

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP- 13197-2021 (O&M)
Date of Decision:01.04.2024**

Mahinder Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Bikram Chaudhary, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Rajesh Gaur, Advocate for respondents No.4, 5 and 8.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *Mandamus* directing the respondents to release the retiral benefits i.e.Pension, arrears of pension, GPF, Gratuity, Commuted value of pension, leave encashment, full salary of suspension period from 16.05.2016 to 18.08.2017 arrears of full pay scale, Ist, 2nd and 3rd ACP Scale and other admissible retiral benefits alongwith interest.

2. The brief facts of the present case are that the petitioner was appointed as a Clerk in the office of the Municipal Council Thanesar-respondent No.5 on 04.12.1979. Thereafter, the petitioner being surplus in the office of respondent No.5, was absorbed in the office of respondents No.6 and 7 which are the government departments and he remained there from 20.02.2001 till 30.03.2007. Thereafter the petitioner was sent back to the office of respondent No.5 and from the office of respondent No.5

the petitioner had retired on attaining the age of superannuation on 31.03.2020.

3. While the petitioner was in service and was working in the office of respondent No.5, he was suspended on 14.05.2016 but thereafter his order of suspension was revoked on 17.08.2017 and in the departmental proceedings only an order of warning was passed. However, after his retirement neither the retiral benefits nor the pension was paid to the petitioner. During the pendency of the present writ petition, some of the amounts have been released to the petitioner. The grievance of the petitioner is with regard to the release of his pension, remaining amount of the retiral benefits and interest on the delayed payments.

4. Learned counsel for the petitioner submitted that it is a case when there was nothing adverse against the petitioner at any point of time except for the aforesaid warning which was issued in the year 2017 and thereafter the petitioner was retired on 31.03.2020 from the office of respondent No.5. However, after the retirement neither his pension was fixed, nor his retiral benefits were paid to him, for the reasons best known to the respondents-department. He further submitted that the petitioner has suffered a lot because of the inaction on the part of the respondents and therefore, has prayed for issuance of directions to respondent No.5 to pay the pension, arrears of pension and all the retiral benefits which have not been paid to him and also interest on the amount which has been paid during the pendency of the present petition.

5. On the other hand, Mr. Kapil Bansal, DAG, Haryana, submitted that so far as the period spent by the petitioner in the office of respondents No.6 and 7 from the year 2001 to 2007, the petitioner has

already been paid the benefits and therefore there should not be any grievance of the petitioner against respondents No.6 and 7 but grievance if any, would be qua respondent No.5.

6. Learned counsel appearing on behalf of respondent No.5 while referring to the reply filed by respondent No.5 submitted that so far as the arrears of the 2nd and 3rd ACP to the tune of Rs.22,06,244/- is concerned, the same has already been released to the petitioner on 19.04.2023 and gratuity of an amount of Rs.9,52,976/- and leave encashment to the tune of Rs.5,63,710/- have been paid to the petitioner on 20.03.2023. However, with regard to the pension case of the petitioner is concerned, the same is still pending because the details of the contribution made by the petitioner is not available with the answering respondent and rather had written a letter to the State vide Annexure R4/1 on 19.09.2023 seeking the documents pertaining to the contribution share and pension record which have not been made available to respondent No.5 till date and therefore, in the absence of any documents which were to be made available by the State i.e. respondents No.6 and 7, the pension case of the petitioner could not be processed.

7. I have heard learned counsel for the parties.

8. The facts as aforesaid stated by learned counsel for the petitioner are not in dispute. The prayer of the petitioner is consisting of three parts. Firstly, the petitioner has not been paid his pension till date despite the fact that he retired on 31.03.2020; secondly he has been paid some of his retiral benefits in the year 2023 as per the reply filed by respondent No.5 and for delayed payment there is no justification mentioned in the affidavit filed by the respondent No.5 for which he was entitled for the grant of interest; thirdly the petitioner was entitled for the

grant of full salary for the time during which he remained suspended because in the order of suspension there is nothing to suggest as to how the suspension period is to be considered and therefore on the revocation of the suspension and in the order of warning being passed, he was entitled for full salary.

9. So far as the first prayer of the petitioner is concerned with regard to the grant of pension, the petitioner retired on 31.03.2020 which is about 04 years ago but his pension case has not been processed at all even as per the affidavit and submission made by respondent No.5. The only reason given by the learned counsel for the respondents as so stated in the affidavit that they have asked for various documents and pension papers from respondents No.6 and 7 where the petitioner worked from the year 2001 to 2007 and in the absence of the same, the pension case of the petitioner could not be processed. This Court is of the considered view that merely because of the inter departmental communication and non-availability of some documents cannot become a ground for depriving of an employee of his pension. Pension is a Constitutional Right of Property under Article 300-A of the Constitution of India. No employee can be deprived of his right to property except with the authority of law. Such kind of plea taken by respondent No.5 is absolutely unsustainable and rather perverse in nature.

10. Law with regard to the right to receive pension and pensionary benefits which are not a bounty of the State also need to be considered in the present case. Way back in the year 1971, a Constitution 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 valuable 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 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*, 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 ***“State of Kerala Vs. M. Padmanabhan Nair”***, ***AIR 1985 Supreme Court 356***, 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. The aforesaid authoritative law was thereafter reiterated by the Hon’ble Supreme Court in ***“Dr. Uma Agrawal Vs. State of U.P. and another”***, ***1999(2) SCT 347 (SC)***.

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 pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

“8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished 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.”

13. A Full Bench of this Court in **“Dr. Ishar Singh Vs. State of Punjab and another” 1993(3) PLR 499**, also discussed the entire issue with regard to right to withhold the pension and permissibility to withhold the commutation of pension etc. was also discussed in detail wherein it was observed that the entire pension has to be paid and it cannot be withheld without any authority of law. The relevant portion is reproduced as under:-

“81. As a result of the above discussion, I would conclude as under:-

(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.

(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.

(iii) Pension cannot be adversely affected before a finding of guilt is returned.

(iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the

delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.”

14. In a recent judgment passed by a Division Bench of this Court in ***LPA No.340 of 2017*** titled as ***“Gurcharan Singh Vs. State of Punjab”***, decided on 08.02.2023, it was observed that in the absence of any pecuniary loss, no recovery can be effected from the pensioner. The relevant portion of the aforesaid judgment is reproduced as under:-

“In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No.1, no recovery from pension could have been ordered as a punitive measure by the respondents.”

15. 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 639: 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)."

16. A perusal of the affidavit filed by the respondent No.5 and arguments raised by learned counsel for the respondent No.5, it is clear that the pension of the petitioner has been with-held for no justification at all and he has been deprived of his constitutional as well as statutory rights. Therefore, the action of the respondents in with-holding the pension on the ground that some documents were not available with them pertaining to the pension is un-sustainable and is rejected.

17. The petitioner is, therefore, entitled for his entire pension alongwith arrears of the same from the date he retired alongwith interest @6% per annum.

18. The second issue involved in the present case is with regard to the payment of the retiral benefits. As per the affidavit filed by respondent No.5, some benefits including gratuity, leave encashment and

arrears of 2nd and 3rd ACP have been paid to the petitioners in the year 2023. There had been a delay of about 03 years for which again there is no justification either in affidavit or in the submissions made by learned counsel for respondent No.5-MC. Therefore, the petitioner will be entitled for the interest @ 6% per annum on the aforesaid delayed payments. In case there are other retiral benefits also which have not been paid to the petitioner till date, he shall be entitled for the same as well alongwith the arrears and interest of 6% per annum.

19. So far as the 3rd prayer of the petitioner with regard to the grant of full salary for the suspension period, is concerned, the petitioner shall be at liberty to file a comprehensive representation to the respondent No.5 in this regard within a period of three months from today. In the event of filing representation by the petitioner, the same shall be considered by respondent No.5 in accordance with law by passing a speaking order after giving an opportunity of personal hearing to the petitioner or his counsel within a period of three months.

20. In view of the aforesaid facts and circumstances, the present petition is allowed. Direction is hereby issued to respondent No.5 to release the pension of the petitioner forthwith, grant him arrears of pension as aforesaid, interest on the delayed retiral benefits and also the arrears of any other amount of retiral benefits if not already paid alongwith the interest @6% per annum. The entire exercise shall be completed by the respondent No.5 within a period of three months from today. 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 a further rate of interest @9% per annum.

21. Considering the aforesaid facts and circumstances where not even a single justified reason has come-forth whereby the petitioner has been denied his pension and retiral benefits, the petitioner shall also be entitled for costs which are assessed as Rs.25,000/- which shall also be paid to the petitioner within a period of three months from today.

22. The present petition is allowed in the aforesaid terms.

(JASGURPREET SINGH PURI)
JUDGE

01.04.2024

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No