

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

222

CWP-1612 of 2020

Date of Decision:03.05.2023

Paramjit Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. V.K. Shukla, Advocate,
for the petitioner.

Mr. Arun William, AAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *certiorari/mandamus* for quashing of the impugned order dated 07.01.2020 (Annexure P-2) and order dated 19.11.2019 (Annexure P-3) vide which an order has been made to recover an amount of Rs.1,36,640/- from the petitioner alleging wrong fixation of his pay.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner had retired as a Craft Teacher on 31.01.2019 and the said post falls under Category-III. He submitted that after the retirement, the petitioner was paid only leave encashment and GP fund but pension and gratuity has not been paid till date and there is no reason or justification

with the State to not have paid the same to the petitioner. He submitted that as per Annexure P-2 a letter was written by the Executive Officer, Panchyat Samiti, Baghapurana to the petitioner in which it has been so stated that while she was in service and when her pay was fixed with effect from 01.01.2006 then inadvertently the Grade Pay of Rs.3600/- in place of Grade Pay of Rs.3200/- was fixed and in this way she had withdrawn an excess payment with effect from 01.01.2006 till the date of retirement which comes out to be Rs.1,36,640/- and thus excess payment be deposited in the office.

3. Learned counsel for the petitioner submitted that the entire action of the respondents in seeking recovery from the petitioner and also by not paying the pension and the gratuity to the petitioner till date is absolutely arbitrary, oppressive and not only violative of the Statutory Rules but also it is an infringement of Article 300-A of the Constitution of India. He submitted that she retired on 31.01.2019 and thereafter she had to face financial difficulties due to Covid-19 pandemic and no reason has come whatsoever from any corner for withholding the pension and gratuity of the petitioner. He submitted that if the State had fixed the grade pay in the year 2006 wrongly and some excess payment was paid to the petitioner then the same could not have been recovered after her retirement in view of the authoritative judgment of the Hon'ble Supreme Court in **State of Punjab and others versus Rafiq Masih (White Washer) etc.** 2015 (4) SCC 334 and rather the case of the petitioner is squarely covered by the aforesaid judgment. He has therefore prayed that the impugned order/letter by which recovery is sought to be effected from the petitioner be set aside and

directions be issued to the State to fix and release the pension and gratuity of the petitioner forthwith alongwith the interest.

4. Mr. Arun William, learned AAG, Punjab has filed a short reply by way an affidavit of the Executive Officer-cum-Block Development and Panchayat Officer on behalf of respondents No.1 and 2 although the same has been filed by respondent No.3 who is the Executive Officer in the Court and an advance copy was supplied to learned counsel for the petitioner. While referring to the reply, he submitted that the grade pay of the petitioner was inadvertently fixed with effect from 01.01.2006 and the petitioner kept on drawing her salary in the wrongly fixed pay scale and therefore she had withdrawn an excess payment of Rs.1,36,640/- for which the State was entitled to recover.

5. I have heard the learned counsel for the parties.

6. There are two fold prayers made by the petitioner. Firstly, with regard to the recovery sought to be effected from the petitioner from her pension and secondly, the petitioner has not been paid pension and gratuity after her retirement.

7. So far as the first prayer of the petitioner is concerned, the petitioner retired on 31.01.2019 as a Craft Teacher which falls in Category-III as per learned counsel for the petitioner. The recovery was sought to be effected from the petitioner vide Annexure P-2 to the tune of Rs.1,36,640/- on the ground that way back in the year 2006 some amount of grade pay was erroneously fixed with effect from 01.01.2006 and the petitioner was getting the same erroneously and that amount is to be recovered after her

retirement. The action of the respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in **Rafiq Masih**'s case (supra). There is no allegation of any fraud or mis-representation on the part of the petitioner and rather the respondent-State itself granted the grade pay to the petitioner on their own. Even otherwise also, since the petitioner falls in Category-III and has already retired, no such recovery can be effected from the petitioner. The relevant portion of the aforesaid judgment is reproduced as under:-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class IV service (or Group 'C' and Group 'D' service).*
- ii) Recovery from retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee,*

would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. The case of the petitioner squarely falls in clauses (i) and (ii) as aforesaid and therefore it is held that the respondent-State had no power to recover the aforesaid amount of Rs.1,36,640/- from the petitioner and the action of the respondents is absolutely contrary to the aforesaid judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case (supra).

9. So far as the second prayer of the petitioner is concerned, the petitioner retired on 31.01.2019 and more than four years have elapsed but the petitioner has not been paid any pension or gratuity. The petitioner has specifically averred in para 6 of the petition that she has not been paid the pension and gratuity. While referring to the reply filed by the State of Punjab today, it has been so stated in the reply pertaining to para 6 that it is matter of record and therefore it is an admitted position that the petitioner has not been paid the pension and gratuity. No reason or justification whatsoever of any kind has come-forth from the State as to why the pension of the petitioner has been withheld. Even for the sake of arguments, an amount of Rs.1,36,640/- assumingly was to be recovered, still the entire pension and gratuity could not have been withheld at all.

10. Pension and pensionary benefits are not the bounty of the State and rather it is a Constitutional Right under Article 300-A of the Constitution of India. Way back in the year 1971, a Constitution Bench of the Hon'ble Supreme Court in **Deokinandan Prasad versus State of Bihar and others** 1971(2) SCC 330 dealt with this issue and observed that the

State cannot withhold the pension and pensionary benefits without the authority of law even though at that point of time the Right to Property was a Fundamental Right under Part-III of the Constitution of India and thereafter with the 44th amendment of the Constitution of India it became a Constitutional Right. The relevant portion of the aforesaid judgment is reproduced as under:-

“31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. The State of Punjab, ILR (1967)1 Punj and Har 278 (FB). 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 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 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.

32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and another, 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."

11. The aforesaid judgment of the Hon'ble Supreme Court was followed by a number of judgments and thereafter in **State of Jharkhand and others versus Jitendra Kumar Srivastava and another** 2013(12) SCC 210, the Hon'ble Supreme Court reiterated that pension and pensionary benefits are not the bounty of the State and thus cannot be either withheld or forfeited without authority of law. Para Nos.8 and 16 of the aforesaid

judgment are reproduced as under:-

“8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

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 Deoki Nandan Prasad v. State of Bihar and Ors. [1971] Su. S.C.R. 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 any one'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 and Another Vs. Iqbal Singh(6)".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. 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."

12. It is a classic case of arbitrariness on the part of the State towards its pensioner. Shockingly in the present case, the petitioner who is a

lady had retired four years ago and she had not been paid pension and gratuity for no reason whatsoever at all. India is a welfare State and the State and its instrumentalities are supposed to take appropriate steps for grant of pension and pensionary benefits in accordance with law but in the present case no reason whatsoever has come-forth. Article 300-A of the Constitution of India provides that no person shall be deprived of property except with the authority of law but here is a case that not only that the petitioner has not been granted the pension or any gratuity but no such order has been passed of any sort for withholding the same. According to learned counsel for the petitioner, the petitioner, especially being a lady, had to undergo the rigor of Covid-19 pandemic without money and that money was not the bounty of the State and rather it was a legally entitled money of pension and gratuity of the petitioner which she earned so in her life. Therefore this Court is of the view that there is a direct infringement of right under Article 21 of the Constitution of India as well. Therefore, the respondent-State has not only violated the Statutory Rules but also infringed Article 21 and Article 300-A of the Constitution of India qua the petitioner.

13. The Hon'ble Supreme Court in **Olga Tellis and others versus Bombay Municipal Corporation** 1985(3) SCC 545 rather observed that right to life includes right to livelihood.

14. In view of the above, the present petition is allowed. The impugned order/letter dated 07.01.2020 (Annexure P-2) is hereby set-aside and quashed. The State is restrained from making any recovery from the petitioner of the amount of Rs.1,36,640/-. The State is directed to forthwith

fix and calculate pension and gratuity of the petitioner and pay to her within a period of two months from today alongwith interest @6% per annum. In case the aforesaid amount is not paid to the petitioner within the aforesaid period of two months from today, then the petitioner shall be entitled for future rate of interest @9% per annum instead of 6% per annum.

15. In the peculiar facts and circumstances of the present case, where the petitioner is a lady and there was no reason of any kind whatsoever for withholding of the pension and gratuity of the petitioner for last four years and the action of the State was *ex facie* arbitrary in nature being violative of Articles 300-A and 21 of the Constitution of India, the petitioner shall also be entitled for exemplary costs which are assessed as Rs.1,00,000/- (one lakh) which shall be paid by the State of Punjab to the petitioner within the aforesaid period of two months from today.

16. Respondent No.1- the Principal Secretary, Department of Rural Development and Panchayats, Punjab is directed to hold an enquiry and fix the responsibility of the official(s) concerned who are responsible for the aforesaid action of the State and shall be at liberty to recover the costs from the concerned official(s) by following requisite procedure strictly in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

May 03, 2023

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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No