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

261 **CWP-26082-2021 (O&M)**
Date of Decision:02.04.2024

Ravinder Kumar Sharma

......Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ashutosh Kaushik, Advocate for the petitioner.

Mr. Vikas Barala, Advocate for the respondents.

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JASGURPREET SINGH PURI J.(Oral)

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 *Mandamus* directing the respondents to grant the petitioner interest @18% per annum on delayed payments from the date of his retirement i.e.31.12.2016 till the date of actual disbursement with a further prayer to quash order dated 12.06.2019 (Annexure P-7).

2. The short facts involved in the present case are that the petitioner was working as a Storemate in the office of respondents-Uttar Haryana Bijli Vitran Nigam Limited (hereinafter to be referred to as 'Nigam') and he retired on 31.12.2016 on attaining the age of superannuation. However, about two months prior to his retirement, he was issued a show cause notice dated 10.10.2016 vide Annexure P-1 on the allegations that the petitioner had issued 25 KVS 33 nos. transformers out of 42 nos. to the OP Circle Karnal in one day which was out of his jurisdiction and ignoring the demand of OP Division UHBVN Shahabad.

When the petitioner retired an order dated 23.12.2016 vide Annexure P-3 was issued in which it was mentioned that the petitioner retires from the Nigam subject to awaited NDCs and pending show cause notice/enquiry. However, vide order dated 28.09.2018 (Annexure P-2), the aforesaid show cause notice was dropped considering the reply submitted by the petitioner and on the basis of the comments offered by the Xen concerned in this regard.

3. Since no retiral benefits were paid to the petitioner at all, he earlier filed a writ petition before this Court bearing No.CWP-1654-2019 decided on 21.01.2019 vide Annexure P-6 and Coordinate Bench of this Court disposed of the aforesaid petition with a direction to the respondents to pass an appropriate speaking order on the representations of the petitioner within a period of three months and it was also directed that in case it is found that the petitioner is entitled to any monetary benefits after the decision of the representation, the same should also be paid to him within three months thereafter.

4. However, before passing any speaking order, in pursuance of the aforesaid directions passed by the Coordinate Bench of this Court, the respondents rather issued a charge-sheet to the petitioner on 17.05.2019 vide Annexure P-8 and when the enquiry was conducted in the aforesaid charge-sheet then the charges were not proved against the petitioner and consequently the charges-sheet was dropped and the matter was closed. Thereafter, the authorities were requested to clear dues of Rs.2,40,300/- since the charge-sheet was closed vide Annexure P-9. However, before closing the charge-sheet, the impugned order dated 12.06.2019 Annexure P-7 was passed in pursuance of the directions passed by a Coordinate Bench of this Court wherein it has been so stated in detail that some of the

payments have been released to the petitioner at different points of time but reason for withholding the pension and pensionary benefits were because of the pendency of the aforesaid show cause notice and chargehseet and also reference has been made to Rule 12 of Haryana Civil Services (Pension) Rules, 2016 (hereinafter to be referred to as 'Rule') wherein as per the impugned order the power vested in the authority to withhold the pensionary benefits.

5. After the dropping of the aforesaid chargesheet vide Annexure P-9 an amount of Rs.2,40,300/- which was withheld from the gratuity of the petitioner, was paid to him. In totality the petitioner retired on 31.12.2016 but on different points of time different payments have been paid to him and as of today as per learned counsel for the petitioner, all the payments have been made to the petitioner and according to him he is entitled for interest on the delayed payments as the same have been with-held without any justifiable basis.

6. Learned counsel for the petitioner submitted that subject matter of the present petition now is only to the extent of grant interest on the delayed payments of pension and pensionary benefits of the petitioner in view of the Full Bench judgement of ***A.S. Randhawa vs. State of Punjab 1997 (3) SCT 468.*** He further submitted that the dates on which different respective payments were made, have been so depicted in para 15 of the writ petition in a tabulated form which is reproduced as under:-

Sr. No.	*Particulars*	*Due date*	*Paid on*	*Amout*
1	*Salary for July to August 2016*	*July and August 2016*	*13.08.2017 vide cheque No.758405*	*Rs.1,02,517/-*
2.	*DCRG*	*01.01.2017*	*07.06.2019*	*Rs.5,29,290/-*

2A	*DCRG balance*	*01.01.2017*	*30.08.2019*	*Rs.76959/-*
3.	*Balance DCRG*	*01.01.2017*	*08.07.2021*	*Rs.2,40,300/-*
4.	*Commutation of Pension*	*01.01.2017*	*07.06.2019*	*Rs.9,89,179/-*
5.	*Arrears of pay fixation re-leave encashment*	*31.12.2016*	*09.01.2019*	*Rs.98,287/-*
6.	*Arrears of pay fixation w.e.f.01.01.2016 -31.12.2016 in new pay scale and washing allowance*	*31.12.2016*	*06.12.2018*	*Rs.87,396/-*
7.	*GPF Final payment*	*01.01.2017*	*08.11.2017*	*Rs.4,45,039/-*
8.	*Provisional Pension 100% @ Rs.25150/- per month*	*01.01.2017*	*After 15 months 24 days from retirement/due date*	*Rs. 3,94,599/-*
Total				*Rs.28,86,607/-*

7. Learned counsel for the petitioner further submitted that when petitioner retired on 31.12.2016, there were no disciplinary or judicial proceedings against the petitioner and on the date when he retired, he was entitled for the entire pension and pensionary benefits since there was nothing pending against the petitioner except for one show cause notice vide Annexure P-1. He further submitted that mere pendency of a show cause notice cannot deprive the petitioner for being granted the pension and pensionary benefits since the same cannot be termed as initiation of disciplinary proceedings against the petitioner. Even otherwise also the aforesaid show cause notice was dropped on its own merits on the basis of the reply filed by the petitioner and the comments of the XEN concerned, which is so clear from the order dated 28.09.2018 (Annexure P-2) by which the show cause notice was dropped. He further submitted that so far as the condition which was imposed in the order of

retirement vide Annexure P-3 i.e. the retirement is subject to the outcome of the show cause notice is concerned, the same is not enforceable in law. The condition if so imposed can be imposed only under a provision of law but no superficial condition can be imposed and therefore is liable to be ignored. He again submitted that the pendency of any show cause notice against the petitioner is of no significance since there was no initiation of any disciplinary proceedings under the law.

8. He further submitted that so far as the chargesheet dated 17.05.2019 (Annexure P-8) is concerned, the same was issued to the petitioner after the issuance of directions by a Coordinate Bench of this Court to decide the representation of the petitioner and instead of deciding the representation, a charge-sheet was issued in which the Nigam conducted an enquiry and it was found that the charges are not proved against the petitioner and therefore charge-sheet were dropped and therefore in that matter even the pendency of charge-sheet which was otherwise issued after about three years of his retirement is again of no significance and the petitioner was entitled for the grant of pension and pensionary benefits immediately after the retirement. He further submitted that the pension and pensionary benefits/retirement benefits were paid to the petitioner in different intervals which have already been reproduced as above and since there was no justification at all for withholding the pensionary benefits, the petitioner is entitled for the grant of interest.

9. Learned counsel for petitioner has also drawn the attention of this Court to Rule 12 of the Haryana Civil Services (Pension) Rules 2016 which has been so referred in the impugned order on the basis of which the pensionary benefits were with-held. He further submitted that even as

per the aforesaid rule the retiral benefits can be with-held only when there is a pendency of any disciplinary or judicial proceedings which is so clear from the language used therein. Rule 12 of the Haryana Civil Services (Pension) Rules 2016 is reproduced as under:-

> *12.* ***Right of appointing authority to withhold or withdraw pension:***—
>
> *(1) The Appointing Authority reserve the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension to make good of the whole or part of any pecuniary loss, if any, caused to Government, if the pensioner is found in departmental or judicial proceedings, to have*—
>
> *(a) been guilty of grave misconduct or negligence committed by him but there is no pecuniary loss to Government; or*
>
> *(b) caused pecuniary loss to Government by misconduct or negligence; during his service including service rendered on re-employment after retirement:*
>
> *Provided that the Haryana Public Service Commission or Haryana Staff Selection Commission or any other approved Recruitment Agency, as the case may be, shall be consulted before final orders are passed:*
>
> *Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of minimum pension prescribed from time to time.*

10. While referring to the aforesaid rule, learned counsel for the petitioner submitted that it is crystal clear that a right is vested in the

authorities to with-hold either part of the pension or retiral benefits only when there are departmental or judicial proceedings pending against any employee whereas in the present case at the time of the retirement there were neither any departmental proceedings nor any judicial proceedings pending against the petitioner and therefore there was no occasion for the respondents-Nigam to have with-held the pension and pensionary benefits. Even as per Rule 12 (c), gratuity and the commuted value of pension can be with-held only if there are departmental and judicial proceedings. Apart from the above, even when the aforesaid with-holding is to be done during the pendency of the departmental or judicial proceedings then the same can only be done when there is a pecuniary loss or a misconduct or negligence is proved whereas in the present case nothing has been done at all and therefore the entire action of the respondents-Nigam in withholding the aforesaid entire benefits was without jurisdiction and without authority of law.

11. On the other hand, learned counsel appearing on behalf of the respondents submitted that it is not in dispute that while the petitioner was in service, there were no disciplinary proceedings against the petitioner nor any charge-sheet was issued against the petitioner. He further submitted that one chargesheet was issued against the petitioner after his retirement and later on it was dropped and the petitioner was paid all the retiral benefits. He also submitted that respondents-Nigam was within its powers in withholding the retiral benefits.

12. I have heard learned counsel for the parties.

13. After hearing learned counsel for the parties, it is clear that when the petitioner retired on 31.12.2016 then at that point of time there were no disciplinary or judicial proceedings pending against him. The

mere pendency of one show cause notice which was issued to the petitioner vide Annexure P-1 about two months prior to his retirement cannot be termed as any disciplinary or judicial proceedings since it is a settled law that mere issuance of a show cause notice is not an initiation of any disciplinary proceedings because the disciplinary proceedings commence with the issuance of a charge-sheet which has not been done in the present case. Therefore, at the time when the petitioner retired there was nothing against him and as such he was entitled for the entire pension and pensionary benefits there and then but the same was not paid to the petitioner and different benefits were paid at different stages as so reproduced by the petitioner in para No.15 of the writ petition.

14 So far as the charge-sheet against the petitioner is concerned, the same was issued after about three years of his retirement and after the issuance of direction by a Coordinate Bench of this Court to decide the representation of the petitioner but the aforesaid charge-sheet was dropped and even the charges are stated to be not proved during the enquiry and therefore that also would not become any reason for delay in disbursement of the pension and pensionary benefits to the petitioner. So far as the applicability of Rule 12 is concerned, a perusal of the same would show very clearly that withholding of the pension and pensionary benefits can be done only when there are judicial or disciplinary proceedings against an employee which was not the case in the present matter and therefore the entire action of the respondents-Nigam in with-holding the pension and pensionary benefits of the petitioner is absolutely illegal and without the authority of law.

15. The law with regard to the right to receive the pension and pensionary benefits is no longer res-integra and pension and pensionary benefits are not a bounty of the State and the State does not do any charity by giving pension and pensionary benefits. Right of receiving pension and pensionary benefits is rather a Right to Property which is a Constitutional Right under Article 300-A of the Constitution of India and a person can only be deprived of his Right to Property with an authority of law whereas in the present case the deprivation has been done without the authority of law. 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 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 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".*

16. 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).***

17. 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?

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 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(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."

18. 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."

19. 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."

20. 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)."***

21. In view of the aforesaid facts and circumstances of the present case, the present petition is allowed. The impugned order at Annexure P-7 is hereby set aside. The respondents-Nigam are directed to calculate the interest @6% per annum (simple) on the disbursement of the pension and pensionary benefits to the petitioner. Since the benefits have been disbursed to the petitioner on different heads on different dates, the respondent No.2 shall pass a detailed order within a period of three months from today by depicting different heads and different dates on which respective payments were made to the petitioner and shall pay the interest to the petitioner as aforesaid to be calculated from two months immediately after the date of retirement of the petitioner till the date of actual disbursement on respective heads.

22. The entire exercise shall be completed within a period of three months from today including the payment of interest to the petitioner. In case the aforesaid amount is not paid to the petitioner within a period of three months from today then the petitioner shall be entitled for future rate of interest @ 9% per annum.

23. Since the action of the respondents-Nigam is totally illegal and perverse which has affected the statutory and constitutional rights of the petitioner, he shall also be entitled for costs which are assessed as Rs.25,000/- (rupees twenty five thousand only) which shall also be paid to the petitioner within a period of three months from today.

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

(JASGURPREET SINGH PURI)
JUDGE

02.04.2024
shweta

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