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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 22nd October, 2024

+ W.P.(C) 14616/2024

SH HARI KUMAR S

.....Petitioner

Through: Mr. Sanjay Sharawat and Mr. Ashok Kumar, Advocates.

versus

LT. GOVERNOR OF DELHI & ORS.

.....Respondents

Through: Mr. Gaurav Dhingra and Mr. Shashank Singh, Advocates for Respondents No.1 and 2.

Mr. Mohinder J.S. Rupal and Mr. Hardik Rupal, Advocates for Respondent No.3.

Ms. Beenashaw N. Soni and Ms. Ann Joseph, Advocates for Respondent No.4.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“(a) Issue a writ of mandamus and direct the Respondent No.2 and 4 to pay to the Petitioner the unpaid retirement benefits towards Leave Encashment amounting to Rs.9,36,632/-; towards Commutation of Pension amounting to Rs.13,37,261/-; and towards LTC and Medical Reimbursement amounting to about Rs.15,000/-; and

(b) Issue a writ of mandamus and direct the Respondent No.2 and 4 to pay to the Petitioner interest @ 18% per annum on the abovesaid dues w.e.f 01.06.2023 till the date of payment and interest @ 18% p.a on delayed payment of Rs.16,15,523/- towards Gratuity w.e.f 01.06.2023 till 30.03.2024.”



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2. Shorn of unnecessary details, facts to the extent relevant are that Petitioner was appointed as Junior Assistant-cum-Typist on probation vide appointment letter dated 22.12.1993 in Deen Dayal Upadhyaya College/ Respondent No.4 (hereinafter referred to as 'College') in the pay scale of Rs.950-1500 and joined his duties on the said post on 24.12.1993. College is a constituent college of University of Delhi/Respondent No. 3 and is fully funded by Government of NCT of Delhi/Respondent No. 2. Petitioner's services were confirmed on 28.04.1995.

3. It is further averred in the petition that Petitioner was promoted to the post of Assistant vide letter dated 16.09.1998 w.e.f. 12.04.1997 and was further promoted as Senior Assistant w.e.f. 29.01.2001 vide letter dated 06.03.2002. Petitioner was promoted to the post of Section Officer vide order dated 27.03.2012 w.e.f. 07.02.2011. As the Petitioner was due to superannuate on 31.05.2023 on, attaining, the age of 60 years, the College vide office order dated 13.12.2022 informed all concerned Departments/ Sections of the College to issue 'No Dues Certificate' to the Petitioner for releasing his retirement benefits and in continuation thereof, College also issued a letter dated 20.12.2022 calling upon the Petitioner to submit requisite documents to enable the College to process the release of his retiral benefits. Petitioner submitted the requisite documents under covering letter dated 18.01.2023. Respondent No.3 by a letter dated 09.05.2023 conveyed approval of the Competent Authority for grant of pensionary benefits to the Petitioner and in furtherance thereto, the Administration Section of the College on 17.05.2023 certified that Petitioner was entitled to Leave Encashment for 300 days calculated at Rs.9,36,632/-. Respondent No. 3



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issued office order dated 18/22.05.2023 fixing the pensionary benefits payable to the Petitioner as per his entitlement.

4. It is stated in the writ petition that though the Petitioner superannuated on 31.05.2023, his retirement dues were not released, despite his having completed all requisite formalities well in time. Petitioner repeatedly represented to the College for release of his retiral dues, only to be informed that the same shall be paid after Respondent No.2/Directorate of Higher Education, Government of NCT of Delhi sanctions/releases the funds. After several personal visits to the College and representations dated 04.03.2024 and 13.03.2024, the only amount released to the Petitioner was to the tune of Rs.16,15,523/- towards gratuity on 01.04.2024. Petitioner claims that he is entitled to several retiral benefits such as: (a) Leave Encashment of Rs.9,36,632/-; (b) Commutation of Pension of Rs.13,37,261/-; (c) LTC and Medical Reimbursement of about Rs.15,000/-; and (d) Interest on delayed payments @ 18% p.a.

5. Learned counsel for the Petitioner strenuously urges that it is about 1½ years since the Petitioner retired on superannuation but his retiral dues have not been released, save and except, a sum of Rs.16,15,523/- towards gratuity. Petitioner is a native of Kerala and shifted to Delhi after he was employed with the College and is currently residing in an LIG flat with his aged and ailing 84 years old mother; a homemaker wife; and a daughter aged 25 years. Petitioner married his elder daughter in 2021 after withdrawing his entire savings from the GPF account. The engagement of his younger daughter is fixed for 17.11.2024 followed by the marriage soon thereafter and as on date, Petitioner is facing severe financial constraints and has no means to fulfill the family responsibilities. On account of inaction of



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the Respondents, which is wholly unjustified, Petitioner is being deprived of his legitimate dues leading to a state of affairs where he will be compelled to take a loan to make the two ends meet.

6. Respondents do not have much to state except for passing the blame on each other as usual. Stand of the College is that it is willing to disburse the retiral dues to the Petitioner but is unable to do so in the absence of provision in the budget and allocation of funds from the other Respondents. Ms. Soni, on instructions, submits that revised estimate has already been sent to the Directorate but the funds have not been released. The only defence of University of Delhi and Directorate of Higher Education is budgetary allocation and planned estimates.

7. Heard learned counsels for the parties and examined their rival submissions.

8. The undisputed facts are that Petitioner retired on superannuation from the College on 31.05.2023 and except for a part amount towards gratuity, his retiral benefits have not been disbursed till date. Under a covering letter dated 18.01.2023, Petitioner has submitted all requisite documents required to process grant of retiral benefits to the College. By letter dated 09.05.2023, University conveyed the approval of the Competent Authority to release the pensionary benefits of the Petitioner, which includes Basic Pension @ Rs.34,000/- w.e.f. 01.06.2023; commutation of pension of Rs.13,37,261/-; pension after commutation @ Rs.20,400/- per month; leave encashment for 300 days leave to his credit, etc. Despite approval by the University and completion of all formalities at the end of the Petitioner, he is running from pillar to post till date seeking what is legitimately due to him after rendering dedicated service of 03 decades with the College. It needs no



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reiteration that pension or gratuity is not the bounty of the State and right to receive the said benefits is a valuable right which is akin to the right to property. In this context, I may allude to judgment of the Constitution Bench of the Supreme Court in ***D.S. Nakara and Others v. Union of India, (1983) 1 SCC 305***, wherein the Supreme Court succinctly described the concept of superannuation and entrancingly elucidated the goals of pension and retiral benefits, as follows:-

“20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] 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 anyone'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 v. Iqbal Singh. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]”

9. The Supreme Court observed that a political society, which has a goal of setting up a welfare State, would introduce and has, in fact, introduced a welfare measure wherein retiral benefits are grounded on considerations of State's obligation to its citizens, who have rendered service during the useful span of life so that they are not left to penury in their old age. The Supreme Court also succinctly described the concept of superannuation and in that context the goals that a pension scheme seeks to subserve. Relevant paragraphs are as follows:-

“23. As the present case is concerned with superannuation pension, a



brief history of its initial introduction in early stages and continued existence till today may be illuminating. Superannuation is the most descriptive word of all but has become obsolescent because it seems ponderous. Its genesis can be traced to the first Act of Parliament (in U.K.) to be concerned with the provision of pensions generally in the public offices. It was passed in 1810. The Act which substantively devoted itself exclusively to the problem of superannuation pension was Superannuation Act of 1834. These are landmarks in pension history because they attempted for the first time to establish a comprehensive and uniform scheme for all whom we may now call civil servants. Even before the 19th century, the problem of providing for public servants who are unable, through old age or incapacity, to continue working, has been recognised, but methods of dealing with the problem varied from society to society and even occasionally from department to department.

24. A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on “considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development”. And this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as “Northcote-Trevelyan Report”. The Report was pungent in its criticism when it says that:

“[I]n civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducements to the parents and friends of sickly youths to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system. [See Gerald Rhodes: Public Sector Pensions, pp 18-19] ”

25. This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively very young age, with selection through national competitive examination and ordinarily the best talent gets the opportunity.

26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with



decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, "that is funny, I could not before". It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and

"pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed". (See Social Security Law by Prof. Harry Calvert, p. 1)

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.



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28. *Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education [302 US 74 : 83 L Ed 57] a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.*

29. *Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.*

30. *The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American Jurisprudence, 2d, 881).*

31. *From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an*



additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

*32. Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice — social, economic and political — shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh v. Union of India* [(1982) 1 SCC 618 : 1982 SCC (L&S) 119]. Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under: (SCC p. 619, para 1)*

“Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence, and the forward-looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their constitutional oath and do justice no less to the pavement-dweller than to the guest of the five-star hotel.”

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure



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amongst other things full enjoyment of leisure and social and cultural opportunities.”

10. It would be useful to refer to judgments in *State of Rajasthan and Others v. Mahendra Nath Sharma*, (2015) 9 SCC 540 and *State of Himachal Pradesh and Others v. Rajesh Chander Sood and Others*, (2016) 10 SCC 77, in the aforesaid context as also a passage from the judgment in *State of Mysore v. C.R. Sheshadri*, (1974) 4 SCC 308, wherein Justice Krishna Iyer in the context of inordinate delay in payment of Pension observed as under:-

“8. ...A retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant — not unusual in Government...”

11. In view of the settled law on release of retiral benefits, this Court is unable to countenance the stand of the Respondents that the pensionary benefits are not being released to the Petitioner due to budgetary allocation, etc. Accordingly, this writ petition is allowed with a direction to the Respondents to release all the retiral benefits to the Petitioner within a period of two weeks from today. It is for the Respondents to work out their budgetary allocation to ensure that the order is complied with.

JYOTI SINGH, J

OCTOBER 22, 2024

B.S. Rohella