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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-7424-2020
Date of Decision: 19.04.2023

Jaswant Singh

..... 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. Sandeep Chopra, D.A.G., Punjab.

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JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to pay interest @ 18% per annum on the delayed payments of the Gratuity, Leave Encashment and GPF and to release the pension and other remaining retiral benefits.

2. Learned counsel for the petitioner has submitted that it is a case where the petitioner retired on 31.05.2019 as Principal/Group Instructor after seeking extension of service and at the age of 60 years. He further submitted that at the time of the retirement or even thereafter, there were neither any disciplinary proceedings nor any criminal proceedings nor any other type of proceedings pending against the petitioner. He also submitted that in fact as per the stand taken by the State in its affidavit, some complainant had filed a complaint before the Human Rights

Commission on the ground that there was some money dispute with regard to some canteen, and thereafter, even the Human Rights Commission also dismissed the complaint on the ground that no human rights have been violated. He further submitted that the pension and the pensionary benefits are not only the Statutory rights but also Constitutional Rights guaranteed under Article 300-A of the Constitution of India and the same can be deprived only in accordance with law and under some provisions of law. He further submitted that there had been no violation of any Statutory provision or Rule, and therefore, the denial of pension and pensionary benefits to the petitioner was without the authority of law. He further submitted that the mere pendency of one complaint before the Human Rights Commission is no ground for denial of pension and pensionary benefits and has submitted that the benefits have been paid to the petitioner with a delay and regarding which the dates have been mentioned in the reply which has been filed by the State in Para No.3. He also submitted that GP Fund has been paid to the petitioner on 19.08.2019, GIS has been paid on 27.03.2020, Leave Encashment has been paid on 13.02.2020, Pension, DCRG and Commutation of pension have been paid on 11.08.2020, for which there is no ground at all for making delayed payment, and therefore, the petitioner is entitled for grant of interest on the delayed payment in view of the full Bench judgment of this Court passed in ***"A.S. Randhawa Vs. State of Punjab and others", 1997(3) SCT 468***.

3. On the other hand, Mr. Sandeep Chopra, learned DAG, Punjab while referring to the reply filed by the State has submitted that it is correct that the petitioner had retired on 31.05.2019 and has been granted the

pension and pensionary benefits on the aforesaid dates which has been so stated in a tabulated form in Para No.3 of the reply. He however submitted that the reason for delay was that a Contractor had filed a complaint before the Human Rights Commission as he had raised some dispute regarding Canteen's money but the Human Rights Commission dismissed the complaint on 27.09.2019, and thereafter, the entire process was started for payment of pension and pensionary benefits of the petitioner, and therefore, it cannot be said that there was any delay in disbursement of the amount.

4. I have heard learned counsel for the parties.

5. The petitioner had retired on 31.05.2019. Admittedly, there were neither any disciplinary proceedings nor any criminal proceedings nor any statutory proceedings of any kind pending against the petitioner. A complaint filed by one Contractor of canteen to the Human Rights Commission cannot be termed to be any proceeding under the law and that itself cannot become a ground for withholding or denying the pension and pensionary benefits to an employee. Even otherwise also, the complaint was dismissed as the Commission found that the issue raised in the complaint does not amount to any violation of human rights.

6. This Court takes a serious view of the attitude adopted by the State. Firstly, the payment of pension and pensionary benefits was deferred for non existing reasons and secondly, the same is sought to be justified at the time of filing of the reply. The question would be that whether mere filing of a complaint by a Contractor before the Human Rights Commission with regard to some canteen dispute and that also pertaining to only Rs.1.5 lacs that a right which has been vested upon an employee under the

Statutory Rules can be taken away in this manner. This Court expresses its displeasure towards the attitude adopted by the State agencies whereby even after making a mistake, they seek to justify their mistake in the reply. Under Article 300-A of the Constitution of India, Right to Property cannot be divested without the authority of law and it is a settled law that Right to pension and pensionary benefits are Right to Property, and therefore, it is a Constitutional Right. For a number of times, Hon'ble Supreme Court has dealt with this issue and rather way-back in the year 1971, a Constitutional Bench of 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 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".*

7. 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 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:*
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> > *"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?*
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> > *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 gratituous 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 maters 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."

8. 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)."

9. In the present case, it is clear that the pension and pensionary benefits of the petitioner has been delayed because of non-existent grounds and without the authority of law. Therefore, the present petition is allowed. The petitioner shall be entitled for grant of interest @ 6% per annum from the date of its accrual i.e. the date of retirement till the date of its disbursement on all the retiral benefits. Let the amount be calculated and paid to the petitioner within a period of 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.

10. In view of peculiar facts and circumstances of the case, whereby the petitioner had to approach this Court due to *ex facie* arbitrary action of the State and delay has been caused on non-existent grounds, the petitioner shall also be entitled for costs which are assessed at Rs.25,000/- which shall also be paid to the petitioner within a period of 3 months from today.

19.04.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No