

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI**

Present:

**The Hon'ble Justice Debangsu Basak
and
The Hon'ble Justice Bibhas Ranjan De**

WPST 2 of 2021

**Swapan Kumar Bhattacharjee
Vs.
The State of West Bengal & Ors.**

For the petitioner	Mr. Swapan Banerjee Mr. Debajit Kundu Mr. Saugata Mitra Ms. Ankita Dey
For the State	Mr. Bikramaditya Ghosh Mr. Momenur Rahaman
Heard on	13.06.2022
Judgement on	13.06.2022

Debangsu Basak, J.:

1. The writ petition is directed against the order dated October 14, 2020 passed by the West Bengal Administrative Tribunal in OA No.114 of 2020.
2. The writ petitioner before us as the applicant approached the West Bengal Administrative Tribunal for a direction upon the authorities to grant pension and other retiral benefits after treating the period of

service of the writ petitioner from June 14, 2013 to March 12, 2015 as regular service.

3. By the impugned order, the West Bengal Administrative Tribunal granted liberty to the writ petitioner to file an application in the prescribed format before the Block Development Officer, Maynaguri, Jalpaiguri for release of the balance amount of the Public Provident Fund within a period of six weeks from date of order. Liberty was also granted to the petitioner to file an application in terms of Rule 14 by the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 before the Principal Secretary, Government of West Bengal, Department of Panchayat and Rural Development within a period of six weeks from date. In the event of such application being filed by the writ petitioner, the Block Development Officer was directed to take all necessary steps for disbursement of the amount of the GPF in favour of the writ petitioner within a period of six weeks from the date of submission of the application for such GPF. The application for interim allowance was directed to be acted upon in terms of the Rules of 1971 within a period of six weeks from the date of submission of such application. The payment of interim allowance was directed to continue till the disposal of the criminal proceedings pending as against the petitioner before the competent Court of law. The Principal Secretary was also directed to decide the entitlement of the writ petitioner to receive pension, gratuity,

leave encashment, etc. after the final verdict of the criminal case pending as against the writ petitioner.

4. The writ petitioner before us is aggrieved by the impugned order dated October 14, 2020 of the West Bengal Administrative Tribunal. According to the writ petitioner, he is entitled to all his retiral benefits unconditionally. Pendency of the criminal proceedings and the conviction of the writ petitioner therein is of no consequence for the purpose of the writ petitioner being paid all his retiral benefits. In support of such contentions learned Advocate appearing for the writ petitioner relies upon, 2014 (2) CHN (CAL) 103 (*Anadi Prasad Mahato vs. State of West Bengal*). He submits that the pendency of the criminal case is not a valid ground for withholding the terminal benefit of a Government employee.

5. Relying upon an order dated July 9, 2015 passed in WP 9890 (W) of 2015 (*Prafulla Chandra Mahato vs. The State of West Bengal & Ors.*), and the judgment and order dated December 18, 2015 passed in WP 28290 (W) of 2015 (*Gunamay Mahato vs. The State of West Bengal & Ors.*) which is reported in 2015 SCC online CAL 7503, learned Advocate appearing for the petitioner submits that, in both the two cases, pendency of the criminal proceedings were considered and that the same was found to be no consequence in paying the retiral benefits.

6. Learned Advocate appearing for the petitioner submits that Gunamay Mahato (Supra) was considered by a subsequent co-ordinate

Bench on September 16, 2016 in WP 18979 (W) of 2011 (*Niranjana Mahato vs. State of West Bengal & Ors.*). There also pending criminal proceedings were not taken to be valid ground for withholding of the retiral benefits.

7. Learned Advocate appearing for the petitioner draws the attention of the Court to the provisions of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and in particular to Chapter II thereof. He submits that Chapter II defines pension. He also refers to Rule 10 as well as Rule 14 of the Rules of 1971. He submits that the provisions of Rules of 1971 were considered in 2014(4) CHN (CAL) 702 (*Surajit Roy vs. Registrar General, High Court at Calcutta*). He submits that, even in that case, the employee was granted the benefit of retiral benefits despite the pendency of the criminal proceedings.

8. Learned Advocate appearing for the petitioner relies upon 2013 Volume 12 Supreme Court Cases 210 (*State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr.*) and submits that, the petitioner is entitled to the retiral benefits. He submits that, a person cannot be deprived of his pension. In law pension is recognized as a right to property protected under the constitutional mandate enshrined under Article 300A of the Constitution. He submits that, any attempt to take away a part of the pension or the gratuity receivable or leave encashment without any statutory provision or administrative instruction cannot be countenanced. According to him, in the facts of

the instant case, the authorities erred in not disbursing the entirety of the retiral benefits. He points out that initially, there was a criminal case as against the petitioner while he was discharging duties as the Additional Block Development Officer. Although, the petitioner was convicted in such criminal proceedings and an appeal is pending, where he is on bail, the pension papers of the writ petitioner were processed at the government level. There is no objection on the part of the Government in releasing the retiral benefits of the petitioner. It is the Controller and Audited General office which is putting the spanner in the works and is purporting to raise objections. The Government authorities clarified the position at least thrice. Despite the same, the Controller and Audited General office is continuing to raise objections which are untenable in law. Consequently, there was a necessity of the writ petitioner approaching the West Bengal Administrative Tribunal. The West Bengal Administrative Tribunal by the impugned order, erred in not directing release of the entire retiral benefits to the writ petitioner forthwith. Therefore, the writ petitioner is aggrieved and is before this Hon'ble Court seeking appropriate reliefs. According to him the writ petitioner is entitled to the entire retiral benefits.

9. On the score of moral turpitude, learned Advocate appearing for the writ petitioner submits that such allegation is without any substance as against the petitioner. The petitioner was initially suspended without any disciplinary proceedings being initiated. The petitioner was allowed

to resume his duties. He submits that the authority took the benefits of the services rendered by the petitioner. Since the writ petitioner was allowed to resume his duties, the question of the writ petitioner being guilty of moral turpitude does not arise. Therefore, at this belated stage, on the writ petitioner superannuating with the passage of time, the authorities cannot withhold the entirety of the retiral benefits.

10. Learned Advocate appearing for the State submits that some of the authorities cited on behalf of the petitioner including Anadi Prasad Mahato (Supra), Prafulla Chandra Mahato (Supra), Gunamay Mahato (Supra) and Niranjana Mahato (Supra) were not on basis of the Rules of 1971. The Rules of 1971 were considered in Surajit Roy (Supra). However, the factual scenario in the present case is different to that of Surajit Roy (Supra).

11. Learned Advocate appearing for the State relies upon (2019) 3 CLT 225 (Dr. Kamal Kanati Ghosh vs. State of West Bengal & Ors.). He submits that, the Rules of 1971 along with Gunamay Mahato (Supra) were considered therein. After consideration of the same, in the facts of that case it was found that the writ petitioner therein was guilty of moral turpitude and, therefore, retiral disbursement benefits of the writ petitioner were denied save and except gratuity. He submits that the factual scenario in the present case is governed by Dr. Kamal Kanati Ghosh (Supra).

12. Learned Advocate appearing for the State relies upon a Full Bench decision of the Allahabad High Court reported in (2019) 4 Allahabad Law Journal 323 (FB) (Shivagopal vs. State of U.P. & Ors.) submits that, pension of a government servant can be withheld or withdrawn, if he is convicted in a crime or is found guilty of misconduct. He submits that a government employee is not entitled death-cum-retiral benefits until the conclusion of the departmental proceedings or the enquiry of the administrative tribunal or judicial proceedings which includes both civil and criminal. According to him in the facts of the present case, since there is a criminal proceedings pending as against the petitioner which involves moral turpitude, the petitioner is not entitled to the retiral benefits. At best he is entitled to interim allowance which was granted by the West Bengal Administrative Tribunal. He is also entitled to gratuity. In the event, he applies in terms of the order of West Bengal Administrative Tribunal, such application will be processed in accordance with law.

13. The writ petitioner herein was absorbed in government service as extension officer on February 20, 1996. He was promoted to the post the Joint Block Development Officer on September 10, 2010. A criminal complaint was lodged as against the writ petitioner, *inter alia*, under the provisions of the Protection of Children From Sexual Offences Act, 2012 as well as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Such complaint was lodged on June 4, 2013. The

petitioner was taken into custody. The petitioner was thereafter suspended from service since the detention of his custody exceeded 48 hrs. due to his involvement in such criminal case. He was suspended on December 15, 2013 with effect from June 4, 2013. He was reinstated by revocation of the order of suspension on March 4, 2015. He superannuated on October 31, 2018.

14. The criminal complaint as against the petitioner being Kurseong Police Station Case No. 120 of 2013 dated June 4, 2013 was tried as Sessions Case No. 34 of 2015. In such Sessions Case No. 34 of 2015, the petitioner was convicted for offences punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and was sentenced to suffer rigorous imprisonment for three years and a fine of Rs.20,000/- only of which 75 per cent was directed to be paid to the victim as compensation under Section 357 of the Code of Criminal Procedure and rest to the State. In default, the petitioner was directed to suffer simple imprisonment for one year. An appeal is pending as against such judgment of conviction. The petitioner is on bail granted by the Appeal Court. The petitioner is yet to be acquitted in the criminal case.

15. On the grievance that the writ petitioner was not given his retiral benefits, due to the pendency of the criminal case he approached the Tribunal by way of O.A. No. 114 of 2020.

16. It appears from the records made available to this Court that, the pension papers of the writ petitioner were submitted and that the Controller and Auditor General office raised objections with regard thereto. The objection is primarily around the provisions of Rule 14 of the Rules of 1971.

17. Rule 14 of the Rules of 1971 is as follows:

“14. Criminal proceedings – A Government servant who retires from service but against whom criminal proceedings involving moral turpitude are pending a court of law, shall not be sanctioned any pension until the termination of the criminal proceedings. An interim allowance not exceeding two-thirds of the pension can be granted during the pendency of such proceedings in cases of hardship. If he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension; compassionate allowance may be granted subject to the same terms and conditions as laid down in Rule 12.”

18. Rule 14 of the Rules of 1971 was construed by the High Court in Surajit Roy (Supra). In Surajit Roy (Supra), the writ petitioner before the Court was yet to be convicted in any criminal case. It noticed that, all criminal cases cannot be classified as a case involving moral turpitude. Consequently, in the facts of that case, retiral benefit was directed to be disbursed.

19. Anadi Prasad Mahato (Supra), Prafulla Chandra Mahato (Supra), Gunamay Mahato (Supra) and Niranjan Mahato (Supra) are cases which are not governed by the Rules of 1971. In Gunamay Mahato (Supra) as also the other authorities noted in this paragraph, the provisions of the West Bengal Recognised Non-Government Educational Institute Employees' (Death-cum-Retirement Benefit) Scheme, 1981 (the Scheme

of 1981) was under consideration. The Scheme of 1981 does not contain any provision as that of Rule 14 of the Rules of 1971. The crucial words 'moral turpitude' are not there in the Scheme of 1981. It is not the case of the writ petitioner that he is guided by the Scheme of 1981. Rather the writ petitioner claims to be governed by the Rules of 1971. In the fact the writ petitioner is governed by the Rules of 1971. Therefore, it would not be appropriate to rely upon any of the ratio in such judgments in the facts of the present case.

20. The Hon'ble Supreme Court in State of Jharkhand (Supra), considered the question, whether in absence of any provision of pension rules, the State Government can withhold pension and gratuity during the pendency of the departmental/criminal proceedings. In answering such question, the Hon'ble Supreme Court recognized that the right to receive pension was a right to property. It goes on to hold that a person cannot be deprived of his pension without the authority of law.

21. The Rules of 1971 authorises denial of pension on the ground of pendency of criminal proceedings involving moral turpitude until the termination of the criminal proceedings. In fact it authorises forfeiture if the person is convicted on a criminal charge involving moral turpitude. A person can be deprived of his pension if such denial is authorized by law. In other words, if the service rules governing the employee concerned contains provisions of denial of pension on the happening if such event or events, the employee can be denied his pension.

22. The Rules of 1971 was considered in Dr. Kamal Kanti Ghosh (Supra). Gunamay Mahato (Supra) was also considered. Dr. Kamal Kanti Ghosh (Supra) observed that, the Scheme of 1974 which was under consideration in such case, did not contain a similar provision such as Rule 14 of the Rules of 1971. In the facts of that case, it was found that the writ petitioner therein was convicted under Section 498A of the Indian Penal Code. The conviction was on the ground of sustained cruelty and torture resulting in death of the wife of the writ petitioner therein.

23. Surojit Roy (supra) considers the evolution of the concepts of pension and gratuity. It finds that pension is a sum paid periodically so long as the pensioner is alive. It is a retirement benefit partaking the character of regular payment to an ex-employee in consideration of the past services rendered by him but having a nexus with the salary drawn by him on the date of his retirement. It notices that, although pension is not a bounty, an employee claiming pension must establish his entitlement to such pension in law. On the other hand, it notices that, gratuity was regarded in labour jurisprudence to be that payment which the employer releases in favour of its employee in token of the gratitude owed by the former to the latter for the long, continuous and meritorious service. It notices that, the statutory recognition of the concept of gratitude was brought about by the introduction of the Payment of Gratuity Act, 1972. It is of the view that, denying gratuity or withholding

of gratuity is permissible only within the four corners of the Act of 1972 that imposes the duty and confers the right relating to release/receipt of gratuity.

24. Surojit Roy (supra) considers Rule 7, 8, 10, 14 and 37 of the Rules of 1971. It is of the view that, the word pension used in Rule 14 of the Rules of 1971 excludes gratuity. It notices that, an act which can be viewed as a serious crime may take within its fold an act of moral turpitude, but all acts of moral turpitude is not serious crimes. Similarly, all acts of moral turpitude do not constitute a grave misconduct. The nature of offence or misconduct that is committed by a government servant for which the proceedings was initiated and the pendency thereof on the date of the retirement, is therefore relevant.

25. Allahabad High Court, in Shivagopal (Supra) is of the view that pension of government servant can be withheld or withdrawn if he is convicted in a crime or is found guilty of misconduct. But if he is neither convicted nor found guilty of misconduct but a departmental or judicial proceeding or any enquiry by the Administrative Tribunal is pending against him at the time of his retirement or is likely to be instituted, he would be entitled to provisional pension in accordance with Regulation 919-A. Civil Service Regulations were under consideration therein. Regulation 919-A26(4) contains a similar provision of prohibiting payment of death-cum-retirement gratuity until conclusion of departmental proceedings, judicial proceedings or the

enquiry by the Administrative Tribunal until the issuance of final orders are passed by the competent authority.

26. The Rules of 1971 permits withholding of pension on the ground of pendency of criminal proceedings involving moral turpitude. It permits an interim allowance not exceeding two-thirds of the pension to be granted during the pendency of such criminal proceeding in cases of hardship. It also provides that in the event the employee is convicted on a criminal charge involving moral turpitude, he shall not be entitled to any pension. Compassionate pension may be given on the same terms and conditions as laid down in Rule 12.

27. In the facts of the present case, the petitioner stands convicted of offences punishable under Section 8 of the POCSO Act by the judgment and order dated August 31, 2016. An appeal is pending against such judgment and order. The appeal is yet to be finally decided. The Court is informed that the petitioner is on bail pursuant to suspension of such sentence granted by the appeal.

28. Dr. Kamal Kanti Ghosh (Supra) noticed (2010) 12 SCC 573 (*Sushil Kumar Singhal V. Regional Manager, Punjab National Bank*) on the issue as to what is understood by moral turpitude. In *Sushil Kumar Singhal* (Supra), the Hon'ble Supreme Court is of the following view on the issue as to what is understood by moral turpitude:-

“25. In view of the above, it is evident that moral turpitude means anything contrary to honesty modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral

turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.”

29. Applying such meaning of moral turpitude in the facts of the present case, we are constrained to hold that in view of the conviction passed by the learned Court convicting the petitioner of the offences under Section 8 of the POCSO Act, there is an element of moral turpitude involved. Therefore, the prohibitory provisions of Rule 14 of the Rules of 1971 stand attracted so far as the petitioner is concerned.

30. In such circumstances, we find no material irregularity in the impugned order of the West Bengal Administrative Tribunal warranting our interference under Article 226 of the Constitution of the India.

31. WPST 2 of 2021 is, therefore, dismissed without any order as to costs.

(Debangsu Basak, J.)

32. I agree

(Bibhas Ranjan De, J.)