IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 **CWP-20758 of 2014 (O&M)**
Date of Decision:18.04.2023

Som Lal

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. Kamaldip Singh Sidhu, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab

Mr. Rajan Bansal, Advocate, for
Mr. Ashish Gupta, Advocate,
for respondents No.2 and 4.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *mandamus* directing the respondents/department to release all the retiral benefits and also release full pension alongwith interest on the delayed payment @18% per annum from the date of its actual accrual till realization as the petitioner has already retired on 10.04.2009 as Mandi Supervisor from the office of the Market Committee, Rajpura, District Patiala.

2. The brief facts of the present case are that the petitioner was appointed as Auction Recorder with Market Committee, Rajpura on 16.06.1979. As per learned counsel for the petitioner, the date of birth of the

petitioner is 15.07.1951. He had attained the age of superannuation at 58 years on 15.07.2009 and therefore he was scheduled to retire on 31.07.2009. However, an order of retirement was passed on 10.04.2009 with effect from 31.07.2007. This order was passed about three months prior to his actual date of retirement on attaining the age of superannuation and that too with retrospective effect with effect from 31.07.2007. The reason for giving retrospective date of retirement to the petitioner was that a complaint was received from a co-villager namely Sahab Dayal that at the time of the appointment of the petitioner he had given his wrong date of birth and in fact his date of birth was two years prior to the date which he had given and therefore acting upon the complaint of a co-villager of the village of the petitioner, he was directed to be retired much prior to his actual retirement age of 58 years although as per the record of the Corporation, the date of birth of the petitioner was recorded as 15.07.1951.

3. During the course of arguments, learned counsel for the parties have also stated that during the pendency of the present petition all the pensionary benefits have since been released to the petitioner in the year 2014 and now the subject matter in the present petition is confined only to the extent of grant of interest on the delayed payments and also with regard to the difference of grant of pay and benefits pertaining to difference between 31.07.2007 and 31.07.2009.

4. Learned counsel for the petitioner submitted that it is a case of victimization whereby the respondent-Corporation acting upon a complaint of a co-villager and without any basis had passed an order of retirement of the petitioner on 10.04.2009 which was three months prior to his actual date of

retirement and that too with retrospective effect i.e. with effect from 31.07.2007. He submitted that purely on the basis of a complaint, the action which was performed by the respondent-Corporation was totally illegal since there was no inquiry or disciplinary proceedings conducted qua the petitioner and no opportunity of hearing was given to the petitioner and of its own action has been taken by which effect has been given to change of date of birth. He submitted that it is not a case that after holding a disciplinary proceedings or any inquiry in accordance with any of the provisions of law that the date of birth has been changed in the records of the Corporation and consequently the date of retirement was changed but it is a case where without any inquiry etc. or disciplinary proceedings, the respondent-Corporation on their own changed the date of birth and retired the petitioner two years prior to the actual date of retirement which is totally illegal and against the law.

5. He further submitted that after his retirement, the aforesaid complainant had lodged an FIR against the petitioner bearing FIR No.302 dated 10.12.2009, under Sections 420, 467, 468 and 471 IPC, registered at Police Station Rajpura. This FIR was thoroughly investigated by the police and three times cancellation report was submitted to the Court and ultimately the Court accepted the cancellation report. Apart from the above, the aforesaid complainant also filed a criminal complaint before the learned Judicial Magistrate which was also dismissed vide Annexure P-13 on 27.11.2017. He submitted that firstly the aforesaid FIR was lodged after the retirement of the petitioner and secondly it was also cancelled and approved by the Magistrate and still the petitioner was not granted the pension and pensionary benefits.

6. Learned counsel for the petitioner further referred to Annexure P-2 attached with the present writ petition which is a resolution which was passed by the respondent-Corporation on 10.03.2010 whereby the complaint of the complainant with regard to date of birth was thoroughly scrutinized on the basis of various documents received from various institutions and University and it was so resolved vide Item No.2 that the complaint contains false and frivolous facts and has been thoroughly investigated and it was found that the documents which were given in the office at the time of joining of the service by the petitioner were found to be unchanged and not tampered with. The certificate issued by the University is genuine and the committee unanimously resolved on the basis of certificate issued by the University considers the date of birth of the petitioner to be 15.07.1951 to be correct date. It was further resolved in para 3 that the committee on the strength of evidence and unanimous consideration took a decision that the petitioner is to be retired on 31.07.2009 instead of 31.07.2007. The relevant portion of the aforesaid resolution at Item Nos.2 and 3 are reproduced as under:-

2. That vide letter No.6344/V/Q/08 dated 17.03.2009 of the Punjab University; the date of birth of Som Lal Marketing Supervisor has been shown to be 15.07.2009. But the Market Committee has not made any mention of the same while passing resolution, whereas the same has been mentioned in the opinion of Secretary Marke Committee, but no strong action has been taken to cancel the above date of birth.	2. After consideration, it has been decided that the Punjab University vide its letter No.6344 V.W. Dated 17.03.2009, the date of birth of Som Lal has been shown to be 15.07.1949 but the same is merely for information and the same is based on the gazette of 10th class. But the University issued 10th class certificate vide Roll No.474970 and in which the date of birth of Som Lal has been shown to be 15.07.1951 in numbers and words as

	well, and on the basis of the same his date of birth is accepted as 15.07.1951. The complaint which contains the false and frivolous facts was thoroughly investigated and it was found that the documents which were given in the office at the time of joining the service by Som Lal (Ex. Marketing Officer) were found to be unchanged and not tampered with. The certificate issued by the University is genuine and the committee unanimously on the basis of certificate issued by the University take the date of birth of Som Lal as 15.07.1951 to be correct one.
3. That the Committee through its earlier resolution No.1950 dated 09.04.2009 and had given retirement to Sh. Som Pal (Marketing Supervisor) on 31.07.2007, accepting his date of birth as 15.07.1949 instead of 15.07.1951 in accordance with record sent by the University but no mention of the same has been made either in the opinion of Secretary Market Committee or by the Committee at the time of passing final resolution.	3. In para No.3 of issues No.2, his date of birth has been specified. The decision which was taken through resolution No.1950 dated 09.04.09 in regard to giving retirement to Sh. Som Lal Marketing Supervisor w.e.f. 31.07.2007, the same was taken by the committee on the basis of letter issued by the University. Now the committee, on the strength of evidence and on unanimous consideration takes a decision that Som Lal is to be retired on 31.07.09 instead of 31.07.2007.

7. Learned counsel for the petitioner also referred to Annexure A-1 which was filed alongwith CM-3740 of 2020 to contend that the aforesaid complainant did not stop here and he rather filed a civil suit against the respondent-Corporation and the petitioner seeking permanent injunction

restraining the respondent-Corporation from disbursing and releasing the amount of service benefits and pension etc. on the ground that at the time of his employment, he had played a fraud by doing a forgery by way of mis-representation of facts pertaining to a date of birth. The said suit was also dismissed on 20.07.2018 and during the pendency of the suit there was no interim order of any kind by the civil Court. He further submitted that the complainant did not end here and he rather filed number of petitions before this Court as well for seeking directions against the petitioner and fourth such petition was filed in CRM-M-6921 of 2012 which was dismissed with costs vide Annexure P-3 on 09.07.2012. The learned counsel while referring to the aforesaid order, submitted that even this Court has noted that earlier also three petitions were filed on the same cause of action and those were dismissed and now the fourth petition was also dismissed with costs of Rs.10,000/-.

8. Learned counsel for the petitioner further referred to Annexure P-5 whereby a legal opinion was also obtained from the learned Advocate of the Corporation in which he opined that pensionary benefits of the petitioner cannot be withheld even if an FIR has not been cancelled. Thereafter, the petitioner served a legal notice upon the Corporation vide Annexure P-8 on 13.02.2014 but no action has been taken by the Corporation in this regard. However, during the pendency of the present petition when reply was to be filed, then the pension and pensionary benefits were released to the petitioner in the year 2014 on different dates.

9. Learned counsel submitted that now the grievance of the petitioner is two fold. Firstly, that the petitioner retired on 10.04.2009 and there was no impediment or any embargo from the respondent-Corporation to have withheld

the pension and retiral benefits of the petitioner and the same was paid to the petitioner in the year 2014 and therefore the petitioner is entitled for grant of interest from the date of the accrual till the date of disbursement especially in view of the law laid down by a Full Bench judgment of this Court in **A.S. Randhawa verus State of Punjab and others** 1997(3) SCT 468. He submitted that the second grievance of the petitioner is that when an order was passed by the respondent-Corporation on 10.04.2009 then he was directed to retire with effect from 31.07.2007 wrongfully and the petitioner was paid salary since he had discharged his duties for the entire period but for a period of three months the salary was not paid and so therefore the petitioner is entitled for the salary of the aforesaid period of three months alongwith interest.

10. On the other hand, Mr. Rajan Bansal, Advocate appearing on behalf of respondents No.2 to 4 submitted that on the basis of a complaint, an information was sought from the Panjab University vide Annexure R-5 which informed that the date of birth of the petitioner was 15.07.1949 and on the basis of the same the petitioner was directed to retire with effect from 31.07.2007. He submitted that thereafter a resolution was passed by the Mandi Board vide Annexure P-2 in the year 2010 but thereafter the same was also cancelled on 21.11.2014. He submitted that apart from the above there was an FIR against the petitioner and a civil suit was also pending against the Board and the petition filed by the complainant and therefore the pension and retiral benefits of the petitioner were withheld for some period of time but ultimately the same were released on 05.11.2014. He submitted that therefore the delay caused by the Mandi Board was not intentional and therefore the petitioner is not entitled for the grant of the interest on the pension and pensionary benefits.

He further submitted that however so far as the component of pension is concerned, the petitioner at the time when the arrears of pension were granted to the petitioner, interest @ 8% has already been granted to the petitioner.

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

12 It is a case where admittedly the date of birth which was reflected in the service record of the petitioner was 15.07.1951 and therefore he attained the age of superannuation at 58 years on 15.07.2009. However, just three months prior to his attaining the age of superannuation, he was directed to retire on 10.04.2009 but retrospectively with effect from 31.07.2007. There is no dispute that the petitioner actually worked on the post till 10.04.2009 and he was also paid salary for the post except for three months upto 31.07.2019 and therefore the remaining salary of three months was not paid to the petitioner. During the pendency of the present petition, as per learned counsel for the parties, the pension alongwith interest has already been paid to the petitioner but the remaining pensionary benefits although were paid in the year 2014 but it was with the delay from the date of his actual date of retirement i.e. 31.07.2009 which is about five years. The second grievance of the present petitioner is pertaining to release of three months salary from 10.04.2009 till 31.07.2009 which has not been paid to the petitioner alongwith interest.

13. 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."

14. 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 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."

15. In the present case, the issue which is to be considered would be as to whether the right which accrued to the petitioner for grant of pension and pensionary benefits has been withheld within an authority of law or not or as to whether it has been withheld under any provision of law or not. As per learned counsel for the petitioner, there was no embargo or impediment for release of

pension and pensionary benefits at least after 31.07.2009. However, the case of the respondent-Corporation was that there was an FIR against the petitioner apart from the fact that there was also a civil suit pending against the petitioner and information was sought from the Panjab University to suggest that the date of birth of the petitioner was not 1951 but 1949. The right of pension and pensionary benefits can be withheld only when there is an express authority vested in the competent authority to withhold the same and by following a procedure. The FIR as aforesaid was lodged after the retirement of the petitioner i.e. on 10.09.2009 and that was thoroughly investigated by the police and three times it was recommended to be cancelled and ultimately the cancellation report was accepted by the learned Magistrate as per learned counsel for the parties. A criminal complaint was also filed by the complainant who was a co-villager and according to learned counsel for the petitioner, he had enmity with the petitioner and his criminal complaint was also ultimately dismissed vide Annexure P-13 dated 27.11.2017. So far as the information which was received by the respondent-Corporation from the Panjab University is concerned, the same was thoroughly considered by the respondent-Corporation itself and a detailed resolution was passed vide Annexure P-2 in which it was specifically resolved that the date of retirement of the petitioner is 31.07.2009 and not 31.07.2007 and there was no mis-representation or fruad. The relevant portion of the aforesaid resolution Annexure P-2 has already been reproduced.

16. The learned counsel for the respondent-Corporation has not been able to show as to under what provision of law the pension and pensionary benefits of the petitioner were withheld since the aforesaid reasons which have

been so stated by learned counsel are not justifiable reasons for withholding of the pension and pensionary benefits. Even a legal opinion was obtained by the respondent-Corporation from their counsel who had opined vide Annexure P-5 that even if there was a pendency of an FIR after the retirement still the pension and pensionary benefits could not have been withheld. Ultimately, the respondent-Corporation itself released all the benefits in November 2014. Therefore, in the absence of any justification for withholding of the pension and pensionary benefits, the petitioner is entitled for the grant of interest on the delayed payments and is also entitled for the dues which have not been paid to the petitioner.

17. In view of the aforesaid position, the present petition is partly allowed. The respondent-Corporation is directed to grant the interest @6% per annum to the petitioner on the delayed payment of retiral benefits which have been paid to the petitioner in the year 2014 whereas it ought to have been paid on 31.07.2009. Therefore, the respondent-Corporation shall calculate the interest with effect from 31.07.2009 till the date of its disbursement and pay to the petitioner within a period of three months from today.

18. So far as the pension which has been paid to the petitioner as per learned counsel for the respondent-Corporation, the same has already been paid alongwith interest and therefore no direction is required to be passed with regard to the delayed payment of pension. So far as the non-payment of salary for the period from 10.04.2009 till 31.07.2009, the petitioner did not work for that period and therefore the petitioner would not be entitled for the grant arrears of aforesaid period between 10.04.2009 till 31.07.2009.

19. The aforesaid payment shall be made within a period of three months from today. The present is a petition of the year 2014 and the right to receive pension and pensionary benefits has been withheld without any justifiable cause and therefore this Court is of the view that the petitioner shall also be entitled for exemplary costs which are assessed at Rs.1,00,000/- (one lakh) which shall also be paid to the petitioner within a period of three months from today.

20. In case the aforesaid payments are not paid to the petitioner within the aforesaid period of three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum instead of 6% per annum.

21. The respondent-Corporation shall be at liberty to recover the amount of costs imposed by this Court from the concerned official/officials after fixing responsibility and following due process and strictly in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

April 18, 2023
dinesh

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