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WPA 16452 of 2022

Chandi Charan Karan @ Chandi Karan
Vs.
State of West Bengal & Ors.

Mr. Rabilal Maitra, learned Sr. Adv.
Mr. Kanailal Samanta
Mr. Rajitlal Maitra
...for the petitioner

Mr. Pinaki Dhole
Mr. Avishek Prasad
.... for the State

The conundrum posed in the present writ petition is whether, in the absence of any nexus between the pending criminal proceedings, albeit of a serious nature, and the employee's service, the employer is nonetheless obligated to release full pension and other retirement benefits in favour of the employee.

Before embarking upon the enquiry into this question, it would be apposite to advert to the essential facts leading to the presentation of the present writ petition.

The petitioner joined Nachipur Primary School (hereinafter referred to as 'the School') as an Assistant Teacher on 16th December 1993. Subsequently, he was promoted to the post of Head Teacher at the same school on 14th July 2005.

During his service tenure, the petitioner was implicated in Lalgarh Police Station Case No. 04 of 2011 dated 7th January 2011under Sections 148/149/326/307/ 302 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act. He was subsequently arrested and remained in custody for a considerable period. The petitioner was placed under suspension with effect from 8th May 2024. Initially, he was granted 50% of his salary as subsistence allowance, which was later increased to 70% of his salary.

He retired from service upon attaining the age of superannuation in February 2022 while still in custody. Subsequently, he was released on bail. After his release, he submitted a representation seeking the release of his full pension. However, despite receipt of the representation, no pension was disbursed in his favour. This continued inaction compelled the petitioner to file the present writ petition.

From the record, it would be explicit that a Coordinate Bench of this Court, by an interlocutory order dated 27th August 2022, directed the respondents to take immediate steps for the payment of interim allowance as per Rule 19(3) of the DCRB Rules, 2009. I have been informed that, in terms of that order, the petitioner is now receiving the interim allowance.

Mr. Moitra, learned senior Advocate representing the petitioner, contends that the judicial proceedings pending against the petitioner have no connection with his official duties. Therefore, there is no valid reason for the respondents to withhold the payment of full pension in the petitioner's favour.

Citing the decision reported in 2015 SCC Online Cal 7503 (Gunamay Mahato vs. The State of West Bengal & Ors.) and an unreported decision by a Coordinate Bench in WPA 10911 of 2020 (Sri Subhash Mahato vs. State of West Bengal & Ors.), he submits that in both instances, two different Coordinate Benches of this Court held that the criminal proceedings initiated against the petitioner bore no nexus to his service. Furthermore, there was no allegation of pecuniary loss to the Government during the petitioner's tenure, nor were any disciplinary proceedings initiated. Consequently, in both cases, directions were issued for the payment of full pension.

He argues that pension is not a bounty bestowed by the employer but is the rightful property of the employee, who is entitled to receive it upon retirement. He further submits that, applying this principle, a direction be issued for the payment of the full pension along with other retirement benefits. He also points out that, following retirement, the pension has been revised in accordance with the Pay and Allowances Revision Rules framed by the State of West Bengal. Therefore, a further direction should be given to ensure payment of the revised pension to the petitioner.

Mr. Dhole, learned Advocate appearing for the State, submits that a criminal proceeding involving allegations of moral turpitude is pending against the petitioner before a court of law. Therefore, according to him, in view of the provisions of Rule 19(3) of the West Bengal Primary Education Employees' (Death-cum-Retirement Benefit) Rules, 2009 (hereinafter referred to as "the 2009 Rules"), the petitioner is not entitled to full pension until the said proceeding is concluded. In support of his contention, he relies on the judgment in *Shivagopal vs. State of U.P. & Ors.*, reported in AIR 2019 All 168, wherein it was held that a government servant against whom a criminal case involving serious offences is pending is not entitled to receive full pension or death-cum-retirement gratuity.

He relies on the decision reported at *(1995) 6 SCC 105 (The State of Orissa & Ors. vs. Kalicharan Mohapatra & Anr.)* for the proposition that where a judicial proceeding is pending against a pensioner for grave misconduct, the Government is entitled to withhold the gratuity and/or death-cum-retirement gratuity. It is also within the Government's authority to sanction only provisional pension during the pendency of such proceedings and it is not necessary for the judicial proceeding to involve allegations of pecuniary loss caused to the Central or State Government due to misconduct or negligence during the employee's tenure of service.

Referring to the decision reported at 2022 SCC OnLine Cal 4036 (*Kolkata Municipal Corporation & Ors. vs. Dilip Kumar Das & Ors.*), he contends that a Hon'ble Division Bench of this Court had the occasion to consider a similar issue and held that where a criminal case is pending against an employee, he is not entitled to receive full pension. However, in that case, the Hon'ble Division Bench directed the Kolkata Municipal Corporation to release the admissible pensionary benefits to the petitioner, subject to the outcome of the criminal proceeding. It was further directed that, in the event of conviction, the petitioner would be liable to refund the entire amount drawn by him as pension, though without any interest.

In response to my query, he confirms that the petitioner is not receiving provisional pension, but is instead receiving an interim allowance in terms of the order dated 22nd August 2022 passed in the present writ petition.

In reply, Mr. Moitra submits that in the said decision, the Hon'ble Division Bench directed the authority to release the admissible pensionary benefits to the petitioner, subject to the final outcome of the criminal proceeding. The Bench further clarified that, in the event the writ petitioner was found guilty in the said proceeding, he would be required to refund the financial benefits received, though without interest. He contends that a similar direction may be issued in the present case, directing the respondents to release full pension to the petitioner, as revised in accordance with the amended Rules, and in the event the petitioner is ultimately found guilty of the offences alleged, he shall refund the amount received, without interest.

To counter such submission made by Mr. Moitra, Mr. Dhole argues that the direction issued by the Hon'ble Division Bench was based on the specific facts and circumstances peculiar to that case, and therefore, cannot be treated as a binding precedent. He contends that the said direction does not lay down any general proposition of law.

Heard the learned Advocates appearing on behalf of the respective parties and perused the materials on record.

Undisputedly, pension cannot be regarded as a bounty at the hands of the employer; rather, it is a vested property right of the employee. An employee, after rendering unblemished service for a considerable period, becomes entitled to receive pension in accordance with the applicable rules governing both the employee and the employer. However, the legal position is well-settled that under certain circumstances, the employer is empowered to withhold pension. Specifically, where the employer suffers pecuniary loss due to the misconduct of the employee, or where a disciplinary or judicial proceeding is pending against the employee, the employer retains the authority to withhold or deny full pension.

Thus, the employer is permitted to take into account the future conduct of the employee when considering entitlement to pension. In most statutory frameworks, the legislature has prescribed a time limit, often three or four years, within which, if a retired employee becomes involved in a criminal proceeding of a serious nature or one involving moral turpitude, the employer may exercise the right to withhold pension until the conclusion of such proceedings.

In the present case, the entitlement to pension is governed by the West Bengal Primary Education Employees' (Death-cum-Retirement Benefit) Rules, 2009 (for short, the 2009 Rules), and the parties are bound by the provisions contained therein.

To shed light on the issue raised by the parties, it would be apt to reproduce the provisions of Rule 19(3) of the 2009 Rules, which is quoted hereinbelow:

> "(3) An employee who retires from service but against whom criminal proceedings involving moral turpitude is pending in a court of law shall not be sanctioned any pension until the termination of the criminal proceedings:
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> Provided that 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 case of hardship.
>
> Provided further that if he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension but a compassionate allowance may be granted to him and this shall not exceed two third of the pension which would have

been admissible to him if he had retired on medical certificate.

Provided also that interim allowance or compassionate allowance, as the case may be, can be sanctioned only after obtaining an admissibility report from Director Pension, Provident Fund and Group Insurance, West Bengal;

Provided also that no such judicial proceedings, if not instituted while the employee was in service, whether before his retirement or during re-employment, shall be instituted in respect of a cause of action which arose, or an event which took place more than 3 years before such institution."

Therefore, the Rule empowers the employer to withhold the pension of an employee who has retired from service, but a criminal proceeding involving moral turpitude is pending against him before a court of law. In such circumstances, the Rule expressly mandates that no pension shall be sanctioned until the conclusion of the said criminal proceeding.

The next question that arises is what constitutes an offence involving "moral turpitude". Admittedly, the relevant Rule does not define the expression "moral turpitude.

In the Indian legal context, offences involving moral turpitude are generally understood to be acts reflecting extreme moral depravity, dishonesty, or vileness, which seriously violate accepted standards of the community. Such offences typically include crimes like murder, rape, theft, criminal breach of trust, outraging the modesty of a woman, kidnapping, and bigamy etc. Although there is no comprehensive statutory definition, courts have consistently interpreted the term based on the inherent nature of the offence and its impact on public morality, distinguishing such acts from petty or technical violations.

An offence punishable under Section 302 of the Indian Penal Code, 1860 which prescribes the highest form of punishment under Indian criminal law, clearly qualifies as an offence involving moral turpitude.

Accordingly, where a criminal proceeding involving such serious charges is pending against an employee in a court of law, the employer is well within their rights, under the applicable Rules, to withhold the sanction of full pension until the conclusion of the proceeding in view of the provisions of Rule 19(3) of the 2009 Rules.

The decisions rendered in *Gunamay Mahato* (supra) and *Sri Subhash Mahato* (supra) were pronounced in the context of the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981. It has not been brought to the notice of this Court that any provision similar to Rule 19(3) of the 2009 Rules exists within the framework of the 1981 Scheme. On the contrary, in response to a specific query posed by the Court, both Mr. Moitra and Mr. Dhole, learned Advocates, have jointly submitted that the 1981 Scheme does not contain any provision analogous to Rule 19(3). Therefore, the decisions rendered in the cases of Gunamay Mahato (supra) and Sri Subhash Mahato (supra) have no application in the factual matrix of the instant case.

Thus, taking note of the provisions of Rule 19(3) of the 2009 Rules and applying the precedent set in the decision of *The State of Orissa & Ors. vs. Kalicharan Mohapatra & Anr.* (supra), it can be concluded that, the Government's power to withhold pension is not limited to cases where there is a nexus between the criminal proceedings and the official duties of the employee.

Admittedly, a decision is an authority only for what it actually decides and not for what may logically follow from it. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

In this context, a useful reference may be made to the decision, reported at (2006) 6 SCC 366) (Uttaranchal Road Transport Corpn. Vs. Mansaram) wherein it was ruled that a decision is a precedent on its own facts. Each case presents its own features. It is not every said by a judge in the judgment that constitutes a precedent. The only thing in a decision binding a party is the principle upon which a case is decided and for this reason it is important to analyse a decision and to isolate from it the *ratio decidendi*. According to well- settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct or perceptible facts; (ii) statement of the principles of law applicable to the legal problems disclosed by the facts; (iii) judgment based on the combined effects of the above. A decision is an authority for what is actually decides. What is essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent.

The factual matrix in *Kolkata Municipal Corporation & Ors. vs. Dilip Kumar Das & Ors.* (supra) is distinguishable from the present case. A different set of rules governs the employees of the Corporation. There is merit in the submission advanced by Mr. Dhole that the direction issued to the Corporation to release the admissible pensionary benefits to an employee against whom a criminal proceeding is pending, subject to the condition that in the event of conviction, the employee would be required to return the entire amount without interest, cannot be treated as a binding precedent, as it does not lay down any proposition of law but was rendered in the context of the facts specific to that case.

In the instant case, as previously noted, an interim allowance has been sanctioned in favour of the petitioner. Thus, a certain sum is being disbursed to the petitioner under the head of interim allowance. However, the respondents have not computed the actual quantum of pension, and it remains unclear at what rate such interim allowance is presently being paid by the employer.

Therefore, the respondent authority is directed to determine the quantum of pension that would have been payable to the petitioner, as revised from time to time in accordance with the extant rules, had there been no criminal case pending against him. Upon such determination, the respondent shall release two-thirds of the said amount as interim allowance and shall continue to pay the same until the conclusion of the pending criminal proceeding.

With this observation and order, the writ petition is disposed of, however, without any order as to costs.

**(Partha Sarathi Chatterjee, J.)**