

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice Tapabrata Chakaraborty
and
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPST 49 OF 2016
Nishitesh Banerjee
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Sagar Bandyopadhyay
Ms. Soma Kar Ghosh advocates

For the State : Mrs. Chaitali Bhattacharya
..... advocate

For the Respondent No.6 : Mr. Sandip Kumar Bhattacharyya
.....advocate

Heard on : 26.11.2021

Judgment on : 22.12.2021

Hiranmay Bhattacharyya, J.:-

1. The instant writ petition is at the instance of the original applicant before the West Bengal Administrative Tribunal (in short, learned Tribunal) and is directed against an order dated February 8, 2016 passed in Original Application No. 509 of

2014 whereby the prayer of the petitioner for sanction of the pension payment order was refused.

2. Shorn of unnecessary details, the facts leading to the instant writ petition are as follows:

(a) A complaint was lodged by the Sub-divisional Controller, Food and Supplies, Kalna by a letter dated March 28, 2013 alleging that the petitioner, who was an Inspector (F & S) indulged in malpractice of issuing ration cards. Kalna (P.S.) case no. 136/2013 dated March 30, 2013 under Section 420 of the Indian Penal Code and Section 13(1)(c) of the Prevention of Corruption Act was registered on the basis of the aforesaid information. The petitioner retired from service on superannuation on October 31, 2013. However, no departmental proceeding was initiated against him for alleged malpractice in issuance of ration cards.

(b) The petitioner's prayer for sanction of his pension was turned down by a decision communicated to him by a letter dated March 21, 2014 on the ground that pension cannot be sanctioned until finalization of the police case pending against him and he was asked to exercise option as to whether he is willing to draw interim allowance. The petitioner by a letter dated March 28, 2014 exercised his option to draw interim provisional pension but without prejudice to his right to

challenge the communication of the Senior Accounts Officer, Principal Accountant General (A&E), West Bengal.

- (c) The aforesaid letter dated March 21, 2014 was issued on the basis of the communication dated February 18, 2014 issued by the Senior Accounts Officer, Principal Account General (A&E), West Bengal returning the service book and pension papers of the petitioner to the Sub-divisional Controller, Food and Supplies, Kalna with an observation that any kind of pension shall not be sanctioned until finalisation of the police case. However, it was observed that in terms of Rule 14 of the DCRB Rules, 1971 interim allowance not exceeding two third of the admissible pension may be granted to him during the pendency of such case.
- (d) In the original application the petitioner has challenged the validity of the order dated March 21, 2014 issued by the Sub-divisional Controller issued on the basis of the communication dated February 18, 2014 of the Senior Accounts Officer, Principal Accountant General (A&E), West Bengal.
- (e) State contested the original application by filing an affidavit-in-reply before the learned Tribunal. The specific case of the State before the learned Tribunal was that since criminal proceeding is pending from March, 2013, petitioner was allowed two third interim allowance as per the West Bengal

Services (Death cum Retirement Benefit) Rules 1971 (for short, DCRB Rules, 1971) instead of regular pension.

- (f) The learned Tribunal by the order impugned set aside the order dated March 21, 2014 whereby the pension of the petitioner had been withheld. However, liberty was granted to the concerned authority to issue fresh order in accordance with Rule 14 of the DCRB Rules 1971 after returning a finding that charge sheet has already been filed and cognizance has also been taken by the Criminal Court on November 19, 2014 against the offence allegedly committed by the petitioner.
3. Being aggrieved by the portion of the learned Tribunal's order dated 8th February, 2021 wherein it was observed that '*at this juncture, we cannot pass any order bypassing the Rule 14 of the D.C.R.B. Rules, 1971 by issuing direction on the appropriate authority to sanction pension payment order in favour of the applicant. The authority concerned is, of course, at liberty to issue fresh order in accordance with Rule 14 of the D.C.R.B. Rules, 1971*', the petitioner approached this Court by filing the present application under Article 226 of the Constitution of India.
4. Mr. Sagar Bandopadhyay, the learned advocate for the petitioner contended that a criminal case can be said to be instituted in a Court only when the Court takes cognizance of

the offence alleged therein. In support of such contention he placed reliance upon the following judgments:-

(1) *Devarapalli Lakshminarayana Reddy and Ors. v. V. Narayana Reddy & Ors.* reported at 1976 (3) SCC 252;

(2) *Narsingh Das Tapadia vs. Goverdhan Das Partani & Anr.* reported at 2000(7) SCC 183;

(3) *Kamal Kumar Narottam Dash Parekh vs. Superintendent (Administration) Regional Passport Office, Ministry of External Affairs & Ors.* reported at 2009 SCC Online 1892(Cal);

(4) *Gouri Kanti Samanta vs. State of West Bengal* reported at 2013 (2) CHN (Cal) 649;

(5) *Surajit Roy vs. Registrar General, High Court at Calcutta* reported at 2014 SCC OnLine Cal 15585;

5. He contended that since the Magistrate took cognizance only on November 19, 2014 that is long after the date of superannuation of the petitioner, no criminal proceeding could be said to be pending as on the date of retirement of the petitioner from government service. Thus, according to Mr. Bandopadhyay Rule 14 of the DCRB Rules 1971 has no manner of application to the facts of the instant case as, according to him, no criminal proceeding involving moral

turpitude was pending against the petitioner on the date of his retirement from service.

6. Mr. Bandopadhyay, further contended that when no departmental proceedings or judicial proceedings has been initiated and the petitioner could not be found to be guilty in any departmental proceedings or any judicial proceedings, the retirement benefits of such employee including pension could not have been withheld.
7. *Per contra*, Ms. Chaitali Bhattacharyya, the learned advocate for the State contended that a criminal proceeding shall be deemed to have been instituted on the date on which the complaint is made as would be evident from explanation (b)(i) of Rule 10 of the DCRB Rules 1971. She contended that Rules 10 and 14 of the said Rules have to be construed harmoniously and upon a complaint been made giving rise to a police station case, a criminal proceeding contemplated under Rule 14 of the DCRB Rules, 1971 shall be deemed to have been instituted. Ms. Bhattacharyya, further contended that since the police station case was registered prior to the date of superannuation of the petitioner, criminal case was pending as on the date of retirement of the petitioner as per the DCRB Rules, 1971. Thus, according to Mr. Bhattacharyya, the respondent authorities were justified in not sanctioning the regular pension in favour of the petitioner.

8. Mr. Sandip Bhattacharyya, learned advocate for the Principal Accountant General (A&E), West Bengal being the respondent no. 6, by drawing the attention of the Court to an order passed by this Court on an application under Section 438 of the Code of Civil Procedure in connection with the GR case arising out of Kalna (P.S.) Case No. 136/2013 dated March 30, 2013, contended that it is evident from such order that a criminal case was pending in a court of law as on the date of retirement of the petitioner. He placed reliance on a judgment in the case of *S.A.L. Narayan Row vs. Ishwarlal Bhagwandas* reported at *AIR 1965 SC 1818* in support of his contention as to what is a criminal proceeding.
9. We have heard the learned advocates for the parties and have perused the materials on record.
10. Rule 14 of the DCRB Rules, 1971 has been applied by the respondent authorities in the instant case as a ground for not sanctioning the pension to the petitioner. The said Rule contemplates that a government servant who retires from service but against whom criminal proceeding involving moral turpitude are pending in a court of law, shall not be sanctioned any pension until the termination of criminal proceedings. An interim allowance not exceeding two thirds of the pension would be allowed under the said rule in cases of hardship. However, if he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any

pension. Thus, pendency of a criminal proceeding involving moral turpitude in a court of law as on the date of retirement from service of a government servant is a precondition for withholding sanction of pension until termination of the criminal proceedings.

11. In the instant case it is evident that the Magistrate did not take cognizance of an offence upon receiving the complaint. The cognizance of such offence was taken upon a police report of the facts constituting such offence. Such cognizance admittedly was taken by the Magistrate on November 19, 2014 and prior thereto, the petitioner retired on 31st October, 2013.
12. Truly, when the competent court takes cognizance after filing of charge sheet by the investigating agency, the said proceeding can be said to be pending in the court of law. However, such proceeding was admittedly not pending in the court of law on the date the petitioner retired. The application for anticipatory bail cannot be held to be initiation of a criminal proceeding in a court of law. Mere arrest in course of investigation and grant of bail subsequently does not constitute '*pendency of a criminal proceeding*' and as such the argument of Mr. Bhattacharya is not acceptable to us. The judgment delivered in the case of *Ishwarlal Bhagwandas (supra)*, upon which reliance was placed by Mr. Bhattacharya, was not on the issue as to the starting point of a criminal

proceeding in a court of law and as such, the said decision has no manner of application in the facts of the instant case.

13. Pension and other pensionary benefits due and payable to an employee are the property of the employee within the meaning of Article 300A of the Constitution of India. No person can be deprived of pension and/or pensionary benefits, which is his property, except by authority of law.

14. Placing reliance upon the judgment delivered by the Hon'ble Supreme Court in the case of *Kamal Kumar Narottam Dash Parekh vs. Superintendent (Administration) Regional Passport Office, Ministry of External Affairs & Ors.* reported at 2009 SCC Online 1892(Cal), the learned tribunal set aside the order dated 21st March, 2014 passed by the respondent no. 5 since the learned Magistrate took cognizance of the offence on 19th November, 2014, i.e., subsequent to the retirement of the petitioner. However, as cognizance was taken by the time the matter was heard, the learned tribunal observed that '*at this juncture, we cannot pass any order bypassing the rule 14 of the D.C.R.B Rules, 1971 by issuing direction on the appropriate authority to sanction pension payment order in favour of the applicant. The authority concerned is, of course, at liberty to issue fresh order in accordance with rule 14 of the D.C.R.B. Rules, 1971*'.

15. The learned tribunal arrived at a categorical finding that no criminal proceeding was pending against the petitioner in a court of law when he retired from service. The said finding had been accepted by the respondents. After arriving at such finding the learned tribunal could not have directed the respondents to take a fresh decision under Rule 14 since cognizance was taken at a juncture the learned Tribunal passed the impugned order.
16. Having set aside the order dated 21st March, 2014, the learned tribunal ought to have directed the respondents to disburse the pension and other retirement benefits including gratuity since it is no longer *res integra* that under rule 14 gratuity of an employee cannot be withheld.
17. Indisputably, save and except the memo dated 21st March, 2014, no other order has been issued by the employer withholding the petitioner's gratuity. The learned Tribunal had already arrived at a finding that no criminal proceeding was pending against the petitioner on the date of his retirement and in view thereof, the argument as advanced on behalf of the respondents as regards application of the provisions of Rule 10(2), is not acceptable to this Court.
18. The observation of the learned Tribunal that since cognizance had been taken, at the juncture the original application is finally decided, no order can be issued

bypassing the Rule 14 of the D.C.R.B Rules, 1971 is fallacious and is contradictory to its own finding that the said Rule could not have been applied by the authorities since no cognizance of the police case was taken prior to the petitioner's retirement. The said observation is thus set aside and quashed.

19. Accordingly, the respondents are directed to disburse the pension and all other pensionary benefits, including gratuity in favour of the petitioner positively within a period of four weeks from the date of communication of this order.
20. The writ petition, being WPST 49 of 2016, is disposed of.
21. All parties shall act in terms of the copy of the order downloaded from the official website of this Court.
22. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(Tapabrata Chakraborty, J.)