

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 8 of 2025

Krishnadas Chatterjee

Versus

The State of West Bengal and Others

For the Petitioner : Mr. Sabyachi Chatterjee,
Mr. Sayan Banerjee,
Mr. Badrul Karim,
Mr. Aritra Ghosh.

For the Respondents : Mr. Tapan Kumar Mukherjee, Id. AGP,
Ms. Sangeeta Roy.

Judgment on : June 10, 2025

Madhuresh Prasad, J.:

1. The petitioner was the applicant and his claim for release of pensionary benefits has been rejected by the West Bengal Administrative Tribunal (SAT for short). The original application (OA) No. 634 of 2021 filed by the petitioner has been disposed of by order dated 07.03.2024, without passing any order in favour of the petitioner. The same is the subject matter of the present writ proceedings.
2. The petitioner was working as an Upper Division Assistant (U.D.A.) under the Directorate of Health Services. He was made an accused in a

criminal case and taken in judicial custody for more than 48 hours, leading to the consequence of his deemed automatic suspension. During the period of suspension, he was paid subsistence allowance. After his release from judicial custody, the State respondents lifted the suspension and allowed the petitioner to continue on his post. The criminal case being Sankrail P.S. Case No. 159 of 2011, in which the petitioner was arrested, is still pending consideration before the trial court.

3. The above facts are not in dispute. It is also not in dispute that the petitioner is getting an interim allowance, i.e. 2/3 of the pension due to him. Learned AGP has fairly submitted there that as per the West Bengal Services (Death Cum Retirement Benefit) Rules 1971(DCRB 1971 for brevity), subsequent upon his attaining the age of superannuation on 31.07.2020, the petitioner is also entitled to grant of full benefits under the heads - leave encashment, group insurance and provident fund.
4. Therefor the contentious issue for consideration in the present case is whether the petitioner can claim release of full pension during pendency of the criminal case and whether he would be entitled to grant of the benefits of gratuity during pendency of the criminal case.
5. Referring to copy of the F.I.R. and Charge Sheet of Sankrail P.S. case No. 159/2011 wherein the petitioner is an accused, learned advocate for the petitioner submits that the allegations therein are neither related

to discharge of his official duties, nor does it involve moral turpitude. He submits that substance of the allegation is that he availed a loan, the proceeds of which have been paid directly to a builder. The builder in conspiracy with the present petitioner has allegedly misappropriated the amounts. The allegation is thus primarily against the builder. The allegations are predominantly civil in nature, regarding non-repayment of loan. Therefore, pendency of such criminal proceedings would not invite any consequence of withholding any of the petitioners' post retiral dues under DCRB 1971.

6. The allegations do not involve any element of moral turpitude the authorities therefore do not have the option of withholding the grant of pension to the petitioner. Referring to Rule 14 of the DCRB 1971, he submits that only if the allegation in the criminal proceedings involve an element of moral turpitude, the Rule permits withholding of pension; and grant of interim allowance not exceeding 2/3 of the pension during the pendency of criminal proceedings. Element of moral turpitude being absent in the criminal case against the petitioner, there is no justification for withholding the full pension of the petitioner. Therefore, the West Bengal State Administrative Tribunal ought to have issued directions for release of full pensionary benefits to the petitioner.

7. Insofar as the claim with respect to gratuity is concerned, he submits that Rule 14 talks only about withholding of pension in the case of pendency of a criminal proceeding involving moral turpitude. The Rule does not even mention the expression 'gratuity' and therefore,

irrespective of the nature of allegations pending in the criminal trial, there is no legal basis under the DCRB 1971 for withholding the benefit of gratuity. He has placed reliance on a decision passed by the Hon'ble Single judge Bench in the case of ***Surajit Roy Vs. The Registrar General, High Court at Calcutta & Ors.*** in ***W.P. No. 834 of 2013***.

8. It is submitted that the Hon'ble Single Judge has taken into consideration Hon'ble Apex Court decisions, as well as the decisions of this Court, and held that if the intention of the Rule was to enable withholding of gratuity, the same would have clearly been indicated in Rule 14, as has been done in Rules 8 and 10 of DCRB 1971. Omission of the expression 'gratuity' in Rule 14, therefore, does not warrant attribution of the expression 'pension' to include 'gratuity'. The context in which the word 'pension' has been used in Rule 14 contains a different meaning, i.e. only to enable withholding of pension.
9. Mr. Mukherjee, learned A.G.P. appearing for the State on the other hand draws attention of the Court towards Rule 7 (f) and Rule 8 of the DCRB 1971. He submits that from reading of the provisions, there is no room for doubt that pension includes gratuity and that the pension sanctioning authority has the power to withhold both pension and gratuity, by an order in writing. Once pension is withheld that there is no scope for grant of gratuity since it is not severable and has to be read as an entitlement included under the heading "pension". The expression "pension" mentioned in Rule 14 of DCRB 1971 must be read

as including gratuity; and the source of power for withholding gratuity in the case of pendency of a criminal case involving moral turpitude.

10. He submits that the offences alleged in the criminal case pending against the petitioner involves crimes such as forgery and misappropriation of public money and therefore, there is no doubt that the offence involves moral turpitude inviting the scope and action under Rule 14 of the D.C.R.B. Rules. The respondents, therefore, according to him have rightly sanctioned only 2/3 of the pension amount as an interim allowance. He relies on two decisions of the Apex Court in the case of **P, an Advocate, Re** reported in **AIR 1963 SC 1313** and **Sushil Kumar Singhal Vs. Punjab National Bank** reported in **(2010) 8 SCC 573**.

11. Based on the above noted submissions, we find one issue which arises for consideration is whether the accusation made against the petitioner in the criminal proceedings involve moral turpitude so as to invite the consequences of Rule 14 of the D.C.R.B. Rules, 1971.

12. We thus proceeded to consider the two judgments relied upon by Mr. Mukherjee in support of his submission that the offences alleged against the petitioner in the pending criminal proceedings involve moral turpitude. In the case of **P, an Advocate** (supra) the Apex Court was considering the concept of moral turpitude with regard to the expected conduct of an Advocate. The apex court held that the expression is not to receive a narrow construction, and conduct which is contrary to

honesty, opposed to good morals or is unethical may safely be held to involve moral turpitude. In the case of **Sushil Kumar Singhal** (supra) the Apex Court has also elaborated on the meaning of the expression “moral turpitude”. It held moral turpitude to mean anything contrary to honesty, modesty or good morals. The Apex Court in para 25 of the said report has stated:

“25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.”

13. We have perused copy of the records relating to the Criminal proceedings. The allegations made against the petitioner is that he along with 21 other co-accused, with the help of a tout have entered into a conspiracy with the developer, and the branch Manager of the UCO Bank, Bakultala Branch, Howrah. They have thus applied for loan for purchase of flats with nomination in favour of the developer. Instead of using the loan amount for purchase of flats by the petitioner and other similar loanees, the amount of loan has been encashed by the developer for developing the flats, for being sold to another person/s at higher rates. The petitioner did not send any intimation in this regard to the bank, for which he received a portion of the loan amount as wrongful gain, from the developer. Allegation has been thus made of cheating in respect of public money, for offences under sections 406/409/417/420 and 120B of the erstwhile Indian Penal Code (IPC

for short); corresponding to sections 316(2)/316(5)/318(2)/318(4) and 61(2) of the Bharatiya Nyaya Sanhita , 2023 (BNS for short).

14. The offences alleged against the petitioner include the offence under section 409 IPC/316 BNS which carry punishment for up to ten years under the erstwhile IPC and up to life under the BNS. We are also not impressed by submission of the learned advocate for the petitioner that the allegation is regarding non-repayment of a loan. The substance of the allegations is conspiring with bank official and developer to commit cheating and criminal breach of trust involving public money and thereby deriving illegitimate gain. The allegations involve grave and serious economic offences having a direct adverse impact on health of a public financial institution, and indirectly affecting the country's economy. Thus, it cannot be said that the allegations do not involve moral turpitude, so as to escape the consequences of Rule 14 of DCRB 1971. We are thus of the considered opinion that Rule 14 of the DCRB 1971 would be attracted against the petitioner in the facts and circumstances of the present case.

15. Having held so, we are required to consider whether Rule 14 is a source of power for withholding pension and gratuity of the petitioner, or not. We thus consider it useful to quote the relevant provisions of DCRB 1971, referred to by the parties namely rule 7 (f), 8, 9, 10 and 14 of DCRB 1971 which reads:

“7. Defenitions-....

(f) “pension” except when the term “pension” is used in contradiction to gratuity, “pension” includes gratuity.

...

8. Withholding of pension in cases of conviction and misconduct-

*Future good conduct shall be an implied condition of every grant of pension. The pension sanctioning authority may, by order in writing, withhold or withdraw, either in full or in part, a pension or **gratuity** (emphasis ours) or both either permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct where a part of the pension is withheld or withdrawn, the amount of such shall not be reduced below rupees four hundred per mensem :*

Provided that no order shall be passed under this clause by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before his retirement from service.

(2) Where the pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2) if the pension sanctioning authority under sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under sub-rule (1)

(a) serve upon the pensioner a notice specifying the action proposed to be taken and calling upon him to submit within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take the representation, if any, submitted by the pensioner under clause (a) into consideration.

(4) Where the authority competent to pass an order under clause (1) is the Governor, the Public Service Commission, West Bengal, shall be consulted before passing the order.

(5) An appeal against an order under clause (1) passed by any authority other than the Governor shall lie to the Governor and the Governor shall, in consultation with the Public Service

Commission, West Bengal, pass such order on the appeal as he deems fit.

....

9. Recovery of sum due to government from pension or gratuity-

The government reserves to itself the right to order recovery from pension or **gratuity** (emphasis ours) or both of an officer under an order of the government passed not later than four years after the date of retirement to meet any sum due under the liability incurred by such officer to government.

...

10. Right of the Governor to withhold pension in certain cases-

(1) The Governor reserves to himself 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 of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that —

(a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(b) Such departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment—

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than [four years] before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than [four years] before such institution; and

(d) the Public Service Commission, West Bengal shall be consulted before final order are passed.

Explanation—For the purpose of this article—

(a) a departmental proceeding shall be deemed to have been instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to have been instituted-

(i) in the case of criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate take cognizance, is made, and

(ii) in the case of a civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

*(2) Where any departmental or judicial proceeding is instituted under sub-rule (1) or where a departmental proceedings is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension; but no **gratuity or death-cum-retirement gratuity** (emphasis ours) shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.*

(3) Payment of provisional pension made under clause (2) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note – The grant of pension under this rule shall not prejudice the operation rule 65 when final pension is sanctioned upon conclusion of the proceeding.”

...

“14 Criminal proceedings–

A Government servant who retires from service but against whom criminal proceedings involving moral turpitude are pending in a court of law, shall not be sanctioned any pension until the termination of the criminal proceedings. An interim allowance not exceeding two-thirds of the pension that would have been admissible but for the criminal proceedings may be granted during the pendency of such proceedings in cases of hardship. If he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension; compassionate allowance may be granted subject to the same terms and conditions as laid down in rule 12.”

16. A plain reading of the above quoted provisions reveals that in the present case the appellants have withheld the petitioner's retiral dues due to the pending criminal proceedings including moral turpitude. It is not the State's case that the petitioner has been convicted of a serious crime or formed guilty of any grave misconduct. Therefore, Rule 8 would have no application in the present case.

17. There is also no allegation against the petitioner that there is any sum due to the Government by virtue of any liability incurred by the petitioner. Therefore, Rule 9 also has no application in the present case.

18. From a plain reading of Rule 10 it is obvious that the same deals with right of the Governor to withhold pension of a Government servant and for ordering recovery from pension of any pecuniary loss caused to the Government if the pensions is found guilty of grave misconduct or negligence during his service tenure, including service rendered on re-employment after retirement. Such finding must be recorded in a

departmental or judicial proceedings instituted and continued in accordance with the Rule. It is not the respondent's case that the petitioner has caused any pecuniary loss to the Government or that he has been found guilty of grave misconduct or negligence during the period of his service. It is also not the respondent's case that any departmental or judicial proceedings has been instituted in respect of any grave misconduct or negligence during petitioner's services causing any pecuniary loss to the Government. Therefore, Rule 10 is also not attracted in the present case.

19. In the present case the petitioner is a retired Government servant against whom criminal proceedings involving moral turpitude are pending in a Court of law, since while he was in service. Thus, Rule 14 is applicable.

20. Rule 14 of DCRB 1971 conspicuously confines itself to enable the Government to withhold or not to sanction any pension until termination of a criminal proceeding involving moral turpitude. This rule omits to mention that gratuity may also not be sanctioned, or that it can be withheld in such circumstances. Had it been the intention of the rule to provide for withholding of gratuity it would have been stated in so many words in rule 14, as has been specifically stated in rule 8, 9; and rule 10 (2) of DCRB 1971. The Rule where it intends to provide for withholding of gratuity has expressed such intention explicitly and not relied on the definition clause in rule 7 (f) wherein "pension" is said to include gratuity.

21. In this connection we have also carefully considered decision of the Hon'ble Single Judge in the case of **Surajit Roy** (supra). On going through the same, we find that the judgment contains an elaborate consideration of the provisions of the DCRB 1971, arising for consideration in the present case. We are immensely benefited by the views succinctly stated in the judgment, we, therefore, quote with respectful agreement and approval, relevant extract of the judgment in the case of **Surajit Roy** (supra) :

"23. My reading of the DCRB Rules is that the provisions of Rules 8, 10 and 14 thereof are intended to operate in different fields.

23.1. Rule 8 requires future good conduct to be an implied condition of every grant of pension and enables the pension sanctioning authority to withhold/withdraw pension or gratuity or both, either in full or in part permanently or for a specified period, should a pensioner be convicted of a serious crime or is found guilty of grave misconduct. It is clear that the rule is applicable to a pensioner, meaning thereby an ex-employee who may have started receiving pension, and at that time commits a "serious crime" or indulges in "grave misconduct". Conviction of the pensioner of a "serious crime" or a finding that he is guilty of "grave misconduct" would necessarily relate to acts post retirement. This is clear from the opening sentence of Rule 8. The effect of this rule, insofar as gratuity is concerned, is that the Government in an appropriate case may be justified in calling back the decision to reward the pensioner with gratuity and withdraw the gratuity, either in whole or in part, permanently by taking further action either in terms of sub-rule (2) or sub-rule (3) of Rule 8, as the case may be.

23.2. Rule 10 would also apply in the case of a pensioner who, after his retirement, is found either in a departmental proceeding or a judicial proceeding (such proceeding having been instituted, inter alia, with the sanction of the Governor in respect of an event not earlier than four years of such institution) to have been guilty of grave misconduct or negligence during the period of his service resulting in the Government suffering a pecuniary loss. Should the pensioner subsequent to his retirement from service be found to have acted in the course of his employment in a manner detrimental to the interest of his employer and thereby exposed the employer to financial losses, and if there are materials for initiating disciplinary proceeding for the purpose of assessment

of the precise quantum of loss suffered by the employer, which could be recovered from a pension, the right reserved in this regard may be exercised by the Governor and definitely that would be a ground for the employer not to provide such employee with deferred payment of salary i.e. pension, and even if he has been paid pension due to him immediately after his retirement, there is no statutory bar in recovering the loss from the pension. However, if in case the gratuity has not been paid, the employee is not to be rewarded with payment of gratuity and that is the specific reason for the mandate in sub-rule (2) of Rule 10 that no gratuity or death-cum- retirement gratuity shall be paid until the proceeding is concluded by passing a final order.

23.3. However, Rule 14 is not applicable to a pensioner. It would govern an employee who on the date of his retirement from service is involved in a pending criminal proceeding for moral turpitude in a court of law. By operation of Rule 14, such a retired Government servant shall not be sanctioned any pension until the termination of the criminal proceeding. If it were the intent that payment of gratuity is not to be effected in favour of the retired Government servant until he is acquitted in the criminal proceeding, I suppose the same would have been clearly indicated in Rule 14, as in Rules 8 or 10, without leaving it to the interpretation of the departmental head. In the absence of a clear restriction in Rule 14 in regard to release of gratuity in favour of a retired Government servant against whom a charge of moral turpitude is pending consideration before a court of law, it would not be proper to read the word 'pension', wherever used in Rule 14, as inclusive of 'gratuity' keeping in mind the definition of 'pension' in Rule 7(f). The context in which the word 'pension' has been used in Rule 14 does not warrant attribution of such definition to understand its meaning.

24. An act which could be viewed as a "serious crime" may take within its comprehension an act of moral turpitude, but all acts of "moral turpitude" are not "serious crimes". Similarly, all acts of "moral turpitude" do not constitute "grave misconduct". The very nature of offence or misconduct that is committed by a government servant for which the proceeding has been initiated and is pending on the date of his retirement, thus, becomes relevant. The words any pension (Rule 14) have to be given a different meaning from the words a part of the pension (Rule 8) or a pension or any part of it (Rule 10). Having regard to the object and spirit of the DCRB Rules, and bearing in mind that gratuity is a reward for an employee who has rendered continuous unblameworthy service for his employer and it is intrinsically connected with the nature of service that an employee provides to his employer and is not dependent on how the employee conducts himself in his personal life, Rule 14 has to be stretched beyond reasonable limits for it to be construed as including gratuity within its field of play."

22. Viewed thus, we have no hesitation in concluding that Rule 14 of the D.C.R.B. Rules justifies withholding of petitioner's pension and payment of interim allowance 2/3 of the pension amount till termination of the criminal proceedings. Rule 14, however, does not provide the source of power to the Government to withhold gratuity. we find the petitioner entitled to payment of gratuity, Leave Encashment, Group Insurance and Provident Fund.

23. We thus, direct payment of the above dues to the petitioner along with a chart showing details of calculation of the amounts being paid. The respondent No. 2 should ensure that payments are made to the petitioner within a period of 8 weeks from the date of receipts/ production of a certified copy of this order.

24. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)