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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1244 of 2016

Girdhari Lal Sahu, S/o late Bhavnath Sahu, aged about 60 years, R/o Village Risdi, Tahsil and District Korba (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Generation Company Ltd., Through its Managing Director, Vidyut Seva Bhawan, Danganiya, Raipur (C.G.)

2. Chief Engineer (Human Resource), Chhattisgarh State Power Generation Company Ltd., Vidyut Seva Bhawan, Danganiya, Raipur (C.G.)

3. Deputy General Manager (Finance and Accounts)-II, Chhattisgarh State Power Generation Company Ltd., Vidyut Seva Bhawan, Danganiya, Raipur (C.G.)

4. Chief Engineer (Production), Korba Thermal Power Station (East) of CSPGCL, Korba, District Korba (C.G.)

5. Superintending Engineer (Human Resource Development), Korba Thermal Power Station (East) of CSPGCL, Korba, District Korba (C.G.)

---- Respondents

For Petitioner: Mr. Rajnish Singh Baghel, Advocate.
For Respondents: Mr. Jitendra Pali, Advocate.
Amicus Curiae: Mr. Siddharth Dubey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/09/2021

1. The short question involved in this writ petition is, whether respondent No.3 / disciplinary authority, by order dated 23-3-2016, was justified in imposing punishment of reduction of pension and gratuity payable to the petitioner who has been compulsorily retired as a measure of punishment?

2. The aforesaid question has to be answered in the following factual

backdrop: -

3. The petitioner, who was working as Assistant Grade-I in the Korba Thermal Power Plant (East) of the respondent No.1 Company, was inflicted with major penalty under Rule 10(vii) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966') and he was compulsorily retired with effect from 30-11-2015 vide Annexure P-3 and he was consequently relieved also from the said date and thereafter, by order dated 17-2-2016, in accordance with the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short, 'the Rules of 1976') as applicable in the respondent No.1 Company notified by the Electricity Board by notification dated 3-2-1990 and also vide circular dated 21-6-2001 read with Board's order dated 22-7-2013 and others, he was granted full pension as well as gratuity in accordance with the applicable service rules, but immediately thereafter, by order dated 23-3-2016 vide Annexure P-1, pensionary benefits sanctioned to the petitioner were cancelled and thereafter, by order dated 30-5-2016, after reviewing its earlier orders dated 30-11-2015 and 23-3-2016, 70% of total pension and 90% of gratuity was granted to him by respondent No.1. The petitioner had filed writ petition calling in question the order dated 23-3-2016 by which his order granting pension dated 17-2-2016 was withdrawn, but later-on, the writ petition has been amended now and order dated 30-5-2016, by which the respondent Company has sanctioned only 70% of pension and 90% of gratuity, has been challenged. As such, the order reducing pension and gratuity has been called in question by the petitioner on the ground that it suffers from vice of arbitrariness, discriminatory and totally irrational and without authority of law as well.

4. Return and additional returns have been filed supporting the order passed by the respondent Company holding that the order passed by the respondent is strictly in accordance with law and no interference is warranted under Article 226 of the Constitution of India.

5. Mr. Rajnish Singh Baghel, learned counsel appearing for the petitioner, would submit that the impugned order dated 30-5-2016 is totally arbitrary, discriminatory, without jurisdiction and without authority of law; once the order dated 17-2-2016 has been passed granting pension & gratuity, it could not have been withdrawn, as, under the Rules of 1976, no power of review has been conferred with the respondent No.1 Company that too in violation of the principles of natural justice and without affording opportunity of hearing. He would further submit that once gratuity and pension has been granted, right is conferred upon the beneficiary and it cannot be withdrawn unilaterally. He would also submit that Rule 37 of the Rules of 1976 is only an enabling provision to grant pension to the person who has been compulsorily retired from service, it is not a penal provision by which pension or gratuity can be reviewed without assigning cogent reason. As such, on record, there is no reason for reducing pension and gratuity as required under Rule 37 of the Rules of 1976 and therefore the impugned orders are liable to be quashed.

6. Mr. Jitendra Pali, learned counsel appearing for the respondents, would support the impugned orders and submit that since the petitioner was inflicted with major penalty of compulsory retirement and by order dated 17-2-2016, pension was granted erroneously, therefore, order dated 23-3-2016 and thereafter order dated 30-5-2016 were passed exercising discretion as conferred under Rule 37 of

the Rules of 1976 granting 70% pension and 90% gratuity which is strictly in accordance with law. He relied upon the decision of the Gujarat High Court in the matter of **A.N. Puniwala v. Bank of India and others**[1] in support of his contention.

7. Mr. Siddharth Dubey, learned *amicus curie*, would submit that Rule 37 of the Rules of 1976 is an enabling provision to grant compulsorily retirement pension to the person who has been inflicted with the penalty of compulsory retirement which is not a penal provision to reduce pension and gratuity, it is a purely discretionary provision conferred with the authority competent to grant pension and it is pari materia to Rule 40 of the Central Civil Services (Pension) Rules, 1972 and therefore penalty not included in the list of penalties specified in Rule 10 of the Rules of 1966 cannot be awarded by making the use of Rule 37 of the Rules of 1976. Reliance has been placed upon the decisions of the Supreme Court in the matters of **C. Jacob v. Director of Geology and Mining and another**[2] and **Nisha Priya Bhatia v. Union of India and another**[3] to buttress the submission.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. The petitioner was inflicted with major penalty of compulsory retirement in accordance with Rule 10(vii) of the Rules of 1966 i.e. compulsory retirement from service and accordingly, he was relieved from duty with effect from 30-11-2015. The competent authority to grant pension i.e. respondent No.3 granted pension and gratuity to the

1 2007 SCC OnLine Guj 367
2 (2008) 10 SCC 115
3 (2020) 13 SCC 56

petitioner on 17-2-2016, but that order has been withdrawn on 23-3-2016 and order dated 30-5-2016 has been passed under Rule 37(1) of the Rules of 1976 granting compulsory retirement pension to the extent of 70% and gratuity to the extent of 90% which has been sought to be challenged in this writ petition.

10. The judicial review of administrative action / decision, as laid down by the Supreme Court in the matter of **Ranjit Thakur v. Union of India and others**[4], is restricted to "illegality", "irrationality", "perversity" and "procedural impropriety". The Court may also stretch its wings and examine such action/decision where the sentence/punishment is outrageous defies logic or is not commensurate with the misconduct proved against the delinquent officer. However, "irrationality" and "perversity" remain the baseline in judicial review. The judicial review, it has been held in umpteen number of cases, is not directed against the decision but against the "decision making process".

11. At this stage, it would be appropriate to notice Rule 37(1) of the Rules of 1976, which states as under: -

> "**37. Compulsory retirement pension**.-(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement."

12. A careful perusal of the aforesaid rule would show that it is a beneficial provision and it confers a discretion upon the competent authority to grant pension to the extent of an amount not less than two-thirds and not more than full amount of pension or gratuity or both admissible to a Government servant on the date of his compulsory retirement. In

4 (1987) 4 SCC 611

other words, it confers upon the competent authority to withhold pension and gratuity up to 25% and withholding of pension and gratuity can be said to be civil consequence, the principles of natural justice must be read into the above-stated provision and consequently, opportunity of hearing has to be provided to the petitioner before withholding of the amount of pension and gratuity.

13. The aforesaid Rule i.e. Rule 37(1) of the Rules of 1976 is pari materia to Rule 40(1) of the Central Civil Services (Pension) Rules, 1972, which states as under: -

> "**40. Compulsory retirement pension**
>
> (1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement."

14. The Government of India has passed a decision on Rule 40(1) of the Central Civil Services (Pension) Rules, 1972 laying down the guiding principles for reduction of pensionary benefits under Rule 40(1) which states as follows: -

> "(1) **Guiding principles for reduction of pensionary benefits under rule 40(1)**. - Rule 40 prescribes the limit for retirement benefits which would be admissible to an officer on whom the penalty of compulsory retirement may be imposed. This form of penalty has been introduced to provide for cases in which the continuance of a Government servant in service is considered to be undesirable but the extreme penalties of removal or dismissal, with the consequent loss of pension, is considered to be too severe.
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> The intention is that, persons on whom the penalty of compulsory retirement is imposed should ordinarily be granted the full compensation pension and retirement gratuity, admissible on the date of compulsory retirement.

> Where, however, the circumstances of a particular case so warrant, the authority competent to impose the penalty of compulsory retirement may make such reductions in the pensionary benefits, within the limits prescribed, as it may think appropriate. In the case of a person governed by the New Pension Rules, reduction may be made either in the retirement gratuity or in the pension or in both."

15. The Supreme Court in **C. Jacob** (supra) while dealing with Rule 40(1) of the Central Civil Services (Pension) Rules, 1972, held that a Government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement.

16. In **Nisha Priya Bhatia** (supra), their Lordships of the Supreme Court while dealing with sub-rules (2) and (3) of Rule 135 of the Research and Analysis Wing (Recruitment, Cadre and Services) Rules, 1975 which deals with grant of pension to a compulsorily retired employee, have held that Rule 135 is cast in the form of a beneficial, balancing and protective provision for the nature of action against the employee concerned and it would not operate in a manner so as to leave the scope for denial of pensionary benefits. It has been observed as under: -

> "78. Indeed, sub-rules (2) and (3) of Rule 135 of the 1975 Rules, posit that the grant of pension to a compulsorily retired employee under this rule is preceded by expression "may". That gives an impression that the grant of pension to the outgoing employee is subject to the discretion of the competent authority. The setting in which expression "may" has been placed in this provision, it must be read as "shall". Lest, it could be argued that a compulsorily retired officer under Rule 135 can be denuded of pensionary benefits. That would result in not only loss of job for the employee concerned due to fortuitous situation referred to in Rule 135, but also deprive him/her of the source of his livelihood (even though the action against him/her is not to

> inflict civil consequences). In fact, Rule 135 is cast in the form of a beneficial, balancing and protective provision for the nature of action against the employee concerned. We find it highly incongruous to permit the rule to operate in a manner so as to leave the scope for denial of pensionary benefits to an officer who has been retired without his/her volition for the sake of meeting organisational exigencies. Notably, the rule, being a special provision, does not prescribe for any minimum age or length of service of the officer concerned and the necessities of the situation may demand the invocation of this rule even within short period of service. In such circumstances, subjugating the statutory right of pension of such officer, who is being ousted without his/her fault because of public interest in reference to the integrity of the Organisation, would be preposterous and in fact, violative of fundamental rights under the Constitution.
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> 79. We are mindful of the fact that the Intelligence Organisations (Restriction of Rights) Act, 1985, enacted by Parliament under Article 33, provides for restriction of certain rights conferred by Part III in their application to intelligence officers. However, the same is confined to restrictions respecting right to form associations, freedom of speech, etc. and does not stretch its sweep to curb the right to livelihood of an officer, that too when the officer is being compulsorily retired under Rule 135. This could not have been the object and intent of the stated legislation. Even in the Pension Rules, Rule 40 is the only provision which subjects the pension of a compulsorily retired officer to a discretionary "may" provision. However, this rule comes into play when the said retirement is ordered as a penalty and thus, it stands on a different footing than Rule 135 of the 1975 Rules which is not linked to the conduct of the officer nor does it entail any consequence, either civil or penal."

17. Reverting to the facts of the case in the light of the aforesaid analysis, it is quite vivid that the petitioner was inflicted with major penalty listed under Rule 10(vii) of the Rules of 1966 in which reduction of pension or gratuity is not listed penalty and only compulsory retirement has been prescribed with which the petitioner has been inflicted. In terms of Rule 37(1) of the Rules of 1976, pension and gratuity would be

admissible to a Government servant on whom the penalty or compulsory retirement from service has been inflicted and he would be entitled for full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement at a rate not less than two-thirds and not more than full compensation pension or gratuity. In other words, Rule 37(1) incorporates safeguards in favour of a Government servant, who has been inflicted with penalty of compulsory retirement. The competent authority, therefore, cannot as penalty slash down the pension and gratuity due to a Government servant compulsorily retired, to less than two-third of pension and gratuity payable to him.

18. In the considered opinion of this Court, Rule 37(1) of the Rules of 1976 is not by itself a penal rule or provision, it only lays down the limitation of the penalty of reduction in pension and gratuity wherever under rules such penalty is provided for. There must be a cogent reasons for taking the decision of reducing pension and gratuity, which should appear on the face of record and which is totally lacking in the instant case. As such, the orders reducing pension and gratuity dated 23-3-2016 and 30-5-2016 are vulnerable and are liable to be quashed.

19. There is one more reason for not sustaining the orders dated 23-3-2016 and 30-5-2016. The petitioner was granted full pension and gratuity vide order dated 17-2-2016 exercising the discretion which the authority competent had under Rule 37(1) of the Rules of 1976 and immediately thereafter, the said order has been withdrawn on 23-3-2016 without assigning any reason and without affording any opportunity to the petitioner to defend the order dated 17-2-2016. Not

only this, when order dated 30-5-2016 whereby 70% of total pension and 90% of gratuity was granted to the petitioner to the extent indicated in order dated 23-3-2016 was passed, the petitioner was again denied opportunity to put forth his grievance and he was not given the benefit of full pensionary benefits which he is otherwise entitled for. This action of the respondent Company is in teeth of the principles of natural justice.

20. In sum and substance, this Court is of the considered opinion that the order passed by the competent authority i.e. respondent No.3 reducing pension and gratuity to the extent of 70% and 90%, respectively, i.e. orders dated 23-3-2016 and 30-5-2016 are liable to be quashed and are hereby quashed. The petitioner will be entitled for full pension and gratuity which shall be paid to him along with 9% interest per annum from the date of his entitlement till the date of payment.

21. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

22. Before parting with the record, this Court appreciates the useful assistance rendered by Mr. Siddharth Dubey, Advocate, who, on short notice, appeared as *amicus curiae* and same is placed on record.

Sd/-
(Sanjay K. Agrawal)
Judge

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