$~A-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 23.11.2020***

\+ W.P.(C) 10619/2019 & CM APPL. 43857 & 43858/2019

KUNAL CHAKRABARTI ..... Petitioner
Through: Mr. Abhik Chimni, Advocate

versus

JAWAHARLAL NEHRU UNIVERSITY ..... Respondent
Through: Mr. Pradeep Kumar Arya & Mr. Ashwyn Kalra, Advocates

JYOTI SINGH, J. (ORAL)

1. Petitioner herein was appointed to the post of Assistant Professor in School of Historical Studies in Jawaharlal Nehru University on 19.04.1979. As per the chronology set out in the petition, after a service of almost 40 years, closer to his retirement, a Show Cause Notice was issued to the Petitioner on 20.09.2018 by the Respondent seeking explanation as to why action should not be taken against the Petitioner for actively participating in the strike on 31.07.2018 along with certain other faculty members, thereby violating Instructions contained in DOPT OM dated 19.09.2017 and Rule M7(6) of the Academic Rules and Regulations of the University.

2. Petitioner has admittedly retired on superannuation on 31.05.2019. It is averred in the petition that the Petitioner has completed all the necessary formalities and submitted the necessary documents for processing his retiral benefits by 11.06.2019.

3. On 19.07.2019, Petitioner wrote to the University/Respondent stating that he had learnt that the University was intending to issue a Chargesheet against him and sought to inquire the reasons for the proposed Chargesheet. However, no response was received.

4. On 30.07.2019 the Respondent issued a No Dues Certificate implying thereby that there was no amount pending against the Petitioner. Petitioner further avers that some of the other faculty members against whom Show Cause Notice dated 20.09.2018 and subsequent Chargesheet dated 24.07.2019 was issued, challenged the same before this Court in W.P.(C) 8686/2019 on 07.08.2019. On 14.08.2019, the Court stayed the inquiry proceedings and the Show Cause Notices.

5. On 29.08.2019, Petitioner again wrote to the University for releasing his retiral benefits. On the same day Petitioner received a response from the Respondent intimating him that his retiral benefits had been kept on hold till the Chargesheet is finalized. Petitioner sought information as to why the Chargesheet was proposed to be issued and also filed an application under the Right to Information Act, 2005 seeking reasons for withholding his benefits, but to no avail. This led to the Petitioner filing the present petition seeking directions to the Respondent to forthwith release his retiral benefits alongwith interest @ 18% per annum w.e.f. 31.05.2019.

6. Pursuant to the notice issued in the present writ petition, Respondent has filed a short affidavit. It is stated in the Affidavit that the Petitioner while in service participated in one-day strike in the University Campus on 31.07.2018 which was considered as illegal by the University Administration. It was thus decided to issue Show Cause Notice to the Petitioner regarding a Major Penalty. Accordingly, a Show Cause Notice

dated 20.09.2018 was issued. Since the Petitioner retired in the meantime on superannuation on 31.05.2019, approval has been sought from the Competent Authority vide communication dated 26.08.2019, for initiation of proceedings against the Petitioner and the same is awaited.

7. It is further stated in the Affidavit that on 11.10.2019 gratuity of Rs.20 Lacs has been released to the Petitioner and vide order dated 11.10.2019 leave encashment for 300 days has also been disbursed. It is further stated that in view of the totality of the circumstances of the case, pension has not been released as the Respondent is proposing to take action under Rule 9 of the CCS (Pension) Rules, 1972.

8. I have heard learned counsels for the parties.

9. It is an admitted position between the parties that till date no chargesheet has been issued against the Petitioner and thus no proceedings are pending against the Petitioner under Rule 9 of the CCS (Pension) Rules, 1972.

10. Rule 9 of the CCS (Pension) Rules is as follows:

> *"**9.Right of President to withhold or withdraw pension**.—*
>
> *(1) 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 pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.*
>
> *xxx xxx xxx*

2(a) xxx xxx xxx

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

xxx xxx xxx

(4) In the case of 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 as provided in Rule 69 shall be sanctioned.

xxx xxx xxx

(6) For the purpose of this rule—

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the government servant or pensioner, or if the government servant has been placed under suspension from an earlier date, on such date; "

11. It is evident from a bare reading of Rule 9(1) that pension of an employee can be withheld in full or in part if in any departmental or judicial proceedings the employee is found guilty of grave misconduct or negligence during the period of service. The provisions of the Rule permit continuation of the disciplinary proceedings, if instituted by the employer when the employee was in service and after retirement they would be deemed to be proceedings under Rule 9(1) and can be continued and concluded by the employer. Rule 9(2)(b) permits institution of disciplinary proceedings after

retirement provided the event is not beyond four years before such institution. Rule 9(4) clearly prescribes that if the Government servant retires on superannuation or otherwise and the departmental proceedings are instituted or continued under Rule 9(2), Provisional Pension as provided in Rule 69 shall be sanctioned.

12. What emerges on a holistic reading of Sub-Rules-(1), (2) (b), (4) and (5) of Rule 9 is that the right to withhold pension, whole or in part, arises only if a Government Servant is found guilty of grave misconduct or negligence during the period of his service. This power can be invoked only when proceedings are concluded and a finding of guilt rendered. Further, even when the disciplinary proceedings are pending, the Government servant is entitled to provisional pension and the pension cannot be withheld. The corollary is that when no disciplinary proceedings are pending, the employee is entitled to release of full pensionary benefits.

13. The next question that arises is when can it be said that departmental proceedings have been initiated. The answer to the said question is not far to seek and is provided by the Legislature in Sub-Rule (6) of Rule 9. It is stipulated therein that departmental proceedings shall be deemed to be instituted on the date on which statement of charge is issued to the Government servant or if he has been placed under suspension from an earlier date, on such date. In the present case the Petitioner has superannuated and thus the question of his suspension does not arise. Admittedly no Chargesheet has been issued against him till date and thus it cannot be said that there are any departmental proceedings instituted or pending against the Petitioner. The stand of the Respondent that there is a proposal to issue a Chargesheet cannot inure to its advantage in view of the

clear provisions of Rule 9 of the CCS Pension Rules.

14. It has been held by the Supreme Court in ***State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210*** as follows:

> *"9. Having explained the legal position, let us first discuss the rules relating to release of pension.*
>
> *10. The present case is admittedly governed by the Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under:*
>
> > *"43. (b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to the Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:"*
>
> *11. From the reading of the aforesaid Rule 43(b), following position emerges:*
>
> *(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 departmental 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.

xxx xxx xxx

13. A 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.

xxx xxx xxx

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

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

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

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, *cannot be termed as "law" within the meaning of the aforesaid Article 300-A. 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."*

15. In a recent judgment the Supreme Court in ***Hira Lal v. State of Bihar*, *(2020) 4 SCC 346***, held as follows:

> *"22. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and unblemished service. [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570] The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the Constitution by a Constitution Bench of this Court in Deokinandan Prasad v. State of Bihar [Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 : 1971 Supp SCR 634] , which ruled that : (Deokinandan Prasad case [Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 : 1971 Supp SCR 634] , SCC pp. 343-44, paras 30-31 & 33)*
>
> > *"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 [Bhagwant Singh v. Union of India, 1962 SCC OnLine P&H 27 : AIR 1962 P&H 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. Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [Union of India v. Bhagwant Singh, 1964 SCC OnLine P&H 275 : ILR (1965) 2 P&H 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. State of Punjab [K.R. Erry v. State of Punjab, 1966 SCC OnLine P&H 255 : ILR (1967) 1 P&H 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 [Bhagwant Singh v. Union of India, 1962 SCC OnLine P&H 27 : AIR 1962 P&H 503] , [Union of India v. Bhagwant Singh, 1964 SCC OnLine P&H 275 : ILR (1965) 2 P&H 1] 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. 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 clause (5) of Article 19. Therefore, it follows that the order, dated 12-6-1968, 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."

(emphasis supplied)

23. The aforesaid judgment was followed in D.S. Nakara v. Union of India [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] by another Constitution Bench of this Court, which held that : (SCC pp. 320 & 323-24, paras 20, 29 & 31)

> *"20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 : 1971 Supp SCR 634] : wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [State of Punjab v. Iqbal Singh, (1976) 2 SCC 1 : 1976 SCC (L&S) 172] .*
>
> ***
>
> *29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the heyday of life to*

your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus, the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'étre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

***

31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch."

(emphasis supplied)

24. *The right to receive pension has been held to be a right to property protected under Article 300-A of the Constitution even after the repeal of Article 31(1) by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20-6-1979, as held in State of W.B. v. Haresh C. Banerjee [State of W.B. v. Haresh C. Banerjee, (2006) 7 SCC 651 : 2006 SCC (L&S) 1719] ."*

16. Consequently, in the light of the observations of the Supreme Court in the judgments referred to above and the provisions of Rule 9 of the CCS Pension Rules, I hereby direct the Respondent to release the pensionary benefits of the Petitioner, within a period of four weeks from today including the arrears w.e.f. 31.05.2019. Petitioner shall also be entitled to interest @ 9% per annum on the arrears of pension.

17. Needless to state that this would be without prejudice to the rights of the Respondent to take action in accordance with law against the Petitioner, if so warranted.

18. In view of the above the writ petition is allowed.

19. All pending applications disposed of accordingly.

JYOTI SINGH, J

NOVEMBER 23, 2020
rd