Judgment Dated: 14-10-2026
WBCHCA0530782024

Ct. No. 1
SL. No. 15
PG

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
WP.CT. 315 of 2024

DIPAK DAS,
SON OF LATE SUBAL CHANDRA DAS,
AGED ABOUT 60 YEARS, RESIDING AT
C-24, POST OFFICE-PANCHASAYAR,
KOLKATA-700094. ….**Petitioner**

Versus

1. UNION OF INDIA SERVICE
THROUGH THE SECRETARY,
GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
DEPARTMENT OF EXPENDITURE
NORTH BLOCK,
NEW DELHI-110001.

2. CHIEF CONTROLLER OF ACCOUNTS,
OFFICE OF PRINCIPAL CHIEF CONTROLLER
OF ACCOUNTS/ CBIC/CBEC, AGCR BUILDING
(1st FLOOR), NEW DELHI-110002.

3. DEPUTY CONTROLLER OF ACCOUNTS,
CBIC, EAST ZONE M.S. BUILDING
(6TH FLOOR), CUSTOM HOUSE,
15/1, STRAND ROAD,
KOLKATA- 700001.

4. ACCOUNTS OFFICER,
PAO, REVENUE CBIC, M.S. BUILDING
(1ST FLOOR),
15/1, STRAND ROAD,
KOLKATA- 700001.

….**Respondents**

Mr. Asit Kumar Manna,
Mr. Niladri Saha,
Ms. Madhurima Basu ... Advocates for the Petitioner

Mr. Aniruddha Bagchi
Ms. Suchorita Biswas,…….. Advocates for the Respondents

CORAM: RAVINDRA V. GHUGE, CJ
&
OM NARAYAN RAI, J.

DATE: OCTOBER 14, 2026

ORAL JUDGEMENT (PER RAVINDRA V. GHUGE, CJ)

1. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner before us is an employee of the Central Board of Indirect Taxes and Customs. He retired from the post of Senior Accountant on 31.08.2023. At the time of his superannuation, there was 3 criminal Cases that were pending against him and the same are still being prosecuted. There is no dispute that in neither of these 3 criminal cases, any Court has delivered any verdict.

3. The issue before us is that the Petitioner's Gratuity, Leave Encashment and retirement monetary benefits have been

withheld by the Employer under Rule 8 (4) (c) of the Central Civil Services (Pension) Rules, 2021. The provisional pension is being paid to the Petitioner.

4. The stand taken by the employer is primarily grounded on only one aspect. The Petitioner is facing some private cases, unconnected with his service. Not a single pending criminal case is related to his service conditions or affecting his Employer-Employee relationship. The Employer has taken a stand that since Gratuity cannot be paid to a Government servant until the conclusion of the departmental or judicial proceedings, that the Petitioner's Gratuity and other retirement benefits, including part of the pension, has been withheld.

5. The Petitioner approached the Central Administrative Tribunal. The prayer put forth before the Tribunal was that all retirement benefits of the Petitioner should be released. The Tribunal observed in paragraph 8 of its impugned order dated 20.09.2024, as under :-

> *"8. In the instant case, it is seen that neither the applicant nor the respondents have provided any material to show the nature of the criminal case pending against the applicant, the specific sections of the Indian Penal Code under which the applicant has been charged. It is*

> *therefore not possible to ascertain the nature of the criminal cases pending against the applicant. Even though the respondents have confirmed that the applicant has not caused any financial loss to the department in which he was serving, it is not possible to ascertain as to whether the applicant has caused any loss to any Government entity such as Public Sector Undertakings, Public Sector Banks etc. directly or indirectly. It is not possible to ascertain as to whether the cases in which the applicant is involved are of a purely personal nature. Further it is not possible to ascertain from the material on record as to whether any loss has been caused upon any Government entity by the applicant. Under the circumstances, I do not think the applicant is covered by the aforesaid judgment.*
>
> *8. In view of the above discussion, I am of the opinion that the instant Original Application lacks merit. O.A. is accordingly dismissed. There will be no orders as to costs."*

6. It is apparent that the Tribunal dismissed the O.A. by drawing a conclusion that neither the Applicant (Employee) nor the Respondents (Employer) have provided any material to demonstrate the nature of the criminal case pending against the Employee or the specific Sections of the Indian Penal Code under which he has been charged. The Tribunal, therefore, concluded that it is not possible to ascertain the nature of the criminal cases pending against the Employee. Even though the Employer had confirmed that the Employee had not caused any financial loss to the department, the Tribunal held that it is not possible to ascertain as to whether the Employee had caused any loss to any Government, or a Public Sector

Undertaking/ Public Sector Bank etc., directly or indirectly.

7. The Tribunal also noted that it is not possible to ascertain as to whether the case in which the Applicant is involved, is purely personal in nature and whether loss had been caused to any Government entity.

8. The learned Advocate representing the Employer submits that all the 3 cases against the Petitioner are not connected with his employment in any manner whatsoever. A departmental enquiry was commenced against the Petitioner since he was arrested in relation to a fraud connected with a bank. A personal hearing was held on 29.03.2019. The departmental enquiry was subsequently, closed and no conclusion was drawn against the Petitioner, since there was no loss caused to the Employer, inasmuch as, the pending criminal case was not connected with either the Employee or the service of the Employee with the Employer. All the charges were therefore, dropped against the Petitioner.

9. He further draws our attention to an order passed by the 9th Additional District Judge, Alipore in a pending Criminal Case No. 431/2013, which is in relation with a personal loan taken by the

Petitioner from one private individual namely, Kalidas Karmakar. This is an insolvency case. Therefore, the 9th Additional District Judge directed the Employer to withhold an amount of Rs. 1,50,000/- from the Gratuity amount of the Petitioner. We are informed that the said amount is still retained by the Employer subject to further orders being passed by the competent Court.

10. It is, thus, apparent that the Tribunal did not deal with the grievance of the Petitioner and dismissed the O.A. only on the ground that adequate details with regard to the case were not presented, either by the Employee or by the Employer. We cannot agree to such reason, to be a basis for the dismissal of the O.A. If the Tribunal desired that further details should be forthcoming from the parties, the Tribunal could have called upon either of the parties to supply further details in order to enable it to write a proper order.

11. We find that the details with regard to the pending cases of the Petitioner are before us, which could have been produced before the Tribunal by either of the parties. It was the Employer, who had taken the plea that the Gratuity amount and a part of the pension could not being released because there were 3 private cases pending against the Petitioner. It was, therefore, the duty of the Employer to

furnish details about such cases to the Tribunal. Non-furnishing of details by the Employer, who had withheld the retirement benefits, could not stand to the disadvantage of the Employee.

12. Be that as it may, the Petitioner is supported by the Judgment of the Hon'ble Supreme Court delivered in the ***State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr., (2013) 12 SCC 210***. The issue before the Hon'ble Supreme Court was that the State Government withheld a part of the pension and Gratuity during the pendency of departmental/criminal proceedings. The High Court had answered the issue and vide the impugned judgment, directed that the retirement dues of the Employee should be released.

13. In ***Jitendra Kumar Srivastava & Anr. (supra)***, the Hon'ble Supreme Court noted that 2 cases were registered against the Employee under the Prevention of Corruption Act, when he was posted as an Artificial Dissemination Officer, Ranchi. Prosecution was launched in the said 2 cases. The Employer directed initiation of disciplinary proceedings. While these proceedings were pending, the employee, Jitendra attained the age of superannuation and retired on 31.08.2002. The Employer sanctioned the release and payment of GPF and also sanctioned 90% provisional pension. 10% pension and

salary for the suspension period was withheld pending the outcome of the criminal case, as well as, the departmental enquiry. He was not paid leave encashment and Gratuity. Jitendra approached the Single Judge Bench, which dismissed his Petition. He resorted to an intra-Court Appeal, which was allowed by the Division Bench relying upon ***Dr. Dudh Nath Pandy vs. State of Jharkhand and Ors. 2007 (4) JCR 1 (Full Bench of the Jharkhand High Court*** decided on **28.08.2007)**.

14. It was then concluded by the Hon'ble Supreme Court in ***Jitendra Kumar Srivastava & Anr. (supra)*** that Gratuity and pension are not bounties and cannot be withheld unless there are grounds supported by law. Considering the law laid down in ***D.S. Nakara & Ors. vs. Union of India ; (1983) 1 SCC 305***, the Hon'ble Supreme Court relied upon the following observations made therein:

> *"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 libralised? 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 377SC".*

15. The learned Advocate for the Employer has vehemently canvassed that retirement benefits as well as Gratuity, cannot be paid to a Government servant until the conclusion of the departmental or judicial proceedings. In our view, this requires no debate. The departmental proceedings are in connection with the misconduct committed by an Employee in service and which also has a manifestation in the service conditions.

16. Rule 8(1) (c) indicates that the Employer can pass an order in writing to withhold pension or Gratuity, or both, either in full or in part or withdraw pension in full or in part, whether permanently or for a specified period and order recovery from pension or Gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental proceeding or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. For brevity, we are reproducing the entire Rule 8 of the Central Civil Services (Pension) Rules, 2021 hereunder:

> *"**8. Power to withhold or withdraw pension***
>
> *[**(1)** (a) The President, in the case of a pensioner who retired from a post for which the President is the Appointing Authority;*
>
> *(b) the Secretary of the Administrative Ministry or Department, in the case of a pensioner who retired from a post for which an authority subordinate to the President is the Appointing Authority; and*
>
> *(c) the Comptroller and Auditor-General of India, in the case of a pensioner who retired from the Indian Audit and Accounts Department, from a post for which an authority subordinate to the President is the Appointing Authority*
> *may, by order in writing, withhold a pension or gratuity, or both, either in full or in part, or withdraw a pension in full or in part, whether permanently or for a specified period, and order recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental proceedings or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:*
>
> *Provided that the Union Public Service Commission shall be*

consulted before any final orders is passed by the President under this sub-rule:
Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of minimum pension under Rule 44;]

(2) *(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:*
[Provided that where the departmental proceedings are instituted by an authority subordinate to the authority competent to pass order under sub-rule (1), that authority shall submit a report recording its findings to the said Competent Authority.]
(b) Notwithstanding anything mentioned in sub-rule (1) and Clause (a), departmental proceedings instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, while the Government servant was in service and continued after retirement, shall have no effect on the pension and gratuity of the pensioner.
(c) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -
(i) shall not be instituted save with the sanction of the '[authority competent to pass order under sub-rule (1)] in Format 2;
(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 [authority competent to pass order under sub-rule (1)] 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 Government servant during his service:
Provided that for the purpose of instituting departmental proceedings under this sub-rule, a memorandum of charges shall be communicated to the pensioner concerned in Format 3.
(d) Where a full-fledged enquiry is conducted giving an opportunity to the pensioner to show-cause during the proceedings in accordance with the Central Civil Services (Classification, Control and Appeal) Rules, 1965, any further opportunity to show-cause would not be necessary before taking action under sub-rule (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 sub-rule (2), a provisional pension as provided in sub-rule (4) shall be sanctioned.
(4) *(a) In respect of a Government servant referred to in sub-rule (3),*

the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date following the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

(d) The provisions of this sub-rule shall not be applicable where allegations of misconduct are under investigation against a Government servant or where departmental or judicial proceedings are contemplated against a Government servant but have not actually been instituted or deemed to have been instituted in accordance with [1][Explanation to this rule) till the date of retirement of the Government servant. The pension and gratuity in such cases shall be authorized to be paid to the Government servant on his retirement in accordance with Rule 63:

Provided that any departmental proceedings instituted after retirement of the Government servant shall be subject to the provisions of sub-rule (2).

(5) Payment of provisional pension made under sub-rule (4) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings 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.

(6) Where the [1][authority competent to pass order under sub-rule (1)] decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

*[**(6-A)** (a) No appeal shall lie against any order made by the President under this rule.*

(b) An appeal against an order under sub-rule (1), passed by an authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public Service Commission, pass such orders on the appeal as he deems fit.]

***(7)** The President may at any time, either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, after consultation with the Union Public Service Commission, and may confirm, modify or set aside the order; or remit the case to any authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case or pass such other order as he may deem fit:*

Provided that no order enhancing the amount of pension or gratuity to be withheld or withdrawn, shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the order proposed and except after consultation with the Union Public Service Commission.

(8) *The President may at any time, either on his own motion or otherwise review any order passed under these rules, where extenuating or special circumstances exist to warrant such review or when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:*

Provided that no order enhancing the amount of the pension or gratuity to be withheld or withdrawn, shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the order proposed and except after consultation with the Union Public Service Commission.

EXPLANATION.- For the purpose of this rule,-

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

(b) judicial proceedings shall be deemed to be instituted

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made; and

(ii) in the case of civil proceedings, on the date the suit is filed in the Court.

(2) the expression "misconduct" means any act done or omitted to be done by the pensioner, during the period of service, including service rendered upon re-employment after retirement, and which was in violation of any provisions of the Central Civil Services (Conduct) Rules, 1964 for which action under Central Civil Services (Classification Control and Appeal) Rules, 1965 could be taken during the period of service.

(3) action under sub-rule (1) may be taken, if the pensioner is found guilty of,-

(i) any corrupt practices during service;

(ii) any misconduct whether in relation to the performance of official duty or otherwise; and

(iii) any misconduct whether resulting in pecuniary loss to the Government or otherwise.

(4) the expression "civil proceedings" would mean such proceedings in respect of a civil suit filed by the Government only.”

17. In view of the above, in ***Jitendra Kumar Srivastava & Anr. (supra)***, the Hon'ble Supreme Court concluded that such retirement benefits/pension/Gratuity can be withheld only if the Service Rules so permitted and the judicial proceedings should be in relation to a misconduct committed by an Employee in the discharge of his duties as an Employee with an Employer while being in service. Paragraphs 11 to 15 read as under:-

> *11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office.*
>
> *There is no provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.*
>
> *12. Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in Deokinandan Prasad vs. 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 A.I.R. 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. MANU/SC/0030/1968: [1968] 3SCR489 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".

> *13. In State of West Bengal Vs. Haresh C. Banerjee and Ors. (2006) 7 SCC 651, this Court recognized that even when, after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum--Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.*
>
> *Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property".*
>
> *14. Article 300 A of the Constitution of India reads as under:*
>
> > ***"300A Persons not to be deprived of property save by authority of law. -*** *No person shall be deprived of his property save by authority of law."*
>
> *Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.*
>
> *15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold -even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.*

18. The case before us is so clear that our judicial conscience is surprised by the fact that an Employer is declining to release the part of the pension, the Gratuity (save and except

Rs.1,50,000/-), the Leave Encashment, as well as the salary for the period of suspension, notwithstanding that the Employer has dropped the enquiry and all charges against the Petitioner.

19. Considering the crystalized position of law, we do not find that the Employer was justified in withholding the above retirement benefits/monetary components. The Petitioner is involved in 3 private criminal cases. The purported act of creation of false documents to obtain loan, is not connected with a bank. Nevertheless, the concerned Court had directed the Employer to retain Rs.1,50,000/- from the Gratuity amount of the Petitioner.

20. In view of the above, **this Petition is partly allowed**. The impugned judgment of the Tribunal is **quashed and set aside**. The **Original Application No.240/2024 is partly allowed** with the following directions:

> (a) The Employer shall initiate steps for facilitating the conversion of the provisional pension into regular pension payable to the Petitioner by submitting the proposal to the competent authority, within a period of 30 days from today.
>
> (b) In the event, any portion of the pension is not paid, the concerned authority shall release the said pension

amount within 30 days in compliance of the above direction.

(c) Insofar as Gratuity amount, the employer shall retain Rs.1,50,000/- in view of the directions of the concerned Court and release the rest of the amount with 10% statutory interest from the date the Gratuity amount became payable (1 month after superannuation) within a period of 45 days from today, keeping in view, the law laid down by the Hon'ble Supreme Court in ***Gagan Bihari Prusty Vs. Paradip Port Trust & Ors. SLP (C) No.4468/2022,*** dated 03.03.2025**.**

(d) Since the Employer has dropped all the charges against the Petitioner and has closed the enquiry without taking the same to a logical end, thereby exonerating the Petitioner, the period of suspension has to be considered as 'on duty' period and the remainder portion of the salary, excluding the Suspension allowance already paid, will have to be paid to the Petitioner within a period of 45 days from today.

21. **Rule is made partly absolute in the above terms.**

(OM NARAYAN RAI, J.) **(RAVINDRA V. GHUGE)**
CHIEF JUSTICE