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# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**CWP-6117-2013**
**Date of Decision: 13.04.2023**

Iqbal Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Ms. Jyoti Sareen, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

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## <u>JASGURPREET SINGH PURI, J.</u> (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the letters dated 11.10.2012 (Annexure P-9) and 05.11.2012 (Annexure P-10) issued by the Principal respondent No.3-Institute vide which the payments of revised retiral benefits have been stopped on frivolous grounds with a further prayer that the last pay drawn by the petitioner be re-fixed after counting the annual increments granted on account of military service rendered by the petitioner and other benefits which are admissible to the petitioner in accordance with law.

**<u>Factual Matrix</u>:-**

2. The brief facts of the present case are that the petitioner had

retired as Group Instructor from the State of Punjab in the Department of Technical Education and Industrial Training, Punjab on 31.10.2011. The petitioner was not granted the retiral/pensionary benefits after his retirement and therefore, he had filed a writ peition bearing CWP No.7298 of 2012 which was dismissed as withdrawn with a liberty to the petitioner to move a self-contained representation to respondent No.2 within a period of 15 days and the respondent No.2 was directed to decide the said representation by passing a speaking order thereon within a period of two months from the date of receipt of a certified copy of the order with a further stipulation that in case the petitioner was found entitled thereto, then the same should also be released within the aforesaid period. Thereafter, the petitioner served a legal notice upon the respondent-State vide Annexure P-5 in pursuance of the aforesaid order. Consequent upon the same, Director, Department of Technical Education and Industrial Training, Punjab vide order dated 04.10.2012 (Annexure P-8) passed a detailed order in which it has been so stated that all the retiral benefits have been paid to the petitioner regarding which the details have been given in a tabulated form corresponding to the claims made by the petitioner. In this way, all the retiral benefits were paid to the petitioner by passing a detailed order as aforesaid. However, there was one component pertaining to the grant of revised pension which according to the petitioner, he was entitled and this issue was also dealt with by the Director, Technical Education and Industrial Training, Punjab at Sr. Nos.3 to 7 of the aforesaid table. The aforesaid Sr. Nos.3 to 7 are reproduced as under:

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| **3** | That it is pertinent to note here that even the benefit of increments granted to my client vide order dated 13.08.2010 has not been released to my client till date. Even the benefit of one promotional increment on promotion to the post of Group Instructor vide order dated 30.6.2011 has not been granted to my client and my client is entitled to arrears of salary on account of the increments as aforesaid. My client is also entitled to calculation of his last pay drawn for the purposes of calculation of pension and his retiral benefits after counting the increments granted on account of military service as well as after counting one promotional increment payable to my client. | The institute has informed that after granting the benefit of military service, the pay upto 01.0186 has been fixed and according to this, the bill regarding the arrears amounting to Rs.4778/- was sent to treasury office, but the claim being time barred, was not passed. The approval regarding this time bared claim is given by head office vide letter No.1760 dated 19.09.2012 and bill of Rs.4778/- is deposited in the treasury for payment.<br>The retired employees has received the cheque dated 03.09.2012 in respect of arrears amounting Rs.8189/- on account of grant of benefit of promotional increment on the post of G.I.<br>The institution has sent the case to Accountant General for giving pensionary benefit according to the increased pay after promotion to the post of G.I. |
| **4** | That even despite the fact my client represented to addressee No.2 and 3 for release of his pension, GPF, gratuity, leave encashment for 300 days of earned leave, amount under the Group insurance Schemes and other benefits but all the said retiral benefits have not been paid till date after fixing the pay granting the due benefits as stated above. | The retired employee has received the cheque dated 22.08.2012 regarding GPF final payment of amount of Rs.736219/-.<br>The retired employee has received cheque dated 20.06.2012 regarding payment of leave encashment of Rs.751580/-.<br>The retired employee has received cheque dated 02.08.2012 regarding payment of DCRG amounting to Rs.734305/-.<br>The retired employee has received cheque dated 10.09.2012 regarding payment of GIS amounting to Rs,32192/-. |
| **5** | That despite representation dated 31.12.2011 and number of personal visits to the office of respondent No.3 only pension commuted pension as well as gratuity gas been paid so far without interest for the period the payments were delayed but the said benefits are to be revised after fixation of his pay by granting due benefits which has not been done so far. | The institution has given pensionary benefit to the employee and the case of revised pension has been sent to Accountant General. |

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| **6** | That as the rightful dues of my client have been wrongfully withheld and my client is being harassed by non-payment of his due retiral benefits, my client is entitled to interest on the amounts payable @ 18% p.a. from the date of his retirement till realization. | The institute has not stopped any dues of the employee. Due to treasury office being closed, the payments were stopped by treasury, which have been released. |
| **7** | That last pay of my client drawn is liable to be calculated after counting the benefits granted vide order dated 13.08.2010 and 29.07.2011 and after granting the benefit of one promotional increment w.e.f. 30.06.2011 and he is also entitled to arrears of salary alongwith interest @ 18% p.a. from dated these benefits became actually due. | On account of refixing of last pay drawn due to promotion as G.I. the case regarding revising of pensionary benefit has already been sent to Accountant General. |

3. A Perusal of the same would show that after grant of pension and pensionary benefits to the petitioner, it has been so stated by Director, Technical Education and Industrial Training, Punjab, that the benefit of revised pension and pensionary benefits have been sent to the Accountant General. In other words, the Administrative Authority after sanctioning the same must have sent the same to the Accountant General for further proceedings. This order of Director is dated 04.10.2012.

4. However, after just about one week, i.e., on 11.10.2012, the Principal, Industrial Training Institute (ITI), Hoshiarpur issued a letter to the petitioner by stating that the Store Keeper has submitted a report in writing before him that one LCD projector was in his charge, cost of which is high and the same is due from him and therefore, till the time no decision is taken, his payments would be stopped. In addition to above, there is another letter vide Annexure P-10 which is dated 05.11.2012 regarding which also earlier the Principal had written to the petitioner that his payments have

been ordered to be stopped due to non-handing over the total charge by him and therefore, complete payments cannot be given to him.

5. However, prior to the writting of the aforesaid two letters and even prior to passing of the detailed order dated 04.10.2012 by the Director, Technial Education and Industrial Training, Punjab vide Annexure P-8 in pursuance of the directions issued by this Court, the Principal himself on 09.04.2012 (Annexure P-13) had issued a No Due Certificate to the petitioner. During the pendency of the present petition, the respondent-State and the Principal had disputed the veracity of the aforesaid Annexure P-13 and therefore, this Court had requisitioned the original record. After perusing the original record, the original letter was also shown to this Court and even the dispatch register was also shown to this Court where this letter was shown to be dispatched properly. Even otherwise also, during the course of arguments, the learned DAG, Punjab has submitted that now after the perusal of original record there is no dispute with regard to the fact that the aforesaid letter (Annexure P-13) was duly dispatched and therefore, the veracity of the aforesaid letter (Annexure P-13) is not in dispute although the Principal, who is also present in the Court today has stated that he did not sign the aforesaid letter but the dispatch of the letter to the petitioner has not been disputed and therefore, this Court would presume that the aforesaid letter has been duly signed which was the No Due Certificate.

**Submissions by learned counsel for the petitioner**:-

6. Ms. Jyoti Sareen, learned counsel for the petitioner has submitted that this is a second round of lititgation filed by the petitioner. By way of the earlier writ petition, which was dismissed as withdrawn with a

liberty to the petitioner to file a representation regarding which he had filed a writ petition and an order was passed by the Director, Technical Education and Industrial Training, Punjab, in which it was stated that all the benefits have been paid but the revised benefits after counting the Military Service Certificate and the promotional increments, was sent to the Accountant General. She further submitted that the aforesaid communication has been made by the Director, Technical Education and Industrial Training, Punjab, who was the competent authority, but the revised benefits as aforesaid were suddenly stopped by the Principal of the Institute vide Annexures P-9 & P-10. She also submitted that the Principal had no authority of law to stop the pensionary benefits of the petitioner which are otherwise not only Statutory Rights but also the Constitutional Rights protected under Article 300-A of the Constitution of India. She further submitted that the stopping of the pensionary benefits in the nature of revised benefits in the absence of any justification or adopting any procedure established by law, the same could not have been stopped by the Principal, who was not even comptent to stop the same. She also submitted that after the Director, Technical Education and Industrial Training, Punjab had himself stated in Annexure P-8 that the revised benefits of pension and pensionary benefits were sent to the Accountant General, and thereafter the Principal of the Institute had no authority to stop the same and that too on a non-existing ground. She further submitted that the justification which has been given by the Principal of the Industrial Training Instutite, Hoshiarpur was that some report of Store Keeper was received wherein it was found that the petitioner had not given the charge of some LCD projector at the time of retirement notwithstanding the fact that the Principal himself had given a No Due Certificate, much prior to the retirement of the petitioner. She also submitted that even otherwise also in case there is some allegation against the petitioner after the retirement then some procedure could have been adopted under the law or may be the provisions of Rule 2.2, Volume II of the Punjab Civil Services Rules could have been invoked but no such disciplinary proceedings were initiated against the petitioner either before the retirement or after the retirement and till date no such disciplinary proceedings have been initiated against the petitioner. She further submitted that however one inquiry was made of its own by the Principal and thereafter by one Deputy Director, Technical Education and Industrial Training, Punjab, who submitted his report much after the retirement of the petitioner that the amount should be assessed with regard to the aforesaid LCD projector and recovery may be effected from the petitioner and it was on the basis of that preliminary inquiry after the retirement that the pensionary benefits of the petitioner in the nature of revised pension and pensionary benefits were stopped. She also submitted that such a procedure adopted by the respondent is unknown to the service *jurisprudence* because in the absence of adopting of a procedure which is so prescribed in the Rules, neither the pension nor the pensionary benefits nor the revised benefits can be stopped. She has further referred to Annexure P-11 which is a complaint which was given by the Deputy Director-cum-Principal of the Industrial Training Institute, Hoshiarpur in the year 2009 to the police with regard to the aforesaid projector which was given to one company for repairing purposes and the same was not returned. She also submitted that once the projector was given to the repairing shop which was not returned then there was no question of fixing any liability upon the petitioner and that too after his retirement. She further submitted that although the aforesaid complaint has been denied by the respondent-State but she has obtained information under the Right to Information Act from the concerned police station to confirm that the said complaint was given. She has, therefore, prayed that in view of the aforesaid facts and circumstances, the revised pension and pensionary benefits be released to the petitioner immediately along with interest.

**Submissions by the learned Deputy Advocate General, Punjab**:-

7. On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab along with Mr. Rupinder Singh, respondent No.4, who is present in the Court, submitted that on the basis of the record (Annexure R-1) which shows that the petitioner at the time of retirement had handed over the LCD to one Tarvinder Singh and after this a No Objection Certificate was issued but thereafter on the denial of the aforesaid person, that he had not received the aforesaid LCD that the revised pension and pensionary benefits of the petitioner were stopped so that recovery could be effected from him. She further submitted that the action of the Principal was *bone fide* in nature. She while referring to the affidavit filed by the State submitted that it is not in dispute that by virtue of the order passed in the earlier writ petition, the Director, Technical Education and Industrial Training, Punjab passed the order vide Annexure P-8 and all the pension and pensionary benefits were paid to the petitioner and so far as the revised pension and pensionary benefits are concerned, the same were sent to the Accountant General for payment. But thereafter on detection of the fact that the petitioner never

handed over the LCD to the successor that the remaining benefits were stopped, and therefore, there is no illegality in the notices/letters which have been issued vide Annexures P-9 & P-10. She further referred to one of the letter issued by the Director to the Principal of the Industrial Training Instutite, Hoshiarpur vide Annexure R-2 dated 04.09.2014, whereby reference was made to one inquiry conducted by the Deputy Director, according to which, the LCD video projector was not returned to the store, and therfore, it was standing in the charge of the concerned employee and that the petitioner was liable to restore the missing items, which were standing in his charge and consequently, recovery was ordered to be effected from him. She also submitted that it is correct that it was only an inquiry was conducted by the Deputy Director but no charge-sheet or Show Cause Notice was issued to the petitioner before or after the submission of inquiry report nor any regular disciplinary proceedings were initiated.. She referred to an affidavit which was filed by one Joint Director, IT, Department of Technical Education & Industrial Training, Punjab dated 21.12.2016 before this Court and while referring to Para No.4 of the aforesaid affidavit, she submitted that the revised retiral benefits of the petitioner were withheld and it has been so categorically stated in the affidavit that no charge-sheet or Show Cause Notice was issued to the petitioner before or after the submission of the inquiry report.

**<u>Analysis of submissions</u>**:-

8. I have heard learned counsel for the parties.

9. It is a case where the petitioner had retired on 31.10.2011 as Group Instructor from the respondent-Department of Technical Education

and Industrial Training, Punjab. The petitioner had to file earlier writ petition before this Court for grant of pensionary benefits and that writ petition was dismissed as withdrawn with a liberty to the petitioner to file a representation to the respondent-Department, who was directed to pass a speaking order in case the petitioner files any represenation. Thereafter, on the filing of the representation by the petitioner, the respondent-Director, Department of Technical Education and Industrial Training, Punjab passed a detailed order vide Annexure P-8 wherein details have been provided with regard to the payment of pension and pensionary benefits of the petitioner which stood paid. However with regard to the revised pension and pensionary benefits pertaining to counting of the military service and promotional increments, it has been so stated by the Director in the aforesaid order Annexure P-8 as reproduced above that the same has been sent to the Accountant General. This order vide Annexure P-8 has been passed on 04.10.2012 but just one week thereafter, the Principal, Industrial Training Instutite, Hoshiarpur vide Annexure P-9 stopped the payment of the revised benefits only on the ground that the petitioner had not handed over the charge of one LCD projector. However vide Annexure P-13, the Principal himself had issued No Due Certificate to the petitioner much before the aforeasid orders passed by the Director and this Annexure P-13 is of the date 09.04.2012 wherein the petitioner was granted No Due Certificate.

10. The issue involved in the present case, therefore, would be as to whether the State was within its rights to have withheld the revised pension and pensionary benefits after sanctioning of the same and after the retirement of the petitioner only because of a complaint/allegation of a Store

Keeper that one LCD projector was not handed over to the successor at the time of retirement and without following the procedure according to law. It is an admitted case of the respondent which has been so stated in the affidavit as stated above of the Joint Director that neither any charge-sheet nor any Show Cause Notice was issued to the petitioner. The objection with regard to the aforesaid non-handing over of the charge was taken by the Principal after the retirement of the petitioner and even after the payment of the pension and pensionary benefits but it was only for the purpose of payment of revised pension and pensionary benefits that this objection was taken without adopting the procedure established by law. It is not a case that the State has invoked the provisions of Rule 2.2 of the Punjab Civil Services Rules Volume II and passed any order. Neither any proceedings were carried out nor any order has been passed by any competent authority in accordance with law. It is a settled law that the pension and pensionary benefits are not the bounty of the State and it is not only Statutory but also a Constitutional Right guaranteed under Article 300-A of the Constitution of India. Way-back in the year 1971, a Constitutional 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 portion of the aforesaid judgment is reproduced as under:-

> "31. *The matter again came up before a Full Bench of the Punjab and Haryana High Court in* ***K.R.***

> ***Erry v. The State of Punjab, ILR (1967)1 Punj and Har 278 (FB)****. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities*

> *before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*
>
> *32. This Court in State of* ***Madhya Pradesh v. Ranojirao Shinde and another, 1968-3 SCR 489*** *had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".*

11. Thereafter, in a plethora of judgments passed in "***State of Kerala Vs. M. Padmanabhan Nair***", ***AIR 1985 Supreme Court 356*** and "***Dr. Uma Agrawal Vs. State of U.P. and another***", ***1999(2) SCT 347 (SC)*** and 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***, has reiterated that the pension and pensionary benefits are not a bounty of the State and is not only Constitutional Right but also Human Right and it cannot be withheld without adopting due procedure.

12. 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***)."

13. The issuance of No Due Certificate (Annexure P-13) to the petitioner on 09.04.2012 was also disputed by the respondent-State earlier during the course of arguments regarding which a record was also requisitioned from where it was found that the aforesaid letter was actually dispatched to the petitioner and No Due Certificate was granted to him but much later the revised pension and pensionary benefits were stopped by just taking a plea that he has not handed over the LCD projector to his successor. Such kind of approach adopted by the State-Department is totally unknown to service *jurisprudence* and is contrary to law. The present petition is of the year 2013 and it is almost 10 years that the present petition is pending but

the State did not think it fit to take corrective or remedial measures.

**Conclusion**:-

14. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to allow the present petition. Consequently, the present petition is allowed. It is directed that the respondent-State shall forthwith fix the revised pension and pensionary benefits of the petitioner w.e.f. the date of its accrual and pay to the petitioner within a period of three months from today. The aforesaid amount shall also carry an interest @ 6% per annum from the date of the accrual of the aforesaid benefits pertaining to the revised pension and pensionary benefits. 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 interest @ 9% per annum instead of 6% per annum.

15. In view of peculiar facts and circumstances of the present case, wherein the petitioner had to file a second round of litigation and that too about ten years ago and according to the facts and circumstances of the present case whereby after the retirement of the petitioner, his revised pension and pensionary benefits have been unduly withheld by the respondent-State, the petitioner shall also be entitled for costs which are assessed at Rs.50,000/- which shall also be paid to the petitioner within the aforesaid period of three months.

**13.04.2023** **(JASGURPREET SINGH PURI)**
*Bhumika* **JUDGE**

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