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

\+ W.P.(C) 15955/2024

DR PRAMESH RATNAKAR .....Petitioner

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

versus

LT. GOVERNOR OF DELHI & ORS. .....Respondents

Through: Ms. Latika Chaudhary, Advocate for R1.
Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal and Ms. Aishwarya Malhotra, Advocates for R3.
Ms. Beenashaw Soni and Ms. Mansi Jain, Advocates for R4.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **19.11.2024**

1. This writ petition 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.21,25,560/- and towards Commutation of Pension amounting to Rs.36,19,997/-; and*
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> *[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 01.02.2023 till the date of payment and interest @ 18% p.a on delayed payment of Rs.20 lakhs towards Gratuity w.e.f 01.02.2023 till 24.03.2024;"*

2. Facts to the extent relevant are that Petitioner was appointed as Lecturer in English on probation vide appointment letter dated 23.08.1991 in Deen Dayal Upadhyaya College/Respondent No.4 (hereinafter referred to as

'College') in the pay scale of Rs.2200-4000/-. 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.

3. It is averred in the petition that by virtue of Merit Promotion Scheme, 1998/Career Advancement Scheme, 2000, Petitioner was promoted to the post of Lecturer (Senior Scale)/Assistant Professor (Academic Level 11) and further promoted as Assistant Professor (Academic Level 12). On 01.01.2006, Petitioner was promoted to the post of Associate Professor. Petitioner was due to superannuate on 31.01.2023 on attaining the age of 60 years. However, unfortunately, few months prior thereto, he was diagnosed with Parkinson's disease and after examination and diagnostic tests, AIIMS Delhi recommended his treatment, the cost of which was approximately Rs.10 lacs. In order to undergo the treatment, Petitioner requested the College on 11.10.2022 for settlement and disbursement of his retiral dues immediate upon his retirement on 31.01.2023, however, there was no progress and Petitioner made representations to the Directorate of Higher Education and other senior officers in the Ministry but to no avail.

4. It is stated that Petitioner retired on 31.01.2023 but his retiral benefits which included gratuity, leave encashment and commutation of pension were not released and only provident fund component was released. With the meagre resources that the Petitioner was able to accumulate, he underwent the complex brain surgery at AIIMS, Delhi on 28.03.2023 and after recovering to some extent, Petitioner again requested for release of his balance dues. By an Office Order dated 17.04.2023, the College fixed the pensionary dues and also calculated the amount he was entitled to receive towards commutation of pension being Rs.36,19,997/-. After much delay,

College only released gratuity of Rs.20 lacs on 24.03.2024 but the remaining dues are still pending.

5. Issue notice.

6. Learned counsels, as above, accept notice on behalf of the respective Respondents.

7. Learned counsel for the Petitioner submits that Respondents were under a legal obligation to release the pensionary benefits of the Petitioner immediately upon his superannuation and in fact, they were required to process the case prior to the date of retirement. Looking at his medical condition, Petitioner had requested for release of the benefits forthwith on retirement, much prior to the date of retirement so that he had money to undergo the complex brain surgery advised by AIIMS, Delhi, but to no avail. It is strenuously urged that this is a fit case where interest must be awarded to the Petitioner who has undergone the mental trauma not only on account of his health issues but also due to paucity of funds. It is not expected of a model welfare State to make retired employees struggle for the retiral dues which they have earned over the years due to hard work.

8. Learned counsels for the Respondents echo the usual defence that the process for release of retirement benefits is on going and that they are willing to release the retiral benefits but the same will be done after the budgetary allocation is done depending on pattern of assistance by the Government. College takes a stand that they have fixed the retiral benefits and have no objection to the payments but are unable to do so on account of paucity of funds and lack of budget allocation in respect of the retiral benefits. It is also brought forth that in order to comply with the directions to release retiral benefits, Directorate of Higher Education is releasing funds in

individual cases where there are judicial orders but this is leading to another complex situation where the College is facing deficit to release monthly salaries of their staff.

9. I have heard learned counsel for the Petitioner and learned counsels for the Respondents. Respondents have no defence to the pleas raised by the Petitioner, save and except, budgetary allocation and disbursement of funds to the College. The writ petition brings to light a very unfortunate state of affairs where the Petitioner, who retired as Associate Professor has been compelled to approach this Court to seek the retiral benefits which he was entitled to receive upon retirement, there being no dispute on entitlement or the quantum of the amounts due. Suffering from a serious brain ailment and desirous of undergoing the brain surgery advised by AIIMS, Delhi, Petitioner had written to the College well in advance of his retirement date to process his case for release of the retiral benefits so that on retirement, he was in a position to make arrangements for the surgery. This, however, did not happen and only the provident fund component of the retirement dues was released. Belatedly, on 24.03.2024 i.e. after more than a year from retirement, College released the gratuity amount and the amounts towards leave encashment and commutation of pension are still outstanding. Petitioner rightly urges that this is a fit case where this Court should award interest on delayed payment of retiral dues.

10. It needs no reiteration that retiral benefits are 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 antequated 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]"*

11. 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.

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

12. 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. In my view, this is a fit case where Petitioner is entitled to interest on delayed payment of the retiral benefits in view of the judgments of the Supreme Court in ***State of Kerala and Others v. M. Padmanabhan Nair, (1985) 1 SCC 429*** and ***D.D. Tewari (Dead) through legal representatives v. Uttar Haryana Bijli Vitran Nigam Limited and Others, (2014) 8 SCC 894*** as well as judgments of the Calcutta High Court in ***Niranjan Kumar Mondal v. The State of West Bengal & Ors., (2012) 1 WBLR (Cal) 903*** and ***Padma Nath v. State of West Bengal and Others, 2019 SCC OnLine Cal 2185.***

13. Accordingly, this writ petition is allowed with a direction to the Respondents to release the retiral/terminal benefits of the Petitioner, as mentioned in the Office Order dated 17.04.2023, within a period of four weeks from the date of receipt of the order along with interest @ 8% per annum from the date the amounts fell due till the date of actual payment. It will be for the Respondents *inter se* to make arrangements to comply with the order.

14. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 19, 2024/*jg/shivam*