IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19348 of 2018

==

Yogendra Rai Sharma Son of Late Jagarnath Rai, Resident of Mohalla- Ward No.37, New Colony, Bettiah, P.S.- Bettiah, District- West Champaran.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Principal Secretary, Education Department, New Secretariat, Patna.
3. Director Primary Education, Education Department, New Secretariat, Patna.
4. Regional Deputy Director of Education-cum-Conducting Officer, Tirhut Division, Muzaffarpur.
5. Accountant General of Bihar, Veer Chand Patel Path, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Pratap Sharma, Adv.
For the State	:	Mr. S.K. Ranjan, AC to GP 17
For the Accountant General	:	Mr. Arun Kumar Arun, Adv.

==

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 23-02-2023

1. The petitioner was served with the charge sheet on 27.01.2017 under Rule 17(4) of C.C.A. Rules of 2005 for imposing a major penalty. A departmental inquiry was continued and in the meanwhile, the petitioner retired, therefore, the respondents issued an order dated 20th August 2018 for converting the proceedings in terms of Rule 43(B) of the Pension Rules and directed that the inquiry be concluded within a period of 45 days. The petitioner challenged the said order dated 20th August 2018 before this Court and by order dated 07.01.2019. The respondents were restrained not to pass a final order in the departmental proceedings.

WEB COPY

2. Learned counsel for the petitioner has argued that the proceedings under Rule 43(B) of Bihar Pension Rules could not have been converted, as the incident had occurred more than four years before retirement. Rule 43(B) of Bihar Pension Rules reads as under:

"(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 a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to 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 Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(I) shall not be instituted save with the sanction of the of the state Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

WEB COPY

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re- employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed,

Explanation- *For the purposes of the rule-*

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him 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 have been instituted:- (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court."

3. Thus, it is apparent that a charge sheet can be issued during the course of service and if the inquiry is pending, the same shall be continued even after retirement. The question regarding four years limitation is only with reference to a charge sheet that may be issued to a retired employee and in that event, the four years period shall be taken into consideration as a limitation for issuing such a charge sheet.

4. In view thereof, the argument raised with regard

WEB COPY

to challenging inquiry is not made out. The interim order passed by this Court is vacated. The respondents are directed to now conclude the inquiry within a period of 45 days as originally order by them on 20th August 2018.

5. Learned counsel for the petitioner has also relied on one judgment passed in **Dr. Hira Lal vs. The State of Bihar,** as reported in **2020(4) SCC 346,** with regard to release of gratuity and commutation of pension during the pendency of the departmental inquiry.

6. This Court finds that the fact of the case in Hira Lal is different from that of this present case. In Hira Lal case *(Supra),*the gratuity and pension had been withheld on account of the pendency of the criminal case. Relying upon an earlier judgment passed by the Hon'ble Apex Court in **State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr.,** as reported in **2013(12) SCC 210**, it was observed that Rule 43 (B) does not permit withholding your pension and gratuity and it was concluded as under:

> ***"14.*** *The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] , as is apparent from the following*

WEB COPY

discussion: (SCC pp. 342-43, paras 27-33)

"27. The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge

WEB COPY

that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

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 [AIR 1962 Punj 503] . It was held that such a right

WEB COPY

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. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR (1965) 2 Punj 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 [AIR 1967 Punj 279 : ILR (1967) 1 Punj 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the

WEB COPY

principles laid down in the two earlier decisions 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

WEB COPY

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.

32. This Court in State of M.P. v. Ranojirao Shinde [AIR 1968 SC 1053 : (1968) 3 SCR 489] had to consider the question whether a 'cash grant' is 'property' within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing 'it is obvious that a right to sum of money is property'.

33. Having due regard to the above decisions,

WEB COPY

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. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it

WEB COPY

was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court."

7. The said order would, therefore, apply to the present case also. The respondents are directed to act accordingly.

8. The writ petition is disposed of on aforesaid terms.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 4

U			

WEB COPY