

CWP-776-2021

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-776-2021

Date of Decision: 08.04.2024

Ravinder Kumar and others

..... Petitioners

Versus

Managing Director, Haryana Agro Industries Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Jammu, Advocate,
for the petitioners.

Mr. Padamkant Dwivedi, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of *mandamus* with a prayer to direct the respondent to release the retiral dues i.e gratuity and leave encashment etc. along with interest on delayed payment of the father of the petitioners, namely, Sh. Ram Avtar.

2. Learned counsel appearing on behalf of the petitioners submitted that the father of the present four petitioners, namely, Sh. Ram Avtar, who was working as a Peon in the respondent-Department i.e Haryana Agro Industries Corporation Limited retired from his service on attaining the age of superannuation on 31.10.2017 and died on 12.01.2019. Petitioners No.1 & 2 are the sons and petitioners No. 3 & 4 are the daughters of the aforesaid Ram

Avtar. He further submitted that there was no inquiry or any charge-sheet or any kind of order against the father of the petitioners either during the service or after his retirement and till date the retiral benefits accrued to the father of the petitioners have not been paid to the petitioners. He also submitted that the petitioners, who are the legal representatives of the aforesaid Ram Avtar were entitled for all the retiral dues i.e gratuity, leave encashment etc., which have been withheld without any justification or any authority of law and therefore a direction may be issued to the respondent to release the aforesaid along with interest.

3. On the last date of hearing, the learned counsel for the respondent had submitted that the grievance of the petitioner is being looked into by the respondent actively and this Court will be apprised with regard to the same.

4. Today, Mr. Padamkant Dwivedi, learned counsel appearing on behalf of the respondent-Haryana Agro Industries Ltd. has stated that at the time when the father of the petitioners was in service, there was some assessment of loss of Rs.6,71,912/- which was outstanding against the father of the petitioners. The aforesaid amount consisted of three different losses for the crop year of 2007-2008, 2013-2014 and 2014-2015 on account of less gain in the wheat pertaining to moisture. He further submitted that there was no charge-sheet qua the father of the petitioners at all. However, the assessment was done at the departmental level and that was the reason as to why the retiral benefits were withheld. He submitted that the matter will now be taken to the Board of Directors for taking a final decision with regard to waiver, if any.

5. I have heard the learned counsels for the parties.

6. Admittedly, no charge-sheet was issued or any inquiry or any kind of disciplinary proceedings or any criminal proceedings were initiated against the father of the petitioner. He retired on 31.10.2017 and thereafter, he died on 12.01.2019. After his retirement, all his retiral benefits have been withheld by the respondent on the pretext that at the time when he was in service, there was some assessment of less gain of the crop in the year 2007-2008, 2013-2014 and 2014-2015. The grievance of the petitioners consists of two parts which are to be analyzed by this Court.

7. Firstly, as per the learned counsel for the respondent, the assessment qua the father of the petitioners was made with regard to less gain in the wheat crop due to moisture. The aforesaid proposition of law as to whether even a charge-sheet can be issued on this ground or not with regard to less moisture gain has been settled by a Co-ordinate Bench of this Court in *CWP No.3239 of 1993* titled as “*Punjab Warehousing Fields Employees Union, Patiala and others Vs. State of Punjab*”, which was a case pertaining to the Warehousing Corporation and it was held that in the absence of any norms for the same, no such accountability can be fixed and the charge-sheet was also quashed. This Court also had an occasion to deal with aforesaid issue in *CWP-9088-2020* titled as “*Anjana Vs. Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd.*” decided on 18.03.2024, in this regard. Therefore, assumingly there was some assessment against the father of the petitioners pertaining to some moisture loss regarding which although no charge-sheet was issued to him, still the same could not have been issued to him in view of the aforesaid proposition of law.

8. Secondly, even otherwise also, it is an admitted case of the parties that there was neither any charge-sheet nor any disciplinary proceedings nor any criminal proceedings or any other proceedings of any kind against the father of the petitioners. The pensionary benefits or retiral benefits are a Right to Property under Article 300-A of the Constitution of India. Article 300-A provides that no person shall be deprived of his Right to Property except by the procedure established by law. In the present case, there is no procedure adopted nor any kind of any order passed nor the same could have been passed in the absence of any disciplinary or criminal proceedings against the father of the petitioners. Therefore, it is *ex facie* clear that the withholding of the pensionary benefits of the father of the petitioners was absolutely without the authority of law.

9. It is also a settled law that the retiral and pensionary benefits are not a bounty of the State and when the State is disbursing the pension and pensionary benefits/retiral benefits, then they are not doing any charity work and rather it is the duty of the State or its instrumentalities being obligatory upon them to give the retiral/pensionary benefits unless the same can be withheld by adopting due process of law and by an authority of law.

10. A Constitution Bench of Hon'ble Supreme Court in the year of 1971 in "*Deokinandan Prasad Vs. State of Bihar and others*", 1971(2) SCC 330, also observed that retiral benefits are not a bounty of the State. 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) Punj & Har 278. 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, AIR 1968 SC 1053 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 “State of Kerala Vs. M. Padmanabhan Nair”, (1985) 1 SCC 429, the Hon’ble Supreme Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property, in their hands. This authoritative law was thereafter again reiterated by the Hon’ble Supreme Court in “Dr. Uma Agrawal Vs. State of U.P. and another”, 1999(3) SCC 438..

12. 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 regarding 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:

“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 Deokinandan Prasad v. State of Bihar

and Ors. (1971) 2 SCC 330 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(1976) 2 SCC 1”.

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.”

13. In “**Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others**”, 2013(1) SCC 353, it was held by the Hon’ble Supreme Court 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; State of Madhya Pradesh v. Narmada Bachao Andolan, (2011)7 SCC 639, State of Haryana v. Mukesh Kumar, (2011)10 SCC 404 and Delhi Airtech Services (P) Ltd. v. State of U.P., (2011)9 SCC 354.***

13. After giving thoughtful consideration to the aforesaid factual position, this Court is of the view that the respondent-Haryana Agro Industries

Corporation Ltd. had wrongly withheld the pensionary benefits of the father of the petitioners, who retired on 31.10.2017 which is more than 6 years ago and he died on 12.01.2019. The action of the respondent is not only illegal and arbitrary but the respondent-Corporation has also been insensitive towards the family of its own employee.

10. Consequently, the present petition is allowed. The respondent is directed to pay the entire retiral benefits of the father of the petitioners to the petitioners along with interest @ 6% per annum (simple).

11. In case, the aforesaid amount is not paid to the petitioners within a period of three months from today, then the petitioners shall be entitled to future interest @ 9% per annum (simple) instead of 6% per annum (simple).

12. Since, this Court has come to the conclusion that action of the respondent was not only illegal and arbitrary, but also insensitive wherein the pensionary/retiral benefits have been denied to the family of the deceased employee, the petitioners shall also be entitled for exemplary costs which are assessed at Rs.1,00,000/- (Rupees One Lac only), which shall also be paid to the petitioners in equal proportions i.e. Rs.25,000/- each within a period of 3 months from today. In case, the aforesaid amount is not paid to the petitioners within a period of three months from today, then the petitioners shall be entitled to interest @ 6% per annum (simple).

08.04.2024

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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