IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2578 of 2021

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1. The Union of India through the Secretary, Department of Posts, Government of India, Sansad Marg, Dak Bhawan, New Delhi- 110001.
2. The Director General, Department of Posts, Sansad Marg, Dak Bhawan, New Delhi.
3. The Chief Postmaster General, Bihar Circle, Meghdoot Bhawan, Patna.
4. The Postmaster General, Northern Region, Muzaffarpur, PIN- 842002.
5. The Director of Accounts (Postal) Bihar, GPO Campus, Patna- 800001.
6. The Vigilance Officer, Office of the Chief Postmaster General, Bihar, Meghdoot Bhawan, Patna, PIN- 800001.
7. The Superintendent of Post Offices, Sitamarhi Division, Sitamarhi, PIN- 843301.
8. The Postmaster, Sitamarhi HO, PIN- 843301.

... ... Respondents/ Petitioners.

Versus

Virendra Kumar Singh, Son of Late Natho Prasad Singh, Resident of Kanhaui, Khadi Bhandar Chowk, Mohalla Gandhi Nagar, P.O. Ramna, District Muzaffarpur (Bihar), PIN- 842002.

... … Applicant/ Respondent.

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Appearance :
For the Petitioners : Mr. Rajesh Kumar Verma, Asst. Sol. Gen.
For the Respondent : Mr. Om Prakash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 16-09-2021

Heard Mr. Rajesh Kumar Verma, learned Assistant Solicitor General (hereinafter referred to as 'ASG') for the petitioners and Mr. Om Prakash Singh, learned counsel for the respondent.

2. The petitioners have moved the Court being aggrieved by the order dated 04.11.2019, passed in O.A. No.847

of 2018, by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal').

3. By the said order, the learned Tribunal has allowed the Original Application filed by the respondent directing the petitioners to pay the gratuity due upon retirement to the respondent along with statutory interest within three months of the receipt of the order as also consequential benefit in the form of commutation of value of pension, if eligible, within the said period.

4. The brief facts of the case are that against the respondent, a departmental proceeding was initiated on 27.07.2010 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and a Memorandum of Charge was served on him. Thereafter, the respondent superannuated on 31.08.2010 resulting in conversion of the departmental proceeding under Rule 9 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'CCS (Pension) Rules'). Upon submission of enquiry report, the departmental proceeding was ultimately concluded by passing order dated 05.06.2015, imposing penalty of withholding 20% of the monthly pension for a period of two years. However, it was recorded that gratuity of the respondent would be paid, if

not required otherwise. In the meantime, on 12.03.2013, the Central Bureau of Investigation (hereinafter referred to as the 'CBI') registered a case against various persons, including the respondent, with regard to a different matter, unconnected with the present departmental proceeding. Therein, a chargesheet was submitted against the accused, including the respondent, by the CBI on 24.06.2015. Thereupon, the Special Court, CBI took cognizance by order dated 02.11.2017. Later, as chargesheet had been submitted against the respondent by the CBI on 24.06.2015, *vide* order dated 19.09.2017, the authorities clarified that gratuity would not be payable to the respondent, relying on Rule 9 of the CCS (Pension) Rules. Before the learned Tribunal, the respondent's challenge to such withholding of gratuity ultimately resulted in passing of the impugned order, which directed the petitioners to pay the gratuity amount to the respondent, if not otherwise required.

5. Learned ASG for the petitioners submitted that the authorities were well within their right to withhold gratuity in view of Rule 9 of the CCS (Pension) Rules. The same reads as under:

> '*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:

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.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its finding to the President.

(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

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) ***Deleted.***

(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.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(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; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the

complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.'

6. Learned ASG relied upon the judgement of a co-ordinate Bench of this Court dated 12.10.2015 in **CWJC No.2800 of 2015** titled ***Md. Quasim Ansari v. The Union of India and Ors.***, reported as **2015 SCC OnLine Pat 8688**, in support of the proposition that once there is a criminal proceeding pending against any superannuated employee, in terms of Rule 69 of the CCS (Pension) Rules, then, in view of Rule 9(4) read with Rule 69(1)(c) of the CCS (Pension) Rules, only the provisional pension can be sanctioned. Learned ASG submitted that in ***Md. Quasim Ansari*** (*supra*), the pendency of the CBI case against the petitioner therein, had been held sufficient to satisfy the conditions of the Rules for stopping such payment as also for there being no scope for commutation of the pension. Rule 69(1)(c) of the CCS (Pension) Rules, it was submitted, also stipulates that no gratuity shall be paid to the government servant until completion of the departmental or judicial proceeding and issue of final orders thereon.

7. Learned counsel for the respondent submitted that the reliance placed by learned ASG is inappropriate, both in

terms of the provisions in the Rules as well as in law. It was submitted that the basic distinguishing factor, factually, was that against the petitioner in ***Md. Quasim Ansari*** (*supra*), both a departmental proceeding and a criminal case were instituted while he was still in service – whereas in the present case, much after the superannuation of the petitioner, the CBI had instituted a criminal case. Thus, it was submitted that once the master-servant relationship had been severed between the petitioners and the respondent on 31.08.2010, no such subsequent institution of a criminal case can adversely impact the payment of the due and entitled pensionary benefits to the respondent. It was submitted that even as per the order in the departmental proceeding dated 05.06.2015, the only penalty imposed was withholding of 20% of the monthly pension for a period of two years with the further provision that the gratuity would be paid, if not required otherwise. Learned counsel submitted that nothing has been shown by the petitioners to justify taking recourse to the term "*if not required otherwise*" to withhold payment of gratuity in the instant case. It was contended that besides the criminal case being lodged for a separate transaction unrelated to the departmental proceeding, even with regard to the criminal case, no formal departmental proceeding, premised on the CBI case, till date, has been instituted against the respondent. Further, learned counsel for the respondent urged that no order has been obtained by the President for withholding his gratuity. It was contended that till date there is no such order either initiating departmental proceeding or for withholding gratuity. Thus, it was contended that in absence of the same, the authorities cannot hold back the gratuity of the respondent, which was been allowed even by the order concluding the departmental proceeding.

8. Having considered the facts and circumstances of the case and the rival submissions of learned counsel for the parties, we do not find any merit in the present petition. The basic point, which clinches the issue is Rule 9(1) of the CCS (Pension) Rules itself, the relevant part reading – '…*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*'. It is not in dispute that while a chargesheet has been filed and cognisance taken against the respondent, he has not, as on date, been found guilty in any judicial proceeding. Rule 9(6)(b)(i) of the CCS (Pension) Rules also only speaks of a judicial proceeding; when it is criminal in nature, is deemed to be

instituted '*on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made*'. In any event, the said Rule 9(6)(b)(i) does not, in any manner, affect the basis of Rule 9(1) of the CCS (Pension) Rules, namely, the establishment of the guilt of the person concerned.

9. We find force in the contention of learned counsel for the respondent that the foundational matrix herein is different inasmuch as in ***Md. Quasim Ansari*** (*supra*), both, a departmental proceeding and a criminal prosecution with regard to having assets disproportionate to his known source of income had been instituted whilst the petitioner therein was still in service, which is clear from paragraph no. 2 therein:

> '*2…A departmental proceeding had been initiated against him as well as a prosecution had been launched against him for having assets disproportionate to his known source of income. Both these proceedings had been initiated while he was in service…*'
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> (emphasis supplied)

10. The learned Tribunal cannot be faulted for its approach. We also notice that, as on the date of superannuation of the respondent, there was no judicial proceeding pending. Moreover, the said judicial proceeding, even if taken, for the

sake of argument, to be a factor against the respondent, the pendency thereof cannot have any adverse effect with regard to the entitlement of the respondent for being paid his gratuity. Firstly, the same is not with regard to any charge or proceeding initiated by the authorities against the respondent, while he was in service or even after superannuation. Secondly, for the first time, and much after the superannuation of the respondent, the CBI instituted the criminal case.

11. Admittedly, here, neither the criminal case was instituted while the respondent was in service nor any departmental proceeding for the subject-matter of the said criminal case, has been instituted, even till date. Thus, ***Md. Quasim Ansari*** (*supra*) will not aid the petitioners herein.

12. We are cognizant that ***Md. Quasim Ansari*** (*supra*) was carried up to the Hon'ble Supreme Court, which was pleased to dismiss **Special Leave Petition (Civil) No. 3451 of 2016** *vide* order dated 01.04.2016 *in limine*. It is no longer *res integra* that an order of the Hon'ble Supreme Court merely dismissing a Special Leave Petition at a preliminary stage, without reasons, does not constitute binding precedent, for which reference can be made to ***Kunhayammed v. State of Kerala*, (2000) 6 SCC 359**; ***Bhakra Beas Management Board***

***v. Krishan Kumar Vij*, (2010) 8 SCC 701**; ***Khoday Distilleries Limited v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal*, (2019) 4 SCC 376**, and; ***Inderjit Singh Sodhi v. Chairman, Punjab State Electricity Board*, (2021) 1 SCC 198**.

13. We are fully aided in our reasoning and conclusion by the Hon'ble Supreme Court's pronouncement in ***Dr Hira Lal v State of Bihar*, (2020) 4 SCC 346**, considering the decision in ***State of Jharkhand v. Jitendra Kumar Srivastava*, (2013) 12 SCC 210**. The relevant extract from ***Dr Hira Lal*** (*supra*) is quoted below:

> '*11. The Bihar Pension Rules, 1950 were enacted under Section 241(2)(b) of the Government of India Act, 1935, and came into force on 20-1-1950. Rules 27 and 43(a) and (b) are set out hereunder:*
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> *"27. Pension includes a gratuity.*
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> *43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this Rule, shall be final and conclusive.*
>
> *(b)The State Government further reserve to themselves the right of withholding or with-*

drawing a pension or any part of it, whether permanently or for a 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:"

(emphasis supplied)

12. A reading of Rule 43(b) would indicate that the State Government was empowered to withhold or withdraw the whole or part of the amount of pension, permanently or for a specified period, if the pensioner was "found to be guilty of grave misconduct" in any departmental or judicial proceeding, or to have "caused pecuniary loss to the Government by misconduct or negligence", during the tenure of his service.

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19. The Government Resolution dated 31-7-1980 came up for consideration before this Court in State of Jharkhand v. Jitendra Kumar Srivastava [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570] . After considering Rule 43(b) of the Bihar Pension Rules and Government Resolution No. 3104 dated 31-7-1980, this Court held that the State had no authority or power to withhold the full amount of pension or gratuity of a government servant during the pendency of judicial or departmental proceedings. This Court held that: (SCC pp. 216-17 & 220-21, paras 9-11, 13 & 16-17)

"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:

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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.

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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 depart-

<u>mental proceedings or judicial proceedings are still pending</u>.

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16. ... 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."

(emphasis supplied)

It was held that pension is "property" within the meaning of Article 300-A of the Constitution, and executive instructions which do not have any statutory sanction cannot be termed as "law" within the meaning of Article 300-A. It was further held that in the absence of statutory rules permitting withholding of pension or gratuity, the State could not do so by way of executive instructions. It was observed that: (Jitendra Kumar Srivastava case [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570] , SCC p. 221, para 17)

> *"17. ... 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."*
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> *(emphasis supplied)*

20. The position has, however, changed with the amendment to the Bihar Pension Rules on 19-7-2012 by the Governor of Bihar in exercise of the powers under Article 309 of the Constitution, whereby clause (c) has been inserted in Rule 43, which reads as follows:

> *"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 per cent)."*

21. Rule 43(c) provides that where a departmental proceeding or judicial proceeding is initiated during the service period of a government servant, and prosecution had been sanctioned but not concluded till superannuation, the provisional pension payable shall be less than the maximum admissible amount, but shall in no case be less than 90%.

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 Ku-

mar 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.*

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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].*
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> *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 sav-*

ing 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.

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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].

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28. With respect to withholding of the full amount of gratuity, we find that as per Rule 27 of the Bihar Pension Rules, "pension" includes "gratuity". With the insertion of Rule 43(c) in the statute book w.e.f. 19-7-2012, it is clear that gratuity also could not have been withheld under administrative Circulars dated 22-8-1974 and 31-10-1974, and Government Resolution No. 3104 dated 31-7-1980.'

(emphasis supplied)

14. Effectively, Rules 43(a) and (b) of the Bihar Pension Rules referred to in ***Dr Hira Lal*** (*supra*) and Rule 9 of the CCS (Pension) Rules, read identically and contemplate the same situations. The Hon'ble Supreme Court is categoric in holding that the power envisaged to withhold gratuity can only be exercised when the concerned person is found guilty. Thus, in view of the discussions made hereinabove, we hold that the respondent is entitled to payment of gratuity, as per the order passed by the authorities themselves in the departmental proceeding. The same cannot be withheld in the facts and circumstances of this case only on the ground that the CBI has either instituted a criminal case or has even filed a charge-sheet that has translated into the concerned court taking cognizance

against the respondent, in view of the provisions governing the field and our analysis of the same.

15. Accordingly, the petition stands dismissed. As the petitioners pursued this matter *bona fide* before this Court, we order that the time granted by the Tribunal will run from today. We hope that whatever else is legally due to the respondent will also be paid within the same time-frame.

16. At this stage, learned ASG submits that the petitioners will make payment of gratuity as directed by the learned Tribunal and other legally admissible dues, if any, to the respondent. We appreciate the stand of the learned ASG.

(Ahsanuddin Amanullah, J)

(Anjani Kumar Sharan, J)

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