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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-1781-2023

Date of Decision: 11.04.2023

Kaushalya Devi alias Kushaliya Devi

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arnav Sood, Legal Aid Counsel,
for the petitioner.

Ms. Deepali Puri, Addl. A.G., Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a petition which has been filed by a widow, who is stated to be bed-ridden and has been running from pillar to post to seek justice. It is a second round of litigation by a widow for seeking the family pension which is not only a Statutory Right but also a Constitutional Right under Article 300-A of the Constitution of India which provides that nobody shall be deprived of his property except by the authority of law. Right to property has also been held to be a Human Right by the Hon'ble Supreme Court.

Factual Matrix:-

2. The facts of the present case are that the husband of the petitioner, namely, Sh. Gurmail Singh was working as Junior Scale Stenographer in the Office of Deputy Registrar, Cooperative Societies, Punjab at SBS Nagar. During the course of his service, an FIR No.141 dated

02.06.2005, under Sections 307, 326, 324, 323, 148 & 149 IPC was lodged against him. He faced the trial and was convicted on 19.03.2014 and was sentenced to undergo imprisonment for a period of 3 years. The aforesaid Office of the Deputy Registrar, Cooperative Societies conveyed the information with regard to the conviction to the Head Office vide letter dated 28.03.2014 which was received by the Office of Registrar, Cooperative Societies, Punjab, Chandigarh on 31.03.2014. However, prior to the aforesaid date which was also the date on which he reached the age of superannuation, he had already applied for premature retirement on 17.12.2013, but without disclosing the pendency of the criminal proceedings against him. At the time when he applied for premature retirement, he was facing trial but there was no conviction order because conviction had taken place on 19.03.2014.

3. On the aforesaid date i.e. 31.03.2014, an order was passed by the competent authority vide Annexure R-2 (Colly.) by which he was retired and no condition of any sort was put on the retirement. Thereafter, on 04.05.2015, the husband of the petitioner submitted an application for grant of pensionary benefits but the Office of the Accountant General, Punjab objected to the same. He did not get any pension or pensionary benefits despite the fact that by way of an order passed by the competent authority he had retired from service without any condition. After about 4 months of his filing an application for premature retirement, he unfortunately passed away on 05.09.2015. After the death of the aforesaid Gurmail Singh, the rights of retiral benefits/pensionary benefits accrued to the petitioner being widow in the nature of family pension and the other benefits which were to be

received in a lawful manner by the husband of the petitioner but neither any retiral benefits which had accrued to the husband of the petitioner were given nor the family pension was given to the petitioner being widow of the aforesaid Gurmail Singh.

4. Thereafter, the petitioner in the year 2016 filed a writ petition before this Court bearing CWP-6187-2016 seeking grant of family pension and all the retiral benefits which accrued to the husband of the petitioner and to which the petitioner is now entitled being his widow. The aforesaid writ petition was disposed of by this Court by passing a detailed order vide Annexure P-2 on 25.02.2019. This Court had considered the effect of Rule 2.2 of the Punjab Civil Services Rules and even reproduced the same in its order and even a judgment of this Court in **CWP-22174-2015** titled as **“Darshan Singh Vs. State of Punjab and others”**, decided on 19.12.2018 was also mentioned and the relevant portion of the aforesaid judgment was also reproduced in which it was held that not more than 1/3rd of the pension of the convicted employee can be withheld. A direction was issued to decide the entitlement of the husband of the petitioner for the grant of pensionary benefits keeping in view the Rule 2.2. The operative part of the aforesaid order is reproduced as under:-

“In these circumstances, the present writ petition is disposed of with the directions to decide the entitlement of the husband of the petitioner for the grant of the pensionary benefits keeping in view Rule 2.2. The respondents shall pass appropriate orders under Rule 2.2 of the Punjab Civil Services Rules within two months from the date of receipt of certified copy of this order and whatever the petitioner is found entitled for, in

respect of the benefits for the service, which the late husband of the petitioner had served, shall be released within a period of two months thereafter.

The writ petition stands disposed of accordingly.”

5. Thereafter, the Department of the Office of the Registrar Cooperative Societies, Punjab initiated disciplinary action against some of its other employees on the ground that at the time when the retirement of the husband of the petitioner was being considered, they did not disclose the factum of the conviction of the husband of the petitioner with his connivance. On the basis of the disciplinary proceedings being initiated against some of the officers which did not include the petitioner, a punishment order was passed on 09.03.2020 qua them only.

6. In pursuance of the aforesaid direction issued by this Court vide Annexure P-2, the Registrar Cooperative Societies, Punjab vide impugned order dated 29.07.2019 (Annexure P-3) passed an order by stating that the husband of the petitioner did not disclose the factum of conviction at the time of his retirement and it smells of conspiracy with the departmental officials. In the aforesaid impugned order, it was further stated that in the cases of criminal involvement, the conduct of an employee is required to be judged along with pecuniary losses and in view of this, the department was under obligation to initiate action under Rule 2.2(b) of the Punjab Civil Services Rules to discontinue the services of an employee who had been convicted by a criminal Court. In the aforesaid order, the Registrar, Cooperative Societies, Punjab observed that he had come to the conclusion that it was incumbent upon the husband of the petitioner to have informed the department about the judgment passed against him but by concealing the

facts, he took premature retirement and it was a clear cut case of concealment of facts and in such cases no benefit can be allowed to the employee and in view of grave misconduct and negligence on the part of the husband of the petitioner, his pension and other pensionary benefits are being withheld under Rule 2.2(b) of the Punjab Civil Services Rules. Thereafter, the present writ petition has been filed impugning the aforesaid order passed by the Registrar, Cooperative Societies, Punjab. When notice of motion was issued considering the submissions made by the learned counsel for the petitioner, the Officer, who had passed the aforesaid order was also impleaded as party in the present case, who has also filed his response along with the response filed by the State of Punjab.

Submissions by learned counsel for the petitioner:-

7. Mr. Arnav Sood, learned counsel for the petitioner has submitted that he is a Legal Aid Counsel since the petitioner is a widow and is bed-ridden and cannot afford a counsel and therefore, he has been deputed to assist this Court. He further submitted that the husband of the petitioner died in the year 2015 and it is almost 8 years that the petitioner has been suffering and has been running from pillar to post to seek justice and the present is a second round of litigation filed by her. He also submitted that at the time when the petitioner was directed to retire, no other condition was imposed with regard to any of the factor apart from the fact that he has retired. The order of conviction against the husband of the petitioner was passed in the year 2014 against which he had preferred an appeal before this Court and submitted that when the husband of the petitioner died in the year 2015, there was no question of pendency of any criminal proceedings

pending against the husband of the petitioner since the appeal had abated and once the appeal itself had been abated by virtue of Section 394 of the Code of Criminal Procedure then at the time after the death of the husband of the petitioner, there was no embargo for grant of family pension to a widow, who is the present petitioner. He further submitted that impugned order which has been passed by the Registrar, Cooperative Societies, Punjab is based upon the observation that the husband of the petitioner was guilty of misconduct although regarding which neither any inquiry was initiated against him nor any Show-Cause Notice was issued to him nor any such kind of order was passed against him. Furthermore, the impugned order has been passed in the year 2019 which was after the death of the husband of the petitioner by observing that the husband of the petitioner is guilty of grave misconduct, and therefore, the impugned order has been passed against a dead person which is unknown to service jurisprudence. He also submitted that there was no embargo for the sanction of family pension to the petitioner under any provision of law. He further submitted that this Court vide Annexure P-2 had specifically directed the Registrar, Cooperative Societies, Punjab to pass an order in view of Rule 2.2 of the Punjab Civil Services Rules whereas the impugned order has been passed in a wholesale violation of Rule 2.2, and therefore, the order is liable to be set aside and a direction may be issued to the respondent/State to sanction family pension to the petitioner along with all the retiral benefits which accrued to the husband of the petitioner along with interest.

Submissions by the learned Additional Advocate General, Punjab:-

8. On the other hand, Ms. Deepali Puri, learned Additional

Advocate General Punjab, while referring to the replies filed by the State of Punjab and respondent No.3 submitted that at the time when the husband of the petitioner was retired, he in connivance with the other officials of the department concealed the factum of his conviction, and therefore, he was guilty of misconduct. She however submitted that later on action was taken against the other officials with regard to misconduct but no action was taken against the husband of the petitioner with regard to the same at that point of time or later. She further submitted that had the husband of the petitioner informed the department with regard to the factum of conviction prior to his retirement then he ought to have been dismissed from service and consequently, he would not have been ordered to be retired and all his benefits would have been forfeited.

Analysis of submissions:-

9. I have heard the learned counsel for the parties at length.
10. Before analysing the rival contentions of the learned counsels for the parties, the impugned order dated 29.07.2019 requires to be dissected on the basis of the observations which have been made therein as follows:-

1. Observation has been made with regard to concealment of fact by the husband of the petitioner and that he had committed a grave misconduct and negligence whereas the husband of the petitioner had died 4 years ago in the year 2015 and therefore, the findings are against a dead person.
2. Since the findings are against a dead person, there was no question of any granting of any hearing or following the *Principles of Natural Justice* and prior to the impugned order,

no disciplinary action or any inquiry has been held against the husband of the petitioner.

3. General observations have been made that in the cases of criminal involvement, the conduct of an employee is required to be judged along with pecuniary losses. However, the FIR which the husband of the petitioner was facing in which he was ultimately convicted was pertaining to injury and there was no allegation or finding of any Court pertaining to any pecuniary loss to the State.

4. It has been directed in the impugned order that the pensionary benefits of the husband of the petitioner are withheld under Rule 2.2(b) and this direction is against a dead person and in a wholesale violation of Rule 2.2(b).

5. Withholding of pensionary benefits of husband of the petitioner is for an unlimited period of time and particularly in view of the fact that the criminal proceedings have already been culminated with the abatement of the appeal on the death of the husband of the petitioner. There is no order of forfeiture but only for withholding of benefits which appears to be for unlimited time because the husband of the petitioner had already died.

11. This Court vide order Annexure P-2 had earlier issued a specific direction to the State of Punjab to pass an order in view of Rule 2.2 of the Punjab Civil Services Rules, Volume-II. The aforesaid Rule consists of three parts: Clause (a), Clause (b) and Clause (c). All the three Clauses are

reproduced as under:-

“2.2. Recoveries from pensions.—(a) Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.

In a case where a pensioner is convicted of a serious crime, action shall be taken in the light of the judgment of the court relating to such conviction.

In a case not covered by the preceding paragraph, if the Government considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order,—

- (i) serve upon the pensioner a notice specifying the action proposed to be taken against him and the grounds on which it is proposed to be taken and calling upon him to submit, within sixteen days of the receipt of the notice or such further time not exceeding fifteen days, as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and*
- (ii) take into consideration the representation, if any, submitted by the pensioner under sub-clause (i).*

Where a part of pension is withheld or withdrawn the amount of such part of pension shall not ordinarily exceed one-third of the pension originally sanctioned nor shall the amount of pension left to the pensioner be ordinarily reduced to less than three thousand five hundred rupees per month, having regard to the consideration whether the amount of the pension left to the pensioner, in any case, would be adequate for his

maintenance.

In a case where an order under clause (i) above is to be passed by the Government, the Public Service Commission shall be consulted before the final order is passed.

The decision of the Government on any question of withholding or withdrawing the whole or any part of the pension under this rule shall be final and conclusive.

Explanation.—*In this rule, the expression “serious crime” includes crime involving, an offence under the Official Secrets Act, 1923 (19 of 1923); and the expression “grave misconduct” includes the communication or disclosure of any secret, official code or pass-word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.*

Note.—*A claim against the Government employee may become known and the question of making recovery may arise:—*

(a) when the calculation of pension is being made and before the pension is actually sanctioned; or

(b) after the pension has been sanctioned.

The claim and the recovery may be one or other of the following categories:—

(1) Recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.

(2) Recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house-rent,

Postal Life Insurance premia, outstanding motor car, house building, travelling allowance or other advances.

(3) Recovery of non-Government dues.

1. In cases falling under (a) above, none of the recoveries mentioned in (1) to (3) above may be effected by a reduction of the pension about to be sanctioned except in the following circumstances:—

(i) Omitted.

(ii) When the pensioner by request made or consent given has agreed that the recovery may be made. If such request is not made or consent is not given by the pensioner, even sums admittedly due to Government such as house rent, outstanding advances, etc., may not be recovered from pension. In such cases, however, the executive authorities concerned would have to consider whether they should not try to effect the recovery otherwise than from pension, for example, by going to a court of law, if necessary.

2. In cases falling under (b) above, none of the recoveries described in clauses (1) to (3), may be effected by the deduction from a pension already sanctioned except at the request or with the express consent of the pensioner. Under rule 2.2(a), of this Volume, future good conduct is an implied condition of every grant of a pension and a pension can be withheld or withdrawn in whole or in part if the pensioner is convicted of serious crime or is guilty of grave misconduct. This, however, refers only to crime or misconduct occurring after the pensioner has retired from service, and the rule would not, therefore, cover a reduction of pension made for the purpose of retrieving loss caused to Government as a result of negligence or fraud on the part of the pensioner

occurring before he had retired from service.

In cases where the pensioner does not agree to recovery being made even of sums admittedly due to Government, the concluding remarks made under 1(ii) above, will also be applicable.

Heads of offices should see that the last pay or leave salary prior to retirement shall not be paid until it is clear that a retiring Government employee has no outstanding dues to Government. Sometimes, it may not be practicable to ascertain in time all the outstanding dues, while sometimes dues may exceed the amount of last pay or leave salary. In such cases, it is the duty of the heads of offices (in consultation with Treasury officers and Accountant-General, Punjab in the case of Group "A" or Group "B" officers), to bring promptly to the notice of the Accountant-General, Punjab, all the outstanding amounts by a separate communication, stating in detail the nature of recovery and why it has not been possible to effect it from last pay or leave salary. The outstanding amounts should also be clearly and completely noted in the last pay certificates in sufficient detail with reference to the previous correspondence with the Accountant-General, Punjab, and if the recovery is to be effected from pension, it should be clearly recorded on the last pay certificate itself that the request or express consent of the pensioner in writing to the recovery from his pension has been obtained.

Note 1.—*Although compassionate allowance is of the nature of an ex-gratia payment it is really a form of pension and, therefore, recoveries from it, once it is sanctioned, should be governed by the above orders.*

Direct recovery of Government dues from Compassionate Allowance is not permissible, under these orders, but recovery may be made indirectly (before the

allowance is sanctioned) by reducing the allowance either permanently or as a temporary measure.

***Note 2.**—Strictly speaking under the orders no recovery of amount is permissible from pension but if final recovery has been made it need not be refunded to the pensioner concerned.*

***(b)** The 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, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:-
Provided that—*

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment—

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

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

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to

departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

Explanation.—*For the purpose of this rule—*

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted—

(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.

Note:—*As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.*

(c)(1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority:

Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.

(2) Payment of provisional pension made under sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or

withheld either permanently or for a specified period.

***Note.**—The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings.”*

12. An Analysis of the aforesaid three clauses would be required for the purpose of examining the observation made by the Registrar Cooperative Societies that the pension and the pensionary benefits of the husband of the petitioner have been withheld in view of Rule 2.2 of the Punjab Civil Services Rules. Rule 2.2(a) provides that the future good conduct is an implied condition of every grant of pension, the government reserves to themselves the right to withholding or withdrawing a pension or any part of it if the pensioner is convicted of serious crime or be guilty of grave misconduct. In the case where the pensioner is convicted of a serious crime then action is to be taken in the light of the judgment of the Court relating to such conviction. However, in the present case, the conviction was under Sections under 148, 324/149, 324, 323 & 326/149 IPC and nothing has been brought on the record to show that any action was required to be taken on the basis of any observation made in the order of conviction. It was not a case of any pecuniary loss to the State. Rule 2.2(a) pertains to the encompasses within its domain, the rights of the Government to withhold the pension on the basis of future good conduct which is stated to be an implied condition for the grant of pension whereas in the present case, the husband of the petitioner had already died and there was no question of any future good conduct. Furthermore, at the most if a pensioner is to be held guilty of grave misconduct and for the purpose of securing the interest of the State

pertaining to the future good conduct, pension can be withheld but here is a case where there is neither any inquiry nor any disciplinary proceeding nor any proceeding of any sort against the husband of the petitioner pertaining to allegation of grave misconduct. However, shockingly an order has been passed after four years after the death of the husband of the petitioner by making an observation that he is guilty of grave misconduct which is totally unknown to service *jurisprudence*.

13. Rule 2.2(b) deals with a situation where the Government further reserves 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 of the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. However, in the present case, there was neither any departmental proceeding nor a judicial proceeding pending against the husband of the petitioner. Both the aforesaid expressions '*departmental proceeding*' and '*judicial proceeding*' are also defined in the aforesaid Rule 2.2(b) to mean that a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner or if the officer has been placed under suspension from an earlier date, on such date and the expression '*judicial proceeding*' shall be deemed to be instituted in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made. However, in the present case at the

time of passing of the impugned order even the appeal was abated by virtue of Section 394 of the Code of Criminal Procedure. The husband of the petitioner had died four years ago and admittedly there was no disciplinary proceeding against the husband of the petitioner and in view of the aforesaid provision, there was no judicial proceeding against the husband of the petitioner and therefore, there was no question of invoking the provision of Rule 2.2(b) at the time of passing impugned order in the year 2019. Apart from the above, even pension in case it is to be withheld, it cannot be withheld for more than 1/3rd of the pension and that too after giving an opportunity of hearing and also after getting sanction from the Punjab Service Commission whereas in the present case, the person was a dead person and there was no question of giving any opportunity nor anything has been placed on record to show that any sanction was obtained from the Punjab Service Commission.

14. Rule 2.2(c) pertains to a situation where any departmental or judicial proceeding is instituted under Clause (b) of Rule 2.2 or where a departmental proceeding is continued under Clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to the date on which he was placed under suspension; but no gratuity or death-cum-

retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon. In the present case, there was neither any departmental proceeding nor any judicial proceeding pending against the husband of the petitioner at the time when the impugned order was passed in the year 2019 and therefore, the pension or even the gratuity could not have been withheld even under the sub-rule (c) of Rule 2.2.

15. The right to receive pension and pensionary benefits is a Constitutional Right within the domain of Right to Property under Article 300-A of the Constitution of India. It is not only a Constitutional Right but it has been so held by the Hon'ble Supreme Court that it is also a Human Right. Therefore, considering the facts of this case where the petitioner is a widow and her husband had died 8 years ago, this Court is of the considered view that it is not only that Article 300-A has been violated but even Article 21 of the Constitution of India has also been infringed wherein the State has tried to take away the Right to Life of a widow.

16. The question which is required to be seen would be as to when a person retires and under the Statutory rules, a person is entitled for pension or family pension then whether a person can be deprived of the same and if so, then under what authority of law and under which Statutory provisions the same can be done. In the present case, the husband of the petitioner was retired unconditionally by passing an order but the State or the learned Additional Advocate General, Punjab has not been able to show as to under what provision of law or under what authority of law, the pension and pensionary benefits or family pension has been denied. Admittedly, there was no disciplinary proceeding against the husband of the petitioner and

there was no judicial proceeding at the time of passing of the impugned order in the year 2019 since the husband of the petitioner had already died and it was for the first time after the death of the husband of the petitioner that by way of impugned order, it has been so observed by the Registrar Cooperative Societies that the husband of the petitioner is guilty of misconduct which is an order against a dead person which is not permissible under the law. The argument raised by learned Additional Advocate General, Punjab that at the time of retirement, had the petitioner apprised the Department of his conviction, he would have been dismissed from service is totally against the record and hypothetical argument. In the reply by way of affidavit filed by the Additional Registrar (Administration), it has been specifically stated in Para No.3 that the husband of the petitioner was convicted on 19.03.2014 and the Deputy Registrar, Cooperative Societies, SBS Nagar conveyed the order of conviction vide its letter No.507 dated 28.03.2014 which was received in the office of respondent No.2 i.e. Registrar Cooperative Societies on 31.03.2014. The husband of the petitioner was retired by passing an order on the same day i.e. 31.03.2014 vide Annexure R-2/T by the Registrar Cooperative Societies. The date on the order is 25.03.2014 but it is released on endorsement to various offices on 31.03.2014. Therefore, no fault can be attributable to the husband of the petitioner.

17. The law with regard to the right to receive the pension and pensionary benefits which are not a bounty of the State also need to be considered in the present case. Way back in the year 1971, a Constitution Bench of Hon'ble Supreme Court in "Deokinandan Prasad Vs. State of

Bihar”, 1971(2) SCC 330, held that pension is not a bounty of the State and is rather a Fundamental Right under Article 31(1) of the Constitution of India. However, later on by virtue of 44th Amendment of the Constitution of India, Right to Property became a Constitutional Right under Article 300-A of the Constitution of India instead of a Fundamental Right. The relevant portion of the aforesaid judgment is reproduced as under:-

“32. 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.

33. 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".

18. Thereafter, in “State of Kerala Vs. M. Padmanabhan Nair”, AIR 1985 Supreme Court 356, the Hon’ble Supreme Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property, in their hands. The aforesaid authoritative law was thereafter

reiterated by the Hon'ble Supreme Court in "**Dr. Uma Agrawal Vs. State of U.P. and another**", 1999(2) SCT 347 (SC).

19. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in "**State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another**", 2013(12) SCC 210 again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is 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 unblemished 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. 20. 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.”

20. A Full Bench of this Court in “**Dr. Ishar Singh Vs. State of Punjab and another**” 1993(3) PLR 499, also discussed the entire issue with regard to right to withhold the pension and permissibility to withhold the commutation of pension etc. was also discussed in detail wherein it was observed that the entire pension has to be paid and it cannot be withheld without any authority of law. The relevant portion is reproduced as under:-

57. As a result of the above discussion, I would conclude as under:-

(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.

(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.

(iii) Pension cannot be adversely affected before a finding of guilt is returned.

(iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no

limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.”

21. In a recent judgment passed by a Division Bench of this Court in **LPA No.340 of 2017** titled as “**Gurcharan Singh Vs. State of Punjab**”, decided on 08.02.2023, it was observed that in the absence of any pecuniary loss, no recovery can be effected from the pensioner. The relevant portion of the aforesaid judgment is reproduced as under:-

“In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No.1, no recovery from pension could have been ordered as a punitive measure by the respondents.”

22. In “**Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others**”, 2013(1) SCC 353, the Hon’ble Supreme Court observed that right to property is now considered to be not only a Constitutional or a Statutory Right but also a human right. Para 9 of the aforesaid judgment is reproduced as under:-

“9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the

*Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide: **Lachhman Dass v. Jagat Ram**, (2007) 10 SCC 448; **Amarjit Singh v. State of Punjab**, (2010)10 SCC 43; (2010)4 SCC (Civ) 29, **State of Madhya Pradesh v. Narmada Bachao Andolan**, (2011)7 SCC 875: AIR 2011 SC 1989, **State of Haryana v. Mukesh Kumar**, (2011)10 SCC 404: (2012)3 SCC (Civ) 769: AIR 2012 SC 559 and **Delhi Airtech Services (P) Ltd. v. State of U.P.**, (2011)9 SCC 354: (2011)4 SCC (Civ) 673: AIR 2012 SC 573)."*

Conclusion:-

23. In view of the aforesaid peculiar circumstances of the present case, no justification has come forth as to under what authority of law, the pension and other benefits of the husband of the petitioner and family pension of the petitioner have been withheld or denied. Therefore, Constitutional, Statutory and Human Right of the petitioner has been violated by the State.

24. Consequently, the present petition is allowed. The impugned order (Annexure P-3) dated 29.07.2019 is hereby set aside. The State is directed to fix the pension of the husband of the petitioner and on the basis of the same, fix the family pension of the petitioner and pay to her along with interest @6% per annum from the date of its accrual till the date of its disbursement within a period of three months from today. All the other retiral benefits, which accrued to the husband of the petitioner which has not

been paid to the husband of the petitioner shall also be paid to the petitioner along with interest @ 6% per annum within three months from today. In case, the aforesaid amount is not paid to the petitioner within a period of 3 months from today, then the petitioner shall be entitled for future interest @ 9% per annum instead of 6% per annum.

25. Considering the aforesaid circumstances where the petitioner is a widow and is stated to be bed-ridden whose husband died in the year 2015 which is 8 years ago and she had to knock the doors of this Court twice and now for the second time, through a legal aid counsel because of paucity of money, the petitioner shall also be entitled for exemplary costs which are assessed at Rs.2 lacs which shall also be paid to the petitioner within a period of 3 months from today.

11.04.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- 1. Whether speaking/reasoned: Yes
- 2. Whether reportable: Yes