2024:PHHC:070200

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21894-2022 (O&M)
Date of decision: 14.05.2024

NARESH KUMAR GOYAL

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Harsh Rana, Advocate for
Mr. Ramesh Goyat, Advocate for the petitioner.

Mr. R. S. Budhwar, Addl. A.G., Haryana.

Mr. J. C. Kapoor, Advocate for respondents No.3 and 4.

Mr. Tushar Gera, Advocate for
Mr. Naveen S. Bhardwaj, Advocate for respondent No.5.

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JASGURPREET SINGH PURI, J. (Oral)

CM-7845-CWP-2024

Prayer in this application is for placing on record the written statement filed on behalf of respondents No.3 and 4.

For the reasons mentioned in the application, the same is allowed. The written statement filed on behalf of respondents No.3 and 4, is taken on record, subject to all just exceptions.

CWP-21894-2022

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari*

for setting aside the impugned order dated 05.09.2022 (Annexure P-19) vide which respondent No.3-Bank has denied to release the retiral dues of the petitioner until respondent No.1 shall not take a decision regarding verification of Graduation Degree of the petitioner, whereas no such verification of his degree is required nor pending before respondent No.1 at any point of time and further to direct the respondent to grant/release the retiral benefits i.e. gratuity, leave encashment and other benefits to the petitioner in pursuance of his retirement with effect from 30.04.2019, along with interest @ 18% per annum on delayed payments.

2. On the last date of hearing i.e. on 26.04.2024, this Court had imposed costs of Rs.20,000/- on respondent No.5-Haryana State Cooperative Apex Bank Ltd., Chandigarh for non-filing of reply.

3. Today, learned counsel appearing on behalf of respondent No.5 submitted that in fact respondent No.5-Bank had no role to play in the present case and no grievance is sought against it and that was the reason as to why reply was not filed on behalf of respondent No.5 and in view of the above, the aforesaid order may be modified and costs may be waived off.

4. After hearing learned counsel appearing on behalf of respondent No.5, this Court is of the considered view that considering the aforesaid reason, the aforesaid order dated 26.04.2024, whereby costs of Rs.20,000/- were imposed on respondent No.5, is recalled and costs are waived off.

5. The brief facts of the present case are that the petitioner was working in respondent No.3-Panchkula Central Cooperative Bank Ltd., Panchkula. Initially the petitioner was appointed as a Secretary in the Central

Cooperative Bank, Ambala in the year 1986 and thereafter, in the year 1995, the aforesaid respondent No.3-Bank was bifurcated and his services were adjusted in the respondent No.3-Bank. Subsequently, the petitioner was promoted as Junior Accountant in the year 2012 and thereafter, he was further promoted as Senior Accountant on 03.03.2016 and he retired from the post of Senior Accountant on 30.04.2019 on attaining the age of superannuation.

6. While the petitioner was still in service, a charge-sheet dated 20.11.2018 was served upon the petitioner by alleging that he was not having a valid Graduation Degree. Respondent-Bank on the basis of a complaint sought verification from the Bangalore University about the same and vide Annexure P-3, the Bangalore University issued a certificate by certifying that the petitioner has been duly admitted to the Degree of Bachelor of Arts in recognition of the fulfillment of requirements for the said degree. The date of issuance of the aforesaid certificate is 01.06.2018. The said complaint was further processed by the respondent-Bank, wherein the respondent-Bank sought verification/confirmation from the aforesaid University and the University confirmed the issuance of marks cards and consequent upon the same, the petitioner was promoted along with some other employees. Thereafter, some verification was again sought with regard to the Degree of the petitioner as to whether the same has been issued by the Bangalore University or not, to which the Bangalore University responded with regard to the issuance of the verification of the Graduation Degree in negative. However, in the meantime, the petitioner retired from service on 30.04.2019 but there was no punishment order passed against the petitioner. After the retirement of the petitioner, again

the matter went on but till date there is no punishment order against the petitioner, although about four years have elapsed after his retirement. However, the petitioner was not given any of his retiral benefits because although the respondent-Bank had authorized the General Manager of the Bank to release the retiral benefits, but it was subject to the final decision of the Additional Chief Secretary, Cooperation Department, Haryana regarding verification of his Graduation Degree. In this way, the petitioner was not released his retiral benefits and therefore, he has filed the present writ petition for release of his retiral benefits.

7. Respondents No.3 and 4 were not filing reply in the present case, although the present writ petition was filed in the year 2022, but now by way of a separate application as aforesaid, reply has been filed by the respondents No.3 and 4-Bank, wherein it has been only stated that the petitioner has been released gratuity of an amount of Rs.13,86,129/- and leave encashment of an amount of Rs.7,75,040/-, totaling Rs.21,61,169/- on 19.08.2023.

8. Learned counsel appearing on behalf of the petitioner submitted that there was no justification for withholding of the retiral benefits of the petitioner and now during the pendency of the present writ petition, retiral benefits have been released but with a delay of about four years. He further submitted that now the subject matter of the present writ petition also pertains to grant of interest on the delayed payments of retiral benefits because there was no justification for withholding the retiral benefits. He referred to a Full Bench judgment of this Court in ***A. S. Randhawa versus State of Punjab and others, 1997 (3) SCT 468 (F.B.)*** in this regard.

9. Learned counsel appearing on behalf of the petitioner submitted that this is a second round of litigation and earlier the petitioner had filed CWP-14585-2022, wherein a Coordinate Bench of this Court had directed respondent No.3-Bank to decide the representation of the petitioner by passing an appropriate speaking order on the same within a period of eight weeks from the receipt of copy of that order and in case, after the decision on the representation, the petitioner is found entitled for any relief, the same be released to him within a period of four weeks thereafter. He further submitted that thereafter, the impugned order (Annexure P-19) was passed by the respondent-Bank, which was although a detailed order, but in nutshell it has been so stated in the said order that the retiral benefits can be released to the petitioner only after the approval of the Additional Chief Secretary, Cooperation Department, Haryana regarding verification of his Graduation Degree and that the General Manager of the Bank is not in a position to release the retiral dues at this stage. He further submitted that in the absence of any detailed departmental enquiry or any punishment order against the petitioner, retiral benefits cannot be withheld for an indefinite period only because of the reason that some verification of the Graduation Degree was required to be conducted and that too after getting approval of the Additional Chief Secretary, Cooperation Department, Haryana. He further submitted that the respondent is a Bank, which is a Cooperative Society registered under the Cooperative Societies Act and it has to take its decision independently because the Board of Directors of a Cooperative Society is a Principal Chief Executive Body and there is no reason as to why the approval of the Additional Chief Secretary,

Cooperation Department, Haryana was required because the respondent-Bank itself was competent to do so.

10. Learned counsel appearing on behalf of the petitioner also submitted that even otherwise also, there is no justification for withholding the retiral benefits of the petitioner on the ground that still verification of the aforesaid Degree from the Bangalore University was required. While referring to Annexure P-3 and the impugned order Annexure P-19, he submitted that in fact when the petitioner was in service, verification of the said Degree was sought from the Bangalore University and it was reported by the Bangalore University, which has been so incorporated in the order itself that the marks cards were genuine and on the basis of the same, the petitioner was promoted to the post of Senior Accountant and now after his retirement, his retiral benefits have been withheld on the ground that so far as the said Degree is concerned, the same has not still verified from the Bangalore University and therefore, it was only an arbitrary exercise of power. He further submitted that now all the retiral benefits have been paid to the petitioner by the respondent-Bank itself and therefore, he was entitled for the grant of interest also.

11. On the other hand, learned counsel for respondents No.3 and 4-Bank submitted that now since the retiral benefits have been paid to the petitioner, the present writ petition has become infructuous. He further submitted that the petitioner is not entitled for grant of interest because of the reason that the verification of his Graduation Degree was still to be verified from the Bangalore University and the approval of the Additional Chief Secretary, Cooperation Department, Haryana was required and that is in fact so

stated in the impugned order (Annexure P-19) and therefore, no interest can be paid to the petitioner.

12. Learned State counsel submitted that so far as the power which is vested in the Board of Directors of the respondent-Bank is concerned, there is no dispute with regard to the same that they are the Chief Executive Authority and the State of Haryana has got no role to play with regard to the disbursement of the aforesaid benefits, but the file which was sent to the Additional Chief Secretary, Cooperation Department, Haryana was only with a limited purpose of getting the Graduation Degree of the petitioner verified.

13. Learned counsel appearing on behalf of respondent No.5-Haryana State Cooperative Apex Bank Ltd., Chandigarh submitted that the Bank also has no role to play in the present case.

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

15. It is a case where the petitioner was working as a Senior Accountant in the respondent No.3-Bank. The respondent No.3-Bank is a Cooperative Society registered under the Cooperative Societies Act. The Executive Authority vests with the Board of Directors of the Bank. A perusal of impugned order dated 05.09.2022 (Annexure P-19) would show that it has been so clearly stated that when the petitioner was to be considered for being promoted to the post of Senior Accountant then the aforesaid qualification of the petitioner of being a Graduate was verified from the Bangalore University because for the purpose of being promoted to the further post, the aforesaid confirmation was required and as per the impugned order itself accompanied with Annexure P-3, which is a certificate issued by the Bangalore University,

the marks cards of the petitioner were duly verified and acting upon the same, petitioner was promoted by the respondent-Bank itself. Thereafter, although charge-sheet was continuing against the petitioner and he was suspended just before his retirement and at the time when he retired, he was reinstated and he was honorably retired from service on 30.04.2019. No further enquiry processed nor any punishment order was passed against the petitioner whatsoever. The respondent-Bank once again sent the file to the Bangalore University with regard to Degree of the petitioner because earlier the marks cards were verified and thereafter, the Bangalore University as per the impugned order did not verify the same and it was in negative. The respondent-Bank also decided that the matter may be sent to the Vigilance Bureau. Although a detailed speaking order has been passed vide Annexure P-19, but in nutshell it has been so stated in the aforesaid speaking order that ultimately the file is sent to the Additional Chief Secretary, Cooperation Department, Haryana regarding verification of Graduation Degree of the petitioner and till date the respondent-Bank is not in a position to release the retiral dues at this stage.

16. This Court is of the considered view that when the petitioner was in service, he stood promoted on the basis of verification of his Graduation Degree got done by the Bank itself and thereafter, no order of any punishment etc. was passed against him and he stood honorably retired from service after getting reinstatement. Even if the case is sent to the Vigilance Bureau for further investigation that itself would not mean that the retiral benefits of the petitioner can be curtailed or withheld. Learned counsel for respondents No.3 and 4-Bank has not been able to show as to under what provision of law the retiral benefits

of the petitioner have been withheld in the absence of any order against him. It is a settled law that after the retirement of an employee, the master and servant relationship ceases to operate and unless there is a specific provision for withholding the pensionary/ retiral benefits and a specific procedure, if at all, has been followed only then as an exceptional case the pensionary/retiral benefits can be withheld but in the present case, the only reason for withholding the retiral benefits of the petitioner was that the file has been sent to the Additional Chief Secretary, Cooperation Department, Haryana, who had no role to play with regard to release of retiral benefits of the petitioner even as per the stand taken by the learned State counsel.

17. The right to pension and retiral benefits is a Right to Property under Article 300-A of the Constitution of India, which provides that no person shall be deprived of his Right to Property without the authority of law. Hon'ble Supreme Court way back in the year 1971, in a Constitution Bench judgment in ***Deokinandan Prasad versus State of Bihar*, *1971(2) SCC 330***, observed that pension and pensionary benefits are not the bounty of the State and it belongs to the petitioner 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 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.*
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> *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".*

18. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in ***State of Jharkhand and others versus 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. Paras No.8 and 16 of the aforesaid judgment are reproduced as under:-

> *"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:*
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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?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. 1971 (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 maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh, 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."

19. Hon'ble Supreme Court in ***Tukaram Kana Joshi and others through Power of Attorney Holder versus M.I.D.C. and others*, *2013(1) SCC 353***, observed that Right to Property is now considered to be not only a Constitutional or a Statutory Right, but also a Human Right. Para No.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 875, 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.***"

20. The aforesaid reason for withholding of retiral benefits of the petitioner that the file has been sent to the Additional Chief Secretary, Cooperation Department, Haryana regarding verification of his Graduation Degree does not constitute a ground for delaying retiral benefits of the petitioner because the same can be withheld only under provision of law and with an authority of law and not in a perverse and arbitrary manner. When the State or its instrumentalities are to disburse the retiral benefits, then they are not doing any charity towards the employees but it is a bounden duty of the State to release the retiral benefits and particularly in view of the fact that the petitioner was rather promoted to the post of Senior Accountant after getting verification done from the aforesaid University with regard to the same marks cards, which is supported by Annexure P-3, which is a certificate issued by the Bangalore University.

21. Now during the pendency of the present writ petition, the respondent-Bank itself has paid all the retiral benefits to the petitioner and therefore, this Court is of the considered view that the petitioner would be

entitled for grant of interest because retiral benefits were withheld without any justification and without the authority of law.

22. Consequently, the present writ petition is partly allowed. The respondent- Panchkula Central Cooperative Bank Ltd., Panchkula is directed to calculate and pay interest @ 6% per annum (simple) to the petitioner starting from the date after two months from the date of his retirement till the date of actual disbursement, within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple).

23. Considering the aforesaid facts and circumstances and the reason for delay, which is totally contrary to law, the petitioner is also entitled for costs, which are assessed as Rs.50,000/-, which shall also be paid to the petitioner by the respondent-Bank within the aforesaid period of three months.

(JASGURPREET SINGH PURI)
JUDGE

14.05.2024
Chetan Thakur

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