$~93

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

\+ W.P.(C) 15940/2024

DR SUMAN BALA MANCHANDA .....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 R1 and R2.
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

<u>O R D E R</u>

% **19.11.2024**

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 her unpaid retirement benefits amounting to Rs.29,09,040/- towards Leave Encashment; Rs.38,40,439/- towards Commutation of Pension and Rs.3,51,946/- towards medical Reimbursement; 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 01.01.2023 till the date of payment and interest @ 18% p.a on delayed payment of Rs.20 lakhs towards Gratuity w.e.f 01.01.2023 till 01.04.2024;"*

2. Shorn of unnecessary details, facts to the extent relevant are that Petitioner was appointed as Lecturer in Hindi vide appointment letter dated 30.09.1992 in Deen Dayal Upadhyaya College/Respondent No.4

(hereinafter referred to as 'College'). 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 Petitioner was promoted to the post of Lecturer (Senior Scale)/Assistant Professor (Academic Level 11) and thereafter to the post of Assistant Professor (Academic Level 12). Petitioner was promoted to the post of Associate Professor on 01.01.2006 and was due to retire on superannuation on 31.12.2022 on attaining the age of 60 years. With a view to calculate and settle the retiral benefits of the Petitioner, the College vide letter dated 12.07.2022 called upon the Petitioner to submit certain documents which the Petitioner did with utmost promptitude. Thereafter the College issued an Office Order dated 27.12.2022 fixing the pension of the Petitioner and also indicating therein the amount due to her towards commutation of pension which is Rs.38,40,439/-.

4. Petitioner states that on retirement on 31.12.2022, Petitioner did not receive the retiral benefits despite fulfilling all requisite formalities and submitting the required documents. Out of the retiral benefits involving gratuity, provident fund, leave encashment and commutation of pension only provident fund was released to the Petitioner. It is also stated that a sum of Rs.3,51,946/- towards medical reimbursement has also not been paid to the Petitioner. Belatedly, on 01.04.2024, the College paid a sum of Rs.20 lacs towards gratuity but despite several representations, the balance dues viz. (a) Leave Encashment of Rs.29,09,040/-; (b) Commutation of Pension to the tune of Rs.38,40,439 /-; (c) Medical Reimbursement of about Rs.3,51,946 /-; and (d) Interest on delayed payments @ 18% p.a., are pending despite passage of nearly two years from the date of superannuation of the

Petitioner.

5. Issue notice.

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

7. Learned counsel for the Petitioner strenuously urges that it is over 2 years since the Petitioner retired but her retiral dues towards leave encashment, commutation of pension have not been paid. Respondents have not even cared to release the amount towards the medical reimbursement and therefore prays that a direction be issued for release of the balance amount along with interest @ 18% per annum from the date the amounts became due till the actual date of payment. It is urged that retiral benefits are not the bounty of the State to be paid to a retired employee at the whims and fancies of an employer.

8. Learned counsels for the Respondents have the usual defence. Ms. Soni, on instructions, submits that revised estimate has already been sent to the Directorate of Higher Education but the funds have not been released. The defence of the University of Delhi and Directorate of Higher Education is budgetary allocation based on planned estimates.

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

10. The undisputed facts are that Petitioner retired on superannuation from the College on 31.12.2022 and, save and except, the provident fund dues and the gratuity nothing has been disbursed by the College and unfortunately this also includes the medical reimbursement. Petitioner has completed all necessary formalities and submitted all requisite documents and even the College has sent the revised estimate but there is total inaction

for releasing the pending retiral benefits for nearly two years now. Petitioner has rendered nearly three decades of dedicated service in the College and in the days of her retirement is struggling and running from pillar to post to realise the retiral dues, which she is legitimately entitled to. It needs no reiteration that pension is not the bounty of the State and right to receive the retiral 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 pending retiral benefits and the amounts due towards medical reimbursement are being delayed due to budgetary allocation, etc. Accordingly, this writ petition is allowed with a direction to the Respondents to release the balance retiral benefits to the Petitioner along with the amount due towards medical reimbursement, within a period of four weeks from the date of receipt of this order by the College. It is for the Respondents to work out their budgetary allocation to ensure that the order is complied with in letter and spirit in the timeline stipulated above. The issue of interest on delayed payment of retiral benefits is kept open.

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

JYOTI SINGH, J

NOVEMBER 19, 2024/*jg/shivam*