



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-5070-1999

Reserved on: 01.10.2025

Pronounced on : 20.11.2025

Uploaded On: 20.11.2025

Mandhir Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kanwal Jit Singh, Sr. Advocate with
Ms. Muskan Sharma, Advocate
for the appellant.

Mr. Ravneet Singh Joshi, DAG, Punjab

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SUDEEPTI SHARMA, J. (Oral)

1. The present regular second appeal is preferred against judgment and decree dated 21.04.1997, passed by Civil Judge (Sr. Division), Patiala whereby, the civil suit filed by the appellant was partly allowed and judgment and decree dated 09.09.1999 passed by Additional District Judge, Patiala, whereby, the appeal filed by the appellant against judgment and decree dated 21.04.1997 was dismissed.

2. Brief facts of the case are that the appellant joined his services in August, 1953 in the Erstwhile State of Pepsu in Tubewell Division, Malerkotla and on 01.11.1956 he was serving as Store Keeper under the XEN Drainage, Patiala. He proceeded on leave in the year 1977-97 and after the expiry of the leave, he was not allowed to join his duties. The efficiency bar of the appellant was not sanctioned which was due on 16.06.1959 and the pension and gratuity etc. was not paid despite appellant crossed the age



of superannuation. Therefore, he filed civil suit for pensionary benefits, gratuity, GP/EP Fund etc. and for not allowing appellant to cross efficiency bar on 16.06.1959 and non-payment of pension, gratuity, GP Fund/EP Fund etc. which was partly allowed vide judgment and decree dated 21.04.1997. The appellant then filed appeal against judgment and decree dated 21.04.1997 which was dismissed vide judgment and decree dated 09.09.1999. Hence, the present regular second appeal.

3. Learned counsel for the appellant contends as under:-

- i) That pension cannot be restricted to 38 months prior to the filing of civil suit.
- ii) That trial court could not confine the pension for 38 months.
- iii) That interest upto date should have been granted on GP Fund/EP Fund etc.
- iv) That both the Courts wrongly declined gratuity as barred by limitation.
- v) That First Appellate Court has also wrongly dismissed the appeal filed by the appellant and upheld the findings of the trial Court.
- vi) That pension and gratuity are not bounties and cause of action is recurring in nature. Neither the gratuity can be declined as barred by limitation, nor the payment of pension can be restricted to 38 months prior to the filing of civil suit even if the suit is filed nearly six years after the retirement.

He, therefore, prays that the present regular second appeal be allowed.



4. Learned counsel for the appellant relies upon the following judgments to support his arguments:-

i) *Des Raj Bhagat Vs. State of Punjab and others; Law Finder Doc Id #763985*

ii) *Mahinder Kumar Vs. State of Haryana and others; 2024:PHHC:043750*

iii) *State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another; 2013(5) MPHT 212*

iv) *Gorakhpur University Vs. Dr. Shitla Prasad Nagendra; 2001(3) CLR 262*

v) *Starpayal Natarajan Iyer Vs. The State of Gujarat and another; SLP(c) No.19195/2022*

5. *Per contra*, learned counsel for the respondents contend that judgment passed by learned Trial Court and First Appellate Court are well reasoned, therefore, the present regular second appeal be dismissed.

6. I have heard learned counsel for the parties and perused the whole record with their able assistance.

7. A perusal of the record shows that appellant joined in Tubewell Division, Malerkotla in 1953 and worked at various places till 14.08.1977 i.e. for 24 years. Thereafter, he applied for leave in the year 1977-78 and after expiry of the leave he was not allowed to join. He superannuated on 30.09.1985. Learned Trial Court held appellant entitled to pensionary benefits by observing that appellant continued in service upto the date of superannuation and would be entitled to pensionary benefits but confined the same to a period of 38 months prior to the filing of suit which was filed on 03.05.1991. Respondents also did not dispute the entitlement to pension. So



far as the absence period is concerned, no departmental proceedings were initiated against the appellant.

8. With respect to the claim regarding GP Funds/EP Funds, the Trial Court held that same belongs to an employee, as it is money deducted from the salary and hence will not be barred by limitation but confined the interest upto 30.09.1985. Respondent state never filed any appeal.

9. Learned trial Court has held that so far as the claim with regard to gratuity, pension and GPS is concerned, this is an admitted fact that appellant rendered service for a long period of about 24 years on the date of his becoming absent from duty w.e.f. 1977-78. It further observed that respondent authorities did not proceed against appellant for his long absence, therefore, appellant would be deemed to be in service upto the date of his actually attaining the age of superannuation on 30.09.1985. It is further observed by learned Trial Court that once appellant was never terminated from service and has already rendered more than 20 years of service even on the date of his becoming absent from duty, therefore, becomes entitled to pensionary benefits like gratuity and pension which is to be worked out in view of qualifying service of appellant in accordance with rules.

10. It is further held that so far as the claim with regard to GPF is concerned, the amount of GPF/EPF belongs to an employee and lies as trust with the employer. Once it is held that the money was lying as trust with employer, the interest should have been ordered till the actual payment is released. Further that once the money belongs to appellant with regard to the subscription of GPF deduction from his salary, appellant is certainly entitled to claim the same from the respondents, whereas, on the other hand held that



his claim to get the gratuity is barred by limitation. Therefore, findings of learned Trial Court are contradictory and are not acceptable to this Court.

11. Hon'ble Supreme Court in ***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another***; 2013(5) MPHT 212 held as under:-

"7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. v. Union of India, (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

"The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

*The antiquated 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 **Deoki Nandan Prasad v. State of Bihar and Ors.**, [1971] Su. S.C.R. 634 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 any one'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 and Anr. v. Iqbal Singh, (1976) IILLJ 377 SC**'.*

8. It is thus hard earned benefit which accrues to an employee and is in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300A of the Constitution of India.

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*12. Right to receive pension was recognised as right to property by the Constitution Bench Judgment of this Court in **Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330**, as is apparent from the following discussion:*

"29. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

30. According to the petitioner the right to receive pension is property and the respondents by an executive order dated June 12, 1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on August 5, 1966. There is only a bald averment in the counter-affidavit that no question of



any fundamental right arises for consideration. Mr. Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1) (f) and 31(1) of the Constitution.

31. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

*32. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in **Bhagwant Singh v. Union of India, AIR 1962 Pun 503**. It was held that such a right constitutes "property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in **Union of***



India v. Bhagwant Singh I.L.R. 1965 Pun 1 approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

33. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. The State of Punjab, I.L.R. 1967 P & H 278*. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is



made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant.

34. This Court in **State of Madhya Pradesh v. Ranojirao Shinde and Anr., [1968] 3 SCR 489** had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

35. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by Sub-article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1) (f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters



mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law".”

12. Hon’ble Supreme Court in **Gorakhpur University Vs. Dr. Shitla Prasad Nagendra; 2001(3) CLR 262** held as under:-

“5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very university reported in 1996(2) ESC 211 (All.) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in 1994(6) SCC 589 (supra) which, in turn, relied upon earlier decisions in **State of Kerala v. M. Padmanabhan Nair, 1985(1) SCC 429** and AIR 1981 SC page 212 (supra). This court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee.”

13. Hon’ble Supreme Court in **Starpayal Natarajan Iyer Vs. The State of Gujarat and another; SLP(c) No.19195/2022** held as under:-

“We have considered the arguments advanced at the Bar in light of the impugned order(s) and the material on record. We find that the payment of pension is not a bounty but a recurring occurrence as



stated by D.A. Desai, J. in D.S. Nakara and Ors. Vs. Union of India: (1983) 1 SCC 305: AIR 1983 SC 130. For ease of reference, the relevant paragraphs may be quoted as under:

"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."

In the circumstances, we find that the High Court was not right in dismissing the Special Civil Application on the ground of delay and laches. Instead, the High Court ought to have considered the case of the appellant on merits and on the basis of the applicable rules and decided the matter on the entitlement of the appellant towards pension and other terminal benefits."

14. A bare perusal of the above referred to judgments shows that payment of pension is not bounty but a recurring occurrence. Therefore, it cannot be restricted to 38 months. Further, it is held by Hon'ble Supreme Court that gratuity and pension are not bounties and an employee earn these benefits by dint of his long, continuous, faithful and unblemished service which cannot be denied. The same is the position with respect to all other retiral benefits including provident fund etc.

15. In view of the above discussion and law laid down by Hon'ble Supreme Court as referred to above, the present regular second appeal is



allowed. Judgment and decree dated 21.04.1997 passed by Civil Judge (Sr. Division), Patiala to the extent of partly rejecting the claim of the appellant is set aside. Judgment and decree dated 09.09.1999 passed by Additional District Judge, Patiala, whereby, the appeal filed by the appellant is dismissed is also set aside.

16. Accordingly, civil suit filed by the appellant is decreed in his favour. He is held entitled to the reitral benefits, pension, gratuity, EP Funds/ GP Funds etc. from the date these benefits become due along with interest @ 9% per annum. It is made clear that the amount of pension, if already granted to the appellant for 38 months, interest of 9% per annum would not be granted on the pension already granted to him.

17. Civil suit was filed by the appellant in the year 1991 for pensionary/retiral benefits etc. Present regular second appeal pertains to the year 1999 and decided in the year 2025. Appellant has been waiting for the relief since 26 years, therefore, respondents are directed to deposit the amount due in favour of the appellant in the account of appellant along with interest @9% per annum within a period of six months from the date of receipt of copy of this judgment. Appellant is directed to furnish his bank account details to the respondents.

18. Since, the present regular second appeal is decided almost after 26 years, therefore, this Court does not want the petitioner to further run after the respondent by way of filing execution for the relief granted to him by allowing the present regular second appeal. To avoid further harassment to the appellant, respondents are therefore, expected to comply with the



directions of this Court and deposit the amount due in the account of the appellant and not to force the appellant to file execution.

19. Pending application(s), if any, also stand disposed of.

20.11.2025

(SUDEEPTI SHARMA)
JUDGE

Sahil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No