.R. 1967 Punj & Har 278. 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.

32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and Anr.: [1968] 3 SCR 489 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'.

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

[15] It is nobody's case however that the gratuity or pension is not the property within the meaning or expression under Article 31(1) [repealed] or under Article 300A of the Constitution of India. The right to property is no longer a fundamental right but it is still a constitutional right as provided in Article 300A of the Constitution. Hence, a person cannot be deprived of the pension and gratuity without following the due process of law as provided under Article 300A of the Constitution. Hence, any action taken under the umbrage of the administrative instruction cannot be countenanced. In **Jitendra Kumar Srivastava** (supra) it has been succinctly laid down as under:

> **"15. <u>It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different</u>."**
>
> **[Emphasis added]**

[16] It appears from the reply that till 28.02.2012 a criminal trial was pending against the petitioner being GR 43 of 1999 was pending on the charge of misappropriation of fund. However, the

petitioner was acquitted from the said charge and as such, till 28.02.2012 the ground for withholding of retiral benefits including pension and gratuity was the said criminal proceeding, but under the direction of this court vide the judgment and order dated 17.12.2014 delivered in W.P.(C) No.305 of 2014, the due benefit according to the respondents was released, but on deduction of the outstanding dues of Rs.83,698/-. The challenge in this petition is confined to the legality of deduction. Whether could it be made by the Municipal Commissioner or not, in absence of due process for such deduction in exercise of the powers conferred under Rule 73(3) of the CCS (Pension) Rules, 1972 as applicable to Agartala Municipal Corporation or its former constitution?

[17] Having considered the submissions as advanced by the learned counsel for the parties, this court is of the view that even for purpose of adjustment and recovery of outstanding due process has to be observed on affording to the employee reasonable opportunities to place his replies. Only thereafter, such amount, can be adjusted or recovered from pension or gratuity. The said procedure has not been followed in the case of the petitioner. Even though detailed account of the liability and deduction has been placed before this court by the Municipal Corporation-respondents, the Municipal Commissioner is directed to issue a show cause to the petitioner why the said amount of Rs.83,698/- shall not be adjusted or recovered from the gratuity

of the petitioner against the outstanding due. With the said show cause notice, the account as produced before this court with the additional affidavit/reply be supplied to the petitioner. For reply, a fortnight's time be provided to the petitioner and thereafter, the account shall be determined finally for purpose of adjustment and recovery in terms of Rule 73 (3) of the CCS (Pension) Rules, 1972. The deducted amount shall not be released till then as that would compound to multiplicity of disputes. The entire exercise shall be completed within a period of 2 [two] months from the day of receipt of a copy of this order. The respondents shall release the amount of gratuity with 7% interest as modified from the day when fell due till the payment is made within the said stipulated time.

[18] In terms of the above, this writ petition stands disposed of, however, there shall be no order as to costs.

Records as produced by Mr. Pal, learned counsel for the respondents be returned under a sealed cover.

JUDGE

Sujay