



2024:DHC:9039-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 15998/2024, CAV 564/2024, CM APPLs. 67272/2024
& 67273/2024

UNION OF INDIA THROUGH ITS
SECRETARY & ORS.

.....Petitioners

Through: Mr. Himanshu Pathak, SPC
with Mr. Amit Singh, Advs.

versus

CHANDRA PAL SINGH

.....Respondent

Through: Mr. Ankur Chhibber and Mr.
Vishal, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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19.11.2024

C. HARI SHANKAR, J

1. We have heard learned Counsel for both sides.
2. With consent of learned Counsel for the parties, we dispose of this writ petition.
3. The respondent was served with a chart-sheet on 1 April 2019 alleging financial irregularities to have been committed by him during 2015. Disciplinary proceedings commenced. On 15 September 2021, the Inquiry Officer who was appointed in the case submitted his inquiry report.

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4. According to the report of the Inquiry Report, the charges against the respondent were not proved. As the Disciplinary Authority disagreed with the Inquiry Officer, a disagreement note was issued to the respondent calling for his reply.
5. The respondent submitted his reply on 14 March 2023. In the interregnum, the respondent had been promoted as Assistant Accounts Officer on *ad hoc* basis on 10 February 2021.
6. The respondent has superannuated on 30 April 2023.
7. Clearly, by application of Rule 8(3)¹ of the Central Civil Services (Pension) Rules, 2021, as disciplinary proceedings against him were pending on the date of his superannuation, the respondent was entitled only to provisional pension. However, apparently, by error, the petitioners disbursed regular pension to the respondent and all other retiral benefits at the time of his superannuation.
8. In June 2024, the petitioners discontinued payment of regular pension to the respondent and started paying the respondent provisional pension.
9. We may note, here, that there is no quantitative difference between regular pension and provisional pension. They are equal in quantum.

¹ (3) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings instituted under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are continued under subrule (2), a provisional pension as provided in sub-rule (4) shall be sanctioned.



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10. The respondent assailed the aforesaid action of the petitioners before the Central Administrative Tribunal² by way of OA 2500/2024. By judgment dated 23 August 2024, the Tribunal has set aside the decision to pay provisional pension to the respondent and has directed that he be paid regular pension as well as arrears of pension due to him.

11. We may note that, as provisional pension and regular pension are equal in quantum, there are no arrears involved.

12. Aggrieved by the decision of the Tribunal, the petitioners have approached this Court by means of the present writ petition.

13. We have heard Mr. Himanshu Pathak, learned Counsel for the petitioners and Mr. Ankur Chhibber, learned Counsel for the respondent.

14. Mr. Himanshu Pathak points that under Rule 8(3) of the CCS (Pension) Rules, the respondent was entitled only to provisional pension and that, on the petitioners discovering this fact that, the petitioners started paying provisional pension to the respondent instead of regular pension. Inasmuch as the payment of regular pension was by mistake, he submits that the no occasion arose to issue a show cause notice to the respondent.

² “the Tribunal”, hereinafter



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15. Mr. Ankur Chhibber, learned Counsel for the respondent, only submits that, before converting regular pension to provisional pension, the respondent ought to have been issued a show cause notice.

16. We have queried of Mr. Chhibber as to whether, given the fact that the respondent was in fact facing disciplinary proceedings and that – continues to be facing disciplinary proceedings – on the date of his superannuation, the respondent was entitled to be paid regular pension or provisional pension.

17. Mr. Chhibber candidly acknowledges that the respondent was entitled only to provisional pension. He, however, reiterates that, having paid him regular pension, the petitioners could not have started paying him provisional pension without a show cause notice.

18. In view of the frank admission, by Mr Chhibber, that the respondent would, in fact, be entitled only to provisional pension, and the clear mandate of Rule 8(3) of the CCS (Pension) Rules, the act of the petitioners in discontinuing payment of regular pension and substituting it with payment of proforma pension was obviously in order.

19. The Supreme Court has held, in several decisions that principles of natural justice are not in the nature of a strait jacket formula and that, where the outcome is predetermined, compliance with the principles of natural justice cannot be insisted upon merely as a formality. In *Municipal Committee, Hoshiarpur v Punjab State*



Electricity Board³, this principle was expressly recognized:

“33. There may be cases where on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. (*Vide State of U.P. v Om Prakash Gupta*⁴, *S.L. Kapoor v Jagmohan*⁵ and *U.P. Junior Doctors' Action Committee v Dr. B. Sheetal Nandwani*⁶).

The “useless formality” principle is, however, not ordinarily to be invoked and can be pressed into service only where there can be one, and only one, outcome. Emphasis is to be on the word “useless”; in other words, if insistence on *audi alteram partem* or other principles of natural justice is plainly of no use; in other words, where there can be, and only one, outcome, and none other, the law will not insist on an empty formality of natural justice being adhered to.

20. This case presents a classic example where the principle can justifiably be invoked. The respondent candidly acknowledges, through Mr Chhibber, that he *was not entitled to be paid regular pension*. Any show cause notice, before the petitioners rectified its mistake and started paying provisional pension to the respondent in place of the regular pension which was being paid prior thereto would be no more than an empty formality, and the law would not, therefore, insist on it.

21. We, therefore, find no error in the decision of the petitioners to pay the respondent provisional pension.

³ (2010) 13 SCC 216

⁴ (1969) 3 SCC 775

⁵ (1980) 4 SCC 379

⁶ (1990) 4 SCC 633



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22. Accordingly, we cannot approve of the decision of the Tribunal.
23. The impugned judgment of the Tribunal is set aside.
24. The writ petition stands allowed accordingly, without any order as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 19, 2024

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Click here to check corrigendum, if any