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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23961-2017(O&M)
Date of decision: 13.11.2024

Manjit Kaur and others

...Petitioners

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Naveen Thakur, Advocate, for the petitioners.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Keshav Gupta, Advocate for respondents No.2 & 3.
(Through video conferencing).

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

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impunged letter dated 24.07.2017 (Annexure P-8) vide which the retiral benefits of the deceased husband of petitioner No.1 have been withheld, with a further prayer to direct the respondents to calculate and release the retiral benefits in favour of the petitioners alongwith interest @ 18% per annum.

2. Mr. Naveen Thakur, learned counsel appearing on behalf of the petitioners while giving the brief facts of the case submitted that the present petition has been filed by the widow, a son and two daughters of one late Sh.

Surinder Singh Chawla who was working as a Mechanic in the respondent-Corporation. The aforesaid Surinder Singh Chawla retired from the services of the Corporation 30.04.2011 as a Mechanic. At the time of his retirement, he was not paid any retiral benefits. He was facing one charge-sheet dated 26.06.2006 pertaining to allegation of less gain than the fixed norms of foodgrains and a regular departmental enquiry was conducted against him in which the Enquiry Officer held him responsible for causing a loss of Rs. 67,380/- being 70% share as per the policy of the respondent-Corporation. However, the competent authority did not agree with the enquiry report and rather issued a show-cause notice to the aforesaid Surinder Singh Chawla for tentative punishment of recovery of loss of Rs. 1,60,781/- alongwith interest and stoppage of two annual grade increments instead of simply recovering of Rs. 67,380/- as per the report of the Enquiry Officer. Learned counsel submitted that the charge-sheet dated 26.06.2006 was challenged by the aforesaid Surinder Singh Chawla before this Court by filing a writ petition bearing CWP No.1892 of 2009 which was admitted by a Co-ordinate Bench of this Court on 03.12.2009 vide Annexure P-2 wherein the recovery proceedings were stayed.

3. Thereafter no further proceedings were carried on by the respondent-Corporation because of the aforesaid order. However, the aforesaid Surinder Singh Chawla died on 20.09.2014 and he did not receive any retiral benefits from the respondent-Corporation. After death of the aforesaid Surinder Singh Chawla, the respondent-Corporation decided to place the matter for the release of retiral benefits which were due to him except an amount of Rs. 1,60,781/- on the basis of disagreement note and a fresh show-cause notice issued to him as aforesaid and in this way, the respondent-Corporation

ultimately released the retiral benefits to the petitioners only when the petitioners received a cheque on 01.03.2021 with a delay of about seven years.

4. Learned counsel also submitted while referring to the reply filed by the respondent-Corporation that in addition to the aforesaid charge-sheet, the aforesaid Surinder Singh Chawla was also facing another charge-sheet dated 17.09.2009 and a departmental enquiry was conducted with respect to the aforesaid charge-sheet but the Enquiry Officer found that the charges are not proved against the aforesaid Surinder Singh Chawla. After the aforesaid report of the Enquiry Officer, no action was taken against him and there is no order of punishment or recovery at all against the aforesaid Surinder Singh Chawla on the basis of the second charge-sheet dated 17.09.2009 and rather the Corporation had recommended for writing off of the loss because the aforesaid Surinder Singh Chawla had died.

5. Learned counsel submitted that in this way the delay in payment of the retiral benefits of the husband of petitioner No.1 and father of the remaining petitioners were delayed for seven years without any justification. He submitted that at the time of the death of the aforesaid Surinder Singh Chawla, assumingly if at all an amount of Rs. 1,60,781/- could be legally recovered, then at least the remaining amount was to be released to the petitioners but the entire retiral benefits were withheld without any justification. He submitted that even the aforesaid amount of Rs. 1,60,781/- could not have been withheld by the respondent-Corporation because there was no order of punishment against the husband of petitioner No.1. He submitted that it is an admitted position in the reply filed by the respondent-Corporation that when the Enquiry Officer had fixed the responsibility of the husband of petitioner No.1 to be Rs. 67,380/-,

then the competent authority rather issued a show-cause notice after disgreeing with the Enquiry Officer and issued a show-cause notice with regard to recovery of Rs. 1,60,781/- but thereafter no order was passed with regard to the same which may be because of the pendency of the writ petition before this Court as aforesaid in which interim order was passed but the fact remains that there is no punishment order against the husband of petitioner No.1 namely Surinder Singh Chawla. He submitted that when the husband of petitioner No.1 had already died in the year 2014, then there can be no further occasion to proceed against a dead person and retiral benefits were at least required to be released to the petitioners.

6. Learned counsel further submitted that at the time of the retirement of husband of petitioner No.1 in the year 2011, the petitioner No.1/widow was 56 years of age, petitioner No.2/son was 24 years of age, petitioner No.3/daughter was 30 years of age and petitioner No.4/daughter was 27 years of age and because of the illegal action on the part of the respondent-Corporation, the family has been deprived of the retiral benefits which are not only the Statutory Rights but also Constitutional Right envisaged under Article 300A of the Constitution of India without the authority of law and now on their own the respondents by realising their mistake have paid the amount on 01.03.2021 and therefore, the petitioners are entitled for the grant of interest on the same and also entitled for exemplary costs which should be imposed upon the respondent-Corporation.

7. On the other hand, Mr. Keshav Gupta, learned counsel appearing on behalf of the respondent-Corporation through video conferencing while referring to the reply filed by the respondent-Corporation submitted that when

the husband of petitioner No.1 had retired, there was a charge-sheet pending against him, although there is no order of punishment but the competent authority had disagreed with the report of the Enquiry Officer and issued a show-cause notice to him for tentative punishment of recovery of loss of Rs. 1,60,781/- alongwith interest and stoppage of two annual grade increments and thereafter when the husband of petitioner No.1 died, the entire retiral benefits were paid except for an amount of Rs. 1,60,781/-. With regard to the second charge-sheet, he also submitted while referring to para No.5 of the reply that the aforesaid charge-sheet ultimately was not pursued because the Enquiry Officer had held that the charges were not proved against the husband of petitioner No.1 and now the Corporation has taken a conscious decision to place the proceedings of the charge-sheet before the Board of Directors of the Corporation so as to get the approval of writing off the loss. He submitted that now since the entire retiral benefits have been paid to the petitioners except for an amount of Rs. 1,60,781/-, the petitioners do not deserve the interest on the aforesaid because of the aforesaid reason.

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

9. It is a case where the family of a deceased comprising of a widow, son and two daughters have knocked the doors of this Court for redressal of their grievances pertaining to grant of retiral benefits which are not only Statutory Rights but also Constitutional Rights being right to property provided under Article 300A of the Constitution of India. The facts of the case are not in dispute as so reflected from the reply filed by the Corporaiton. The husband of petitioner No.1 had retired on 30.04.2011 as a Mechanic and he faced two charge-sheets. So far as the second charge-sheet dated 17.09.2009 is concerned,

the respondents have themselves stated in para No.5 of the reply that the Enquiry Officer submitted report that the charges are not proved against him and in the meantime, the husband of petitioner No.1 died and there is no punishment order against the husband of petitioner No.1 and rather as per para No.6 of the reply, after the death of husband of petitioner No.1, the respondent-Corproration referred the case to the Board of Directors for writing off of the aforesaid amount. Therefore, it is clear that so far as the second charge-sheet is concerned, the same could not have become a ground for withholding the retiral benefits of husband of petitioner No.1 because there had been no punishment order against him at all at any point of time.

10. So far as the details of the first charge-sheet are concerned, when the Enquiry Officer gave a report even as per para No.2 of the reply, he only fixed the responsibility of husband of petitioner No.1 to the extent of Rs. 67,380/- but the competent authority disagreed and issued a show-cause notice by making a tentative amount of punishment of recovery of Rs. 1,60,781/- alongwith interest and stoppage of two annual grade increments. However, on being challeged by the husband of petitioner No.1 before this Court in CWP No.1892 of 2009, a Co-ordinate Bench of this Court had stayed the recovery vide Annexure P-2. However, after the death of husband of petitioner No.1, the respondents again could not have proceeded against a dead person and they have withheld an amount of Rs. 1,60,781/- which was the amount which was neither ascertained by any authority nor it was an amount which was pertaining to any punishment order passed by any competent authority. This figure of Rs. 1,60,781/- came into being on the basis of one tentative figure arrived at by the competent authority while issuing a show-cause notice by disagreeing with

the report of the Enquiry Officer. In other words, there is no ascertainment of the aforesaid amount for being recovered from the husband of petitioner No.1 by any authority of law. By simply issuing a show-cause notice by putting a tentative amount of Rs. 1,60,781/- would not mean that any amount was ascertainable or recoverable from the husband of petitioner No.1. There was no order of punishment against him after issuance of show cause notice due to interim order Annexure P-2.

11. It is therefore clear that at the time when the husband of petitioner No.1 had retired in the year 2011 and died in the year 2014, there was no order/recoverable amount from the husband of petitioner No.1. It was later on during the pendency of the present petition that the respondents appear to have realized their mistake and paid the retiral benefits to the petitioners after a span of about seven years on 01.03.2021 and again by withholding an amount of Rs. 1,60,781/- which could not have been withheld because there is nothing on the record to show that it was an amount which was recoverable by any order. Not only this, it is also not understandable as to how the aforesaid amount has been withheld which even according to the respondents could be recovered from the husband of petitioner No.1 who is a dead man and who died in the year 2014 which is about seven years prior to the release of the retiral benefits. The conduct of the respondents is not only deprecated by this Court but it appears that the respondents are insensitve towards their own employees and their families.

12. Earlier right to property was a Fundamental Right under Part-III of the Constitution of India under Article 31A. However after 44th amendment of the Constitution of India, it became a Constitutional Right under Article 300A

of the Constitution of India. It provides that no person shall be deprived of the right to property except by the authority of law. It is a settled law by a catena of judgments of Hon'ble Supreme Court that the right to property includes right to pension and retiral benefits. In this way, not only the Statutory Right but even the Constitutional Right of the deceased and his family members who are the present petitioners has been directly infringed by the respondents.

13. 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".*

14. 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).***

15. 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:*
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>> *"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?*
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>> *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.*
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>> *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."*

16. 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."*

17. In a 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."*

18. In "***Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others", 2013(1) SCC 353***, 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).”***

19. It is also a settled law now that right to livelihood is also right to life enshrined under Article 21 of the Constitution. A Constitution Bench of Hon'ble Supreme Court in *Olga Tellis and others Vs. Bombay Municipal Corporation and others, (1985) 3 SCC 545* had laid down a law that Right to Livelihood is a part of Right to life under Article 21 of the Constitution of India. The present is a case where the right to livelihood of the petitioners has been taken away by the respondent and therefore, Right to life under Article 21 has also been infracted. Not only Article 21 has been infracted qua the deceased but it has also been infracted qua his entire family who are the petitioners in the present writ petition.

20. It is therefore clear that there has been not only infringement of the Statutory Rights but also infringement of Article 21 of the Constitution of India as well as Article 300A of the Constitution of India. It is also settled law that grant of pension and pensionary benefits/retiral benefits is not the charity of the State or its instrumentality but it is a duty to pay.

21. The aforesaid amount has been withheld by the respondents on which they have accrued interest thereon. A Co-ordinate of this Court in ***J.S.***

Cheema Versus State of Haryana and others, 2014 (1) SCT 782 observed as under:-

> *"In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

22. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondent-Corporation is directed to calculate and pay interest @ 6% per annum(simple) on the delayed payments to the petitioners within a period of three months from today. The respondent-Corporation is also directed to pay the withheld amount of Rs. 1,60,781/- to the petitioners within the aforesaid period of three months alongwith interest @ 6% per annum (simple). The aforesaid interest is to be calculated w.e.f. date of retirement plus two months till the date of actual disbursement. 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 for future interest @ 9% per annum (simple) instead of 6% per annum (simple).

23. Since it has been held that the Statutory, Constitutional Rights and Fundamental Rights of the petitioners have been infringed by the respondent-

Corporation and a widow of a deceased employee and the family has been affected by the unlawful conduct of the respondent-Corporation, the petitioners are also entitled for exemplary costs in the nature of compensation which are assessed as Rs. 1,00,000/- (Rs.One Lac). The respondents are directed to pay the aforesaid costs to petitioner No.1 within the aforesaid period of three months. The costs shall be paid by the respondent-Corporation at the first instance within the aforesaid time period and thereafter, the Managing Director of the respondent-Corporation will fix the accountability of the officer(s) concerned in accordance with law and thereupon recover the aforesaid costs from the concerned officer(s).

(JASGURPREET SINGH PURI)
JUDGE

13.11.2024
Rakesh

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