

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CWP-12383 of 2019 (O&M)

Date of Decision:29.04.2023

Surjit Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ranjivan Singh, Advocate,
for the petitioner.

Ms. Ishma Randhawa, Addl. AG, Punjab

Mr. Sarthak Gupta, Advocate,
for respondents No.4 and 5.

JASGURPREET SINGH PURI, J. (Oral)

CM-7697-CWP-2022 and

CM-7698-CWP-2022

Vide this application, the applicant-petitioner is seeking permission to place on record the accompanying application (CM-7698-CWP-2022) which is filed for seeking direction to respondents No.4 and 5 to issue No Dues Certificate alongwith Annexures A-1 to A-9.

For the reasons mentioned in the application, the same is allowed and the accompanying application alongwith Annexures A-1 to A-9 are taken on record, subject to all just exceptions.

Both the applications stand disposed of.

CWP-12383 of 2019

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *mandamus* directing the respondents to release/grant the benefit of family pension and other retiral benefits including DCRG etc. under the provisions of the Punjab Civil Services Rules.

Factual Matrix

2. The brief facts of the present case are that the petitioner is a widow of one Shri Gulzar Singh who was appointed in the State of Punjab in the Department of Irrigation in the year 1984. Thereafter, on 19.08.2009 vide Annexure P-1 his services were regularized by the State of Punjab. Thereafter, he was posted with respondents No.4 and 5 i.e. the Bhakra Beas Management Board (BBMB) on 01.06.2010. While he was working in the aforesaid organization, the husband of the petitioner unfortunately died on 21.08.2011. As per learned counsel for the petitioner, the son of the petitioner was called by the BBMB to hand over the charge and possession of the quarter in which the husband of the petitioner was residing and the possession of the quarter was immediately handed over to the BBMB on 13.10.2012 vide Annexure A-2. After the death of the husband of the petitioner, the petitioner being widow was therefore entitled for grant of family pension by the Punjab Government but the same was not paid to her. The husband of the petitioner was regularized after 01.01.2004 and a Division Bench judgment of this Court had already decided the issue with regard to the grant of old pension scheme to those employees who were recruited prior to 01.01.2004 but regularised thereafter vide judgment **Harbans Lal versus The State of Punjab and others** (CWP-2371 of 2010, date of decision 31.08.2010) Annexure P-8. The

husband of the petitioner was also asked to deposit CPF so that the benefit of old pension scheme can be conferred upon him and consequently vide Annexure P-7, the petitioner deposited the CPF on 14.03.2014 so that the benefit of the old pension scheme can be given in accordance with the judgment of Division Bench of this Court in ***Harbans Lal's*** case (supra). However, still the family pension and all the retiral benefits were not paid to the petitioner.

3. When the petitioner visited a number of times to the offices of the State of Punjab and to the BBMB for release of family pension and pensionary benefits, the BBMB vide Annexure A-3 dated 26.08.2019 after eight years wrote a letter to the petitioner that there are certain objections from the office of the Accountant General, Punjab and apart from the above, it was also stated in the letter that the possession of the quarter which was allotted to her husband has still not been handed over to the department and No Dues Certificate has not been issued by the Estate Sub-Division and therefore it was required that the vacant possession of the house was handed over so that No Dues Certificate may be issued and further action can be taken for family pension case. Thereafter, vide Annexure A-4 on 29.11.2019 another letter was written to the petitioner by the BBMB by stating that the penalty of the quarter which was allotted to her husband comes out to Rs.3,22,505/- for the unauthorised period from 22.08.2011 to 05.09.2019 and the petitioner was asked to deposit the aforesaid amount so that No Dues Certificate be issued. This letter was based upon an earlier letter written by the Additional Superintending Engineer, Municipal Board, BBMB, Sundernagar to the Senior Executive Engineer dated 22.11.2019 (Annexure A-5) that an amount of Rs.3,22,505/- be deducted from the arrears of the husband of the petitioner.

Thereafter, the petitioner wrote a letter to the Senior Executive Engineer, BBMB, Sundarnagar vide Annexure A-7 dated 11.12.2019 by specifically stating that soon after the death of her husband, they had locked the house, cut off the power and the keys were submitted in the concerned office and therefore the penalty which is sought to be so imposed should be waived off and pension case be forwarded to the Irrigation Department, Punjab. However, the State of Punjab still insisted upon the no objection to be received from the BBMB with regard to the objection raised by the BBMB pertaining to the arrears and they did not grant any family pension to the petitioner. Thereafter, the petitioner deposited the aforesaid amount with the BBMB and thereafter the process of family pension started and learned counsel for the petitioner submitted today that the family pension with arrears and retiral benefits have now been paid to the petitioner on 01.03.2023 during the pendency of the present petition.

Submission of learned counsel for the petitioner

4. The learned counsel for the petitioner submitted that the actions of both the State of Punjab and that of BBMB were totally illegal, arbitrary and violative of not only rules governing the family pension but was also violative of Article 300-A and Article 21 of the Constitution of India. He submitted that immediately after the death of the husband of the petitioner who was residing at Sundarnagar alone whereas the entire family including the petitioner was residing in Punjab were called at Sundarnagar for vacation of the quarter and on 13.10.2012 the entire quarter was vacated and keys were handed over to the department and regarding which he has referred to Annexure A-2 in which even a certificate had been issued under the signatures of the Electrician and Junior Engineers by

preparing an inventory. He submitted that once the quarter itself was vacated by the petitioner and her family especially when they were not even residing there, then there was no occasion for the BBMB to have not sent the No Dues Certificate to the State of Punjab so that the further family pension case may be processed. He specifically submitted that neither any notice was issued to the petitioner thereafter nor any proceedings for eviction were initiated under any provisions of law including the Public Premises Act nor any other kind of intimation was sent to the petitioner that the house has not been vacated because in fact the house already stood vacated vide Annexure A-2. He submitted that when the petitioner was running from pillar to post then suddenly after a period of eight years, letters were written to the petitioner vide Annexure A-3 and Annexure A-4 for the first time in which it was stated that No Dues Certificate could not be issued because of unauthorised possession and a penalty of Rs.3,22,505/- was imposed without making any assessment of the same in accordance with law. He submitted that whenever there is any unauthorised possession of a Government house then assessment has to be done by following a specific procedure and no officer of any organization on its own, can straightway fix the amount of penalty. In the present case no assessment procedure was carried out nor any notice in this was issued to the petitioner.

5. He further submitted that the family pension and all the retiral benefits were not paid to the petitioner even after a long period of time and the BBMB had told the petitioner that it can be done only when she deposits the aforesaid amount and therefore the petitioner had no option but to deposit the aforesaid amount of Rs.3,22,505/- with the BBMB so that at least she could get her family

pension and other retiral benefits to meet her requirements and that also after a lapse of long time and therefore she was forced to deposit the aforesaid amount which she deposited under protest. He submitted that after the same was deposited on 18.07.2022, the matter was sent to the State of Punjab and thereafter, the State of Punjab granted the family pension and pensionary benefits to the petitioner after sanctioning the same on 17.10.2022 and the actual payment was made to the petitioner on 01.03.2023.

6. Learned counsel for the petitioner submitted that the action of both the State of Punjab and that of the BBMB was arbitrary and illegal. He submitted that the action of the BBMB was without the authority of law because after a period of eight years for the first time they wrote a letter to the petitioner for deposit of an amount regarding which not even an assessment was made in accordance with law and it was only a cover up operation and so far as the State of Punjab is concerned, the husband of the petitioner was an employee of the State of Punjab and it was the bounden duty of the State of Punjab to have released the family pension and the retiral benefits to the petitioner immediately after the death of the husband of the petitioner and so far as the objection taken by the State of Punjab that no dues were not received from the BBMB, the same cannot be to the detriment to the petitioner because it is only an inter-departmental communication which was otherwise also without any basis and even otherwise also assumingly for the sake of arguments, an amount of Rs.3,22,505/- was to be paid, then the entire family pension and the pensionary benefits could not have been stopped with the result that the petitioner being a widow had to face acute hardship especially during the worse period of Covid-19 pandemic which she has seen without any money. He

submitted that now since the family pension and the other retiral benefits have been paid to the petitioner, the petitioner is entitled for the grant of interest on the delayed payments in view of the law laid down by a Full Bench judgment of this Court in A.S. Randhawa versus State of Punjab and others 1997(3) SCT 468 and also for the refund of the amount of Rs.3,22,505/- alongwith interest from the BBMB since the BBMB was not authorised to charge the same as there was no order by any competent authority under the law after making due assessment by following due procedure for recovering the same and there is nothing in the reply filed by the BBMB or on the record to suggest that as to how the assessment was carried on. Even otherwise also, as per Annexure A-2, the petitioner had already surrendered the house way back in the year 2012.

Submission by learned counsel for BBMB

7. On the other hand, Mr. Sarthak Gupta, learned counsel for respondents No.4 and 5-BBMB has submitted that so far as the retiral benefits of the husband of the petitioner pertaining to the grant of leave encashment and gratuity for the period spent by the husband of the petitioner in the BBMB is concerned, the same has already been paid to the petitioner in time and therefore the BBMB was not liable for any delayed payments. He submitted that however so far as the grant of No Objection to the State of Punjab for further family pension and other benefits to be given by the State of Punjab is concerned, the husband of the petitioner was residing in a quarter which was not vacated after the death of the husband of the petitioner till the year 2019 and that was the reason as to why a letter was written to the petitioner to deposit an amount of Rs.3,22,505/- for the unauthorised occupancy of the house. He submitted that he has sought instructions

from Sunny Bharti, Sr. XEN/Township, BBMB, Sundernagar who is present in the Court, to state that it is correct that after the death of the husband of the petitioner, no notice or any communication was sent to the petitioner or any other family members for seeking vacation of the house and it is also correct that no proceedings under the Public Premises Act or under any other process under the law was initiated against the petitioner for making any assessment for unauthorised possession. He however submitted that a calculation was made by a senior officer of the BBMB on the basis of the average rent for the period from 22.08.2011 to 05.09.2019 and on the basis of the calculation the letters Annexure A-4 and A-5 were sent to the petitioner in the form of penalty rent. He further submitted that one communication was sent to the State of Punjab vide Annexure R-4/3 dated 27.05.2019 which rather stated that the pension case is pending in their own office and there was some clarification with regard to as to whether the pensionary benefits should be granted to the employees who were regularised after 01.01.2004 or not. Learned counsel submitted that in view of the above, the BBMB cannot be put at any fault for the delayed release of pensionary benefits by the State of Punjab.

Submission by learned Additional Advocate General, Punjab

8. On the other hand, Ms. Ishma Randhawa, learned Addl. AG, Punjab while referring to the reply filed by the State of Punjab submitted that the petitioner was posted at BBMB where he served and died and after his death a No Objection Certificate was required to be taken from the BBMB and the BBMB did not send the No Dues Certificate to the State and that was one of the reasons as to why there was a delay in the grant of family pension and the other retiral benefits

to the petitioner by the State. She submitted that another reason for the delayed amount is that the services of the petitioner were initially not pensionable because he was earlier not on regular basis but he was regularised in the year 2009 vide Annexure P-1. Thereafter, there is a judgment of a Division Bench of this Court in ***Harbans Lal's*** case (supra) Annexure P-8 that those employees who were working on temporary/work charge/*ad hoc* basis prior to the cut of date of 01.01.2004 but they have been regularized thereafter were entitled for the benefit of old pension scheme on the deposit of the CPF. In compliance of the aforesaid judgment, the CPF was deposited on 14.03.2014 vide Annexure P-7 and therefore to some extent there was a delay on the part of the petitioner as well. She further submitted that unless all the formalities including the No Objection Certificate from the BBMB were cleared, the State could not have sanctioned the family pension or other retiral benefits of the petitioner after 14.03.2014 and now when the petitioner had deposited the aforesaid amount of Rs.3,22,505/- to the BBMB and the BBMB had thereafter sent No Objection to the State of Punjab, the process was expedited and the petitioner has been paid entire family pension alongwith arrears and all the retiral benefits on 01.03.2023 and therefore no delay is attributable to the State of Punjab.

Analysis of submissions

9. I have heard the learned counsel for the parties.
10. It is a case where the petitioner is a widow and her husband died on 21.08.2011 while he was posted in the BBMB at Sundernagar. The husband of the petitioner was otherwise an employee of the State of Punjab in the Department of Irrigation. After the death of the husband of the petitioner, the statutory benefits of

family pension and the other retiral benefits were to be considered and paid by the State of Punjab in accordance with law immediately. As per learned counsel for the respondents, delay has been caused because of two reasons. Firstly, initially the husband of the petitioner was not entitled for the grant of any pension because he was not a regular employee but it was only after the passing of the judgment of a Division Bench of this Court in *Harbans Lal's* case (supra) that he became entitled subject to deposit of the CPF, but soon thereafter he died and therefore the CPF was not deposited. However, the petitioner deposited the aforesaid CPF on 14.03.2014 vide Annexure P-7 and therefore on the face of it from the date of the death of the husband of the petitioner till at least 14.03.2014 when the CPF was deposited by the petitioner, she was not entitled for grant of pension.

11. The second reason for delay was that the BBMB did not give any No Objection Certificate to the State of Punjab on the ground that when the husband of the petitioner died, the quarter which he was having at Sundernagar was not vacated by the petitioner and her family. However, a perusal of Annexure A-2 would show that rather a certificate in which there are signatures of the Electrician, Commerical Sub-Division and Junior Engineer, Commercial Sub-Division, BBMB, Sundernagar wherein an inventory Annexure A-2 has been prepared and it is also stated therein that the follwing electrical goods existed in the house vacated by Shri Gulzar Singh on 13.10.2012. In the reply filed by the BBMB, no mention has been made with regard to the authenticity of the aforesaid certificate pertaining to the record of electrical fitting. Although the aforesaid Annexure A-2 has been appended alongwith the civil miscellaneous application, but no counter affidavit has been filed by BBMB with regard to the same, although notice was issued with

regard to the present application, but no reply to the application has been filed by the BBMB. In addition to the above, it was for the first time after a period of eight years from the death of the husband of the petitioner that the BBMB wrote letters to the petitioner vide Annexures A-3 and A-4 dated 26.08.2019 and 29.11.2019, respectively, by which it was stated that there was an unauthorised possession of the house which has not been handed over to the department and due to which No Dues Certificate has not been issued and the petitioner was asked to deposit Rs.3,22,505/- on account of penalty rent. During the course of arguments, learned counsel for the respondents No.4 and 5-BBMB has submitted on instructions from the officer present in the Court that after 2012, no notice nor any kind of proceedings were initiated against anybody including the petitioner or her family members pertaining to the aforesaid quarter nor any kind of action was taken. It was only for the first time after eight years from the death of the husband of the petitioner that one letter was issued stating that the petitioner was liable to deposit of the aforesaid amount. Even no assessment was made with regard to the penalty rent or the ordinary rent, if any permissible under any provision of law but the calculation appears to be made by an officer of the BBMB regarding which nothing has been so stated either in the application or any other document or affidavit filed by the BBMB. Therefore, the aforesaid two factors, firstly, that after the year 2012 till 2019 there was no action taken by the BBMB. No notice or letter was ever sent to the petitioner or to anybody else. Secondly, there has been no assessment made by any lawful authority pertaining to the penalty rent. The action of the BBMB was not justified to have asked the petitioner to deposit the aforesaid amount of Rs.3,22,505/- which appears to be a condition for issuance of No Dues

Certificate to the petitioner. Learned counsel for the petitioner during the course of arguments submitted that the petitioner was compelled to deposit the aforesaid amount under protest so that at least the family pension and the other retiral benefits can be released by the State on the basis of No Dues Certificate to be issued by the BBMB.

12. This Court is therefore of the view that the action of the BBMB in withholding the No Dues Certificate of the petitioner for a long period of time was absolutely arbitrary and illegal and without any authority of law. Furthermore, action of the BBMB for asking the petitioner to deposit the aforesaid amount without following any procedure or any assessment under any law and that too after elapse of eight years was also not justified. The petitioner would therefore be entitled for the refund of the aforesaid amount alongwith interest.

13. So far as the role of the State of Punjab is concerned, the husband of the petitioner was an employee of the State of Punjab and was only posted at BBMB and it is not in dispute that the family pension and the other retiral benefits were to be paid by the State of Punjab and in fact they have now been paid by the State of Punjab on 01.03.2023.

14. The first argument which raised by learned Addl. AG, Punjab was that initially the husband of the petitioner was not entitled for the grant of family pension because he was not a regular employee and thereafter in view of the judgment of a Division Bench of this Court in **Harbans Lal's** case (supra), he was entitled but subject to the condition that the CPF was to be deposited which was ultimately deposited by the petitioner on 14.03.2014 because her husband died on 21.08.2011. Therefore, so far as this aspect is concerned, delay upto 14.03.2014

for grant of family pension only is justified. However, so far as the grant of gratuity, leave encashment and other retiral benefits are concerned, the same were required to be paid to the petitioner who is a widow of Gulzar Singh immediately on the death of Gulzar Singh which was also not paid to the petitioner and therefore so far as the component of gratuity, leave encashment and other retiral benefits except pension are concerned, there was a delay right from the time when the death of the husband of the petitioner had occurred till the date of payment.

15. So far as the second argument of learned Addl. AG, Punjab that because of non-supplying of No Dues Certificate by the BBMB, the family pension and the other retiral benefits could not have been granted is concerned, the same is also not sustainable and it is totally unjustified in view of the fact that the husband of the petitioner was an employee of the State of Punjab and it was the bounden duty of the State of Punjab to have processed the case of family pension and the other pensionary benefits promptly in accordance with law for which inter-departmental communication cannot become a ground for delay in the pension and the pensionary benefits. Even if assuming for the sake of arguments that some amount of Rs.3,22,505/- was assumingly to be recovered from the petitioner, still the entire amount of gratuity, leave encashment and family pension could not have been withheld. Furthermore, there is nothing on record to show that any order has been passed by any officer of the State of Punjab for withholding of the entire amount. Apart from the above, even the action of the BBMB was totally unjustified for not granting the No Dues Certificate. In the result, it was only because of lack of coordination or synchronization between the State of Punjab and the BBMB which caused delay. Furthermore, there is nothing on the record or the reply filed

by the State to show that any letter or communication was sent by the State of Punjab to the petitioner for the removal of any objection but in fact the State of Punjab chose to keep silent depending upon the outcome of the No Dues Certificate of the BBMB.

16. India is a welfare State and its instrumentalities are required to take effective steps in finalizing the pension matters and especially the family pension as expeditiously as possible and it cannot be expected from the State or an instrumentality of a State to keep silent and not even inform the person who is entitled for the benefit of pension or family pension as to why it has not been paid. Furthermore, it is a settled law that pension and pensionary benefits are not the bounty of the State and duty is cast upon the State and its instrumentalities to pay the same in accordance with law and in case there is any reason for withholding or forfeiting the same, then a proper procedure has to be followed in accordance with the domain of the statutory provisions contained under the Rules. Under the Punjab Civil Services Rules, there is a specific provision for withholding or forfeiting of pension or a part of pension under Rule 2.2 of Vol.II of the Punjab Civil Services Rules. In the present case, the aforesaid provision has not been invoked nor any order has been passed by any authority for withholding or forfeiting any family pension and retiral benefits of the petitioner and therefore the action of the State of Punjab is *ex facie* illegal and oppressive in nature.

17. 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 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."

18. The aforesaid Constitutional Bench judgment of the Hon'ble Supreme Court was thereafter followed by a number of judgments and thereafter in **State of Jharkhand and others versus Jitendra Kumar Srivastava and another** **2013(12) SCC 210** again the Hon'ble Supreme Court reiterated that pension and pensionary benefits are not the bounty of the State and 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.”

19. 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. The present is case of a widow where she has not been granted any benefit to sustain her livelihood and therefore there has been an infringement of Article 21 of the Constitution of India as well.

20. Another recent Constitutional Bench of the Hon'ble Supreme Court in **K. S. Puttaswamy (retired) and another versus Union of India and Another** (2019) 1 SCC 1 while dealing with the law relating to right to privacy again discussed the domain of Article 21 of the Constitution of India whereby it was so

observed that the right to life and livelihood under Article 21 of the Constitution of India does not only operate as a negative command to the State but it also operates as imposing positive obligation so that the State or its instrumentalities should ensure that proper steps are taken for the protection of life and livelihood of its subjects. In the present case, the State has kept silent and did not even inform the petitioner with regard to the delay which was caused and because of the departmental communication for want of No Objection Certificate, the delay has been caused. Even the State of Punjab did not care to ask from the BBMB as to whether the penalty if any was authorised by some law or not. The net result of the same was that the petitioner being a widow had to wait for a long period of 12 years to enforce her rights so guaranteed under Article 21 and 300-A of the Constitution of India and under the Punjab Civil Services Rules which are statutory in nature.

21. In Tukaram Kana Joshi and others through Power of Attorney Holder versus 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).”

22. In view of the above, the present petition is partly allowed. The action of both the State and the BBMB is totally illegal, arbitrary and rather oppressive in nature. The petitioner shall be entitled for the grant of interest @6% per annum on the following components:-

- i) For the entire retiral benefits which accrued to the husband of the petitioner except for the pension with effect from the date of death of the husband of the petitioner till its actual payment by the State of Punjab.
- ii) On the family pension with effect from 14.03.2014 when the petitioner had deposited the CPF till the date of its payment by the State of Punjab.
- iii) Refund of Rs.3,22,505/- shall be made by the BBMB to the petitioner alongwith interest @6% per annum from the date of deposit of the aforesaid amount by the petitioner to the BBMB till the date of actual payment.

23. The aforesaid amount calculated by both the State of Punjab and the BBMB be paid to the petitioner within a period of three months from today alongwith interest @6% (simple). In case the aforesaid amount is not paid to the petitioner within the aforesaid period of three months from today, then the

petitioner shall be entitled for future rate of interest @9% per annum instead of 6% per annum.

24. Considering the aforesaid facts and circumstances wherein a widow had to run from pillar to post to seek justice and she has been granted family pension and pensionary benefits after a delay of 12 years and she had to survive for the aforesaid period of 12 years without her rightful benefits to which she was entitled under the law, this Court is of the considered view that the petitioner is also 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 three months from today.

25. Liberty is granted to the State of Punjab to fix the responsibility of the official(s) concerned who caused delay and recover the costs from them strictly in accordance with law and by following requisite procedure. Additionally, State of Punjab may also enforce and claim from the BBMB but strictly following the procedure and in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

April 29, 2023
dinesh

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