(2019) 11 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 809 Of 2019

Khurshid Ahmad Naqeeb — APPELLANT

Vs

State Of Jammu & Kashmir & Ors — RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

Civil Service Regulations, 1956 — Article 185D(IV)
Constitution Of India, 1950 — Article 4(b), 14, 19(1)(f), 19(5), 31(1), 32

Citation : (2019) 11 J&K CK 0003

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Shariq J. Riyaz, Javaid Iqbal, Satinder Singh

Final Decision : Disposed Of

Judgement

Rashid Ali Dar, J

1. In terms of the petition filed on April 24, 2012, the petitioner herein had prayed for grant of the following reliefs:-

"i) Writ, order or direction including one in the nature of mandamus declaring the impugned action of the respondents in particular respondents 1 and 2 in withholding the retiral benefits including gratuity and leave salary accrued due and payable to the petitioner on retirement from service on superannuation w.e.f. 31.05.2010 and also monetary benefits due and payable amounting to Rs.13,74,185 with interest at the prevalent commercial lending rate from the date the monetary benefits have accrued due and payable to the date the benefits are actually paid and disbursed to the petitioner, totally arbitrary and invidiously discriminatory, violating with impunity the legal and constitutional guarantees guaranteed to the petitioner by law and the constitution in the matter of services under the State, liable to be interdicted under the appropriate writ of this Hon'ble Court, be issued in favour of the petitioner and against the respondents;

ii) Writ, order or direction including one in the nature of mandamus commanding the respondents in particular respondent No.1 to release forthwith in favour of the petitioner all the retiral benefits including gratuity and leave salary accrued due and payable to the petitioner on retirement from service on superannuation w.e.f. 31.05.2010 and also monetary benefits due and payable amounting to Rs.13,74,185 with interest at the prevalent commercial lending rate from the date the monetary benefits have accrued due and payable to the date the benefits are actually paid and disbursed to the petitioner, be also issued in favour of the petitioner and against the respondents."

2. Later in view of the Cabinet Decision No.76/06/2014 dated 21.05.2014 followed by issuance of Government order No. 216-TSM of 2014 dated 22.05.2014, amendment to the earlier filed petition was sought, which was allowed and the following reliefs were accordingly incorporated therein:-

".....(ii-a) Writ in the nature of mandamus or any other appropriate writ commanding the respondents in particular respondent No.1 to treat the condition (a) in the Government Order No. 216-TSM of 2014 dated 22.05.2014 restricting the benefit of the Defined Pension Rules, 2014 only to the employees retiring on or after 01.01.2014, non-est in law, be also issued in favour of the petitioner and against the respondents.

(ii-b) Writ in the nature of mandamus or any other appropriate writ commanding the respondents in particular respondent No.1 to admit forthwith all the employees of the respondent No.4 to the benefit of Defined Pension Rules adopted pursuant to the Cabinet Decision No.76/06/2014 dated 21.05.2014 in respect of the employees of respondent No.4 vide Government order No. 216-TSM of 2014 dated 22.05.2014, be also issued in favour of the petitioner and against the respondents."

3. It is the case of the petitioner that he was initially appointed to the post of Manager Administration and Secretary, Convention Centre, Srinagar vide Government Order No. 47-TSM of 1981 dated 04.06.1981. Thereafter, in terms of the Government order No.13-TSM of 1988 dated 05.02.1988, petitioner came to be appointed as Executive Director, SKICC, Srinagar. However, the post of Executive Director, SKICC came to be re-designated as Director, SKICC vide Government order No. 135-TSM of 1988 dated 31.08.1988 and so the designation of the petitioner was also changed from Executive Director, SKICC to Director, SKICC.

4. It is being further contended that despite the Government order No.160-TSM of 1988 dated 28.09.1988, which is categoric in terms as regards to scale of pay and the annual increments, petitioner, as per due and drawn statement of accounts, has been illegally and arbitrarily denied the benefits of annual increments on due dates during the period from September, 2000 to June, 2009 as a result whereof an amount of Rs.3,25,080 is due and owing to the petitioner from respondent No.1. Thereafter, according to the petitioner, he was transferred

and posted as Managing Director, J&K Tourism Development Corporation vide Government order No. 1176-GAD of 1996 dated 02.12.1996. Then again in terms of order No. 968-GAD of 2000 dated 18.08.2000, petitioner came to be posted as Vice Chairman, J&K Lakes and Waterways Development Authority. Thereafter, in the year 2002, petitioner was placed under suspension, however, on representation, he was reinstated vide Government Order No. 34-GAD(Vig) of 2004 dated 06.07.2004. Then pursuant to the representation dated 08.07.2004 made by the petitioner, he was attached with General Administration Department in terms of the Government order No.514-GAD of 2005 dated 27.04.2005. Thereafter, vide Government order No.1180-GAD of 2005 dated 23.09.2005, petitioner was posted as Officer on Special Duty in the Tourism Department. Finally, the petitioner, on attaining the age of superannuation retired from Government service w.e.f. 31.05.2010.

5. The grievance of the petitioner is that despite lapse of so many years since the date he retired from service on attaining the age of superannuation, all the service benefits including retiral benefits payable to a retiree in accordance with the rules and regulations occupying the field, have not been released/disbursed in his favour. Petitioner is also aggrieved of the Government order No.216-TSM of 2014 dated 22.05.2014, whereby sanction has been accorded to the adoption of Defined Pension Rules by SKICC as applicable to the State Government employees for payment of pension including superannuating, special retiring and invalid pension, family pension, commutation of pension, gratuity/death-cum-gratuity etc., however, restricting the benefit of Defined Pension Rules only to the employees of respondent No.4-SKICC retiring on or after 01.01.2014.

6. It would be quite appropriate to have a brief reference of the text of orders noted above and annexed with the petition:-

a) Government order No. 1292-GD of 1981 dated 19.05.1981 reflects creation of the staff to operate the Convention Complex, Srinagar. Among other posts, one post of Administrative Officer in the pay scale of Rs.750-1350/-was created. The expenditure on account of creation of the posts and appropriation of the expenditure on the same has been directed to be debited to the account heads indicated in the annexure, which is however not on record. This order has been issued by General Department with the concurrence of Finance Department.

b) Vide Government order No.47 TSM of 1981 dated 04.06.1981, the post of Administrative Officer, created in the Convention Center, referred above, was re-designated as Administration Manager and Secretary and the petitioner herein was appointed on the said post initially for the period of six months on consolidated salary of Rs.1100/-per month.

c) In terms of Government order No. 727 GD of 1983 dated 17.05.1983, the petitioner has been deputed to Philippine Convention Bureau, Manila for the period of ten days.

d) Then the communication No. TSM(EST)21/81 dated 19.05.1983 reveals that the visit of the petitioner herein to Philippine Convention Bureau, Manila for the period of ten days was on State Government expenses and release of foreign exchange as admissible to the officers of his rank was requested to be released in his favour for his visit.

e) Vide Government order No. 91-TSM of 1983 dated 02.12.1983, the petitioner herein was asked to look after the work of Project Director, SKICC during the leave period of Mr. S.M.Aga, Project Director, SKICC, Srinagar.

f) Then vide Government order No. 23-TSM of 1984 dated 20.02.1984, whereby sanction was accorded to the continued adhoc appointment of the petitioner herein on a consolidated pay of Rs.1100/- per month upto the end of March, 1984.

g) Vide Government order No. 13-TSM of 1988 dated 05.02.1988, SKICC was converted into a registered Society under the J&K Societies Act, run by the Board of Governors and its functioning was directed to be carried out by the Executive Director. The petitioner herein was asked to work against the post of Executive Director till further orders. However, later in terms of order No.35-TSM of 1988 dated 31.08.1988, the post of Executive Director, SKICC was ordered to be re-designated as Director, SKICC and so the petitioner herein was accordingly re-designated as Director, SKICC. Both the orders were issued by the Tourism Department.

h) In reference to the Cabinet Decision No.25/7 dated 02.12.1996, General Administration Department issued order No. 1176-GAD of 1996 dated 02.12.1996, whereby number of transfers and postings were ordered, which include the petitioner herein, who was working as Director, SKICC was transferred and posted as Managing Director, J&K Tourism Development Corporation, however, shall retain lien in his parent organization.

i) Government order No. 34-GAD(Vig) of 2004 dated 06.07.2004, reflects that the petitioner herein was reinstated into service after being suspended, however, subject to the outcome of court proceedings. Further, he was directed to report to the Tourism Department for further posting, also the period of suspension was directed to be decided on the conclusion of the court proceedings pending against the petitioner herein.

j) Then in terms of the Government order No. 514-GAD of 2005 dated 27.04.2005, the petitioner herein, who was attached with Tourism Department was directed to remain attached with General Administration Department. This order has been issued by the General Administration Department.

k) Copy of the Government order No. 1180-GAD of 2005 dated 23.09.2005 issued by GAD, indicates that the petitioner herein along-with other officers, was posted as OSD in the Tourism Department in his own pay and grade and was also directed to monitor the working of the Development Authorities.

l) Vide Government order No. 216 TSM of 2014 dated 22.05.2014, sanction was accorded to the adoption of Defined Benefit Pension Rules by the SKICC employees retiring on or after 01.01.2014 as applicable to the State Government employees for payment of pension etc.

7. It may be pertinent to quote the Government order No. 216 TSM of 2014 dated 22.05.2014:-

"Sanction is hereby accorded to:-

i. The adoption of Defined Pension Rules by the SKICC as applicable to the State Government employees for payment of pension including Superannuating Special, Retiring and Invalid pension, Family Pension, Commutation of Pension, Gratuity/Death-cum-Retirement Gratuity etc.

ii. Authorize the Director SKICC to sanction pensions and other retirement benefits to the eligible employees of SKICC in accordance with the rules as applicable to the State Government employees after these have been checked and verified by the FA&CAO of SKICC.

The order is issued subject to the following conditions:-

(a) The Defined Benefit Pension Rules will be applicable to the employees of SKICC retiring on or after 01.01.2014.

(b) All the appointments made in SKICC on or after 01.01.2010 shall be governed by the New Pension Scheme Rules for which the issue is taken up with the DG A&T, the nominated Nodal Officer for NPS.

(c) The already settled terminal benefit cases are not re-opened.

(d) The financial burden on account of pension is borne by the Society (SKICC) out of its internal resources."

8. Objections have been filed by respondent No.1-GAD, wherein it has been stated that the petitioner was initially engaged in SKICC as Manager Administration and Secretary to the Convocation Centre for a period of six months on consolidated salary of Rs.1100/- per month in the year 1981. In 1986, he was assigned the position of Director, SKICC and thereafter in 1988 was placed in the Grade Scale by the Tourism Department. Then the General Administration Department transferred the petitioner from the said Society to the JKTDC as Managing Director, retaining his lien in SKICC. The petitioner belongs to Tourism Department being Administrative Department of SKICC and thus his retiral benefits are to be settled by the said Society or by Administrative Department i.e. by Tourism Department. It is being further stated that the issue relating to payment of retiral benefits including gratuity, leave salary and G.P.Fund is to be decided by the parent department of the petitioner i.e. SKICC and Tourism Department. It is being vehemently denied in terms of the objections filed by respondent No.1 that the petitioner is borne on the cadre of General Administration Department.

9. Reply on behalf of respondent No.2 is indicative of the fact that in compliance to the order passed by this Court on 07.05.2012, respondent-SKICC issued the order No. 97 SKICC of 2012 dated 29.09.2012, copy whereof has been annexed with reply, wherein it has been made clear that there is no pensionary/retiral benefits approved for the employees of SKICC and no employee is being granted any pension, however gratuity and leave salary is being paid to its employees on their attaining the age of superannuation. On the other hand respondent No.3-Accountant General in its reply contends that all the grievances of the petitioner pertains to respondent Nos. 1 & 2, as the respondent No.3 being the authorizing agency of State Government, therefore, role of respondent no.3 is very limited. It is further contended that the case of the petitioner with regard to pensionary benefits would be processed only when the case of the petitioner is received duly completed in all respects from the office of the State respondents.

10. Heard learned counsel for the parties.

11. Learned counsel for the petitioner while reiterating the pleas taken in the petition has referred to the following relevant provisions of Civil Service Regulations, 1956 to show that the post held by the petitioner throughout his service career was permanent pensionable post:-

"...1-A.

....

(b) All rules, orders and instructions issued by the Government from time to time and not expressly provided herein shall, in so far as they are not inconsistent with these rules, continue to be in force until repealed or modified.

4-(a) The Government reserves to itself the right of changing or cancelling the rules in these Regulations from time to time at its discretion and or interpreting their meaning in case of dispute.

....

Government Instructions.- Where as Government servant is confirmed in a post from a retrospective date he should be deemed to have held the post substantively from such date and benefits if any, by virtue of such confirmation on account of increase in pay and allowances or pension, reckoned under rules in vogue from time to time should be allowed to him notwithstanding the provisions of Article 4(b).

....

13. "Count" and "Qualify" means to count and qualify for pension from the General Revenues of the State, or for leave of absence, as the case may be.

....

31. Pensionable Office or Pensionable Service.-

Service is said to be "Pensionable" when it qualifies; and an office is said to be "Pensionable" when service therein counts.

31.A. Permanent Post means a post, carrying a definite rate of pay sanctioned without limit of time."

12. Learned counsel has also referred to the Article 185-D (IV) of the Civil Service Regulations, 1956, which provides as:-

"Notwithstanding anything contained in Art.185-D(I) to 185-D(III) the pensionary benefits in respect of Government servants who are transferred to an Autonomous Body/Public Sector Undertaking on the conversion of a Government Department/Office into an Autonomous Body or Public Sector Undertaking shall be governed by the following conditions:-

a) The permanent Government servant shall have an option to retain the pensionary benefits available to him under the Government rules or be governed by the rules of the Public Sector Undertaking/Autonomous Body........"

13. Mr. Javaid Iqbal, learned Sr.AAG while arguing the matter has laid emphasis on the argument that the petitioner knew during the continuance of entire period that his services are contractual in nature and are not governed by the rules applied to the civil servants who are entitled to pension and other retiral benefits. Some benefits other than pension, however, have been granted in his favour to which he was found entitled. Learned Sr.AAG further submits that no mandamus can be granted, as grant of pensionary benefits is stemmed in the policy decision of the Government with which interference is not permissible by exercise of power of judicial review. He has also made reference to the below mentioned documents placed on record and interpreted these documents to sound that the petitioner could not earn pensionary benefits:-

a) Government order No. 1292-GD of 1981 dated 19.05.1981, whereby sanction was accorded to the creation of one post of Administrative Officer in the pay scale of Rs.750-1350.

b) Government order No.47 TSM of 1981 dated 04.06.1981, according sanction to re-designation of the post of Administrative Officer, Convention Centre, Srinagar as Administration Manager and Secretary, pending clearance of the Finance Department.

c) Government order dated 727 GD of 1983 dated 17.05.1983, in terms of which the petitioner has been deputed to Philippine Convention Bureau, Manila for the period of ten days.

d) Communication No. TSM(EST)21/81 dated 19.05.1983, which reveals that the State Government had accorded sanction to the deputation of petitioner herein to Philippine Convention Bureau, Manila for the period of ten days on State Government expenses and release of foreign exchange as admissible to the officers of his rank was requested to be released in his favour for proceeding to

Manila.

e) Government order No. 1176-GAD of 1996 dated 02.12.1996, whereby the petitioner herein was transferred and posted as Managing Director, J&K Tourism Development Corporation and was asked to hold the charge of the post of Director SKICC till further orders. However, shall retain lien in his parent organization.

14. Learned Sr.AAG further argued that the petitioner has made entry into the service without being subjected to any recognized and defined process delineated in terms of the regulations or rules framed in this regard by the competent authority. The irony, as being contended, is that he rose to various positions. It is also his contention that there is no mention in the writ petition that the petitioner was working in the substantive capacity on a post which carried pensionary benefits on superannuation. Learned Sr.AAG also refer to Rule 2(k) of Civil Services (Classification, Control And Appeal) Rules, 1956 to put weight to his submission that in order to earn entitlement for pension a person should be a 'Member' of a particular 'Service'.

15. Mr. Shariq, learned counsel for the petitioner while rebutting the arguments raised on behalf of the respondents has relied on two judgments of Supreme Court reported in AIR 1983 SC 130, D.S.Nakara & Ors. Vs. Union of India, and (2008) 9 SCC 125, Union of India & Anr. Vs. SPS Vains & Ors. to lend support to his arguments. It is his submission that the stand of the respondents that as the petitioner belongs to Tourism Department and so is not entitled to pensionary benefits and also the plea that even if the petitioner may have to be treated a member of SKICC still he is not entitled to pensionary benefits in view of the cut-off date fixed in terms of the Government order dated 22.05.2014, is devoid of merit. The cut-off date fixed by the respondents has no nexus with the object sought to be achieved, according to him there is no reasonable classification while giving the pensionary benefits to 'Member' of SKICC. Rule being discriminatory and arbitrary and outcome of whim and caprice of General Administration Department and it cannot be enforced against the petitioner. He has termed the argument made by learned Sr.AAG that mandamus cannot be granted viz. policy decision, as fallacious and so required to be turned down.

16. Emphasis is being laid on Para 42 of D.S.Nakara's case, wherein the principle of law has been summed up as:-

"42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogenous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects underlying the payment of pension. If the State considered it necessary to liberalize the pension scheme, we find no principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalization was considered necessary for augmenting social security in old age to government servants then those retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to be subject to ceiling of Rs.8,100/- p.a. and average emolument to be worked on 36 months' salary while the other will have a ceiling of Rs.12,000/- p.a. and average emolument will be computed on the basis of last ten months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objections sought to be achieved by liberalizing the pension scheme. In fact this arbitrary division has not only no nexus to the liberalized pension scheme, but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Art. 14."

17. In another case (Union of India & Anr. Vs. SPS Vains & Ors.), also relied on by learned counsel for the petitioner, their lordships have referred to the judgment of the Constitution Bench in D.S.Nakara and it was held that the division which classified the pensioners into two classes was artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran contrary to the very object of the Pension scheme. It was also held that the classification did not satisfy the test of Article 14 of the Constitution.

18. Considered the rival arguments.

19. The bottom-line of the case of the petitioner is his grievance in being deprived of the post retiral benefits. He having rendered the service in different capacities on various positions for which expenditure is borne by debit to public exchequer, pensionary benefits were due to him, is the main plank of argument of the petitioner. Arbitrary action taken by the respondents in fixing the cut-off date in paying the retirement benefits to the member of SKICC was liable to be struck down, according to the petitioner.

Later argument is raised in alternative.

20. The petitioner having held various assignments which ordinarily are held by members of Government Gazetted services, is not under cloud. He has spend his prime youth in serving SKICC (stated to be a Society). He has also served in some Government departments. His services, admittedly, were utilized as MD of JKTDC, Vice Chairman, LAWDA. Long span of his service being in SKICC is not being denied. There is no ambiguity even about the nature of SKICC being a SOCIETY run by Government. The service conditions of the member of the said Society are governed by the executive instructions issued from time to time by the Government itself. Expenditure for operating the Society is borne by Public exchequer. Service conditions of the employees of SKICC are defined by the Government.

21. This Court may not be, thus, required to delve on the question whether the petitioner is a member of any Gazetted service under the control of General Administration Department or Tourism Department as his birth in Society and his superannuation is not questioned. By an executive fiat the Government has decided to give retiral benefits to all the employees of Society retiring on or after 01.01.2014. The employees working prior to cut-off date are deprived of same. Action of the Government on the face of it appears to be arbitrary and capricious. Classification of the employees if needed, is to be made according to the need and exigencies but has not to be arbitrary or artificial. It has to be rationale and has to be stemmed in some qualities or characteristics having reasonable relation to the object of such classification. The object sought to be achieved by issuance of Government order No. 216-TSM of 2014 dated 22.05.2014 is to ward off the likelihood of the employees working in 'Society' in being subjected to vagrancy in older age after their superannuation. Deprivation of the petitioner from being entitled to pension because he retires prior to 01.01.2014, defeats the purpose of this enabling classification.

22. Payment of pension has a purpose which would be defeated in case classification made in terms of the Government order No.216-TSM of 2014 dated 22.05.2014 is accepted and the employees working prior to 01.01.2014 are deprived of the benefit. Pension is not a bounty depending upon sweet-will of the employer. It does provide security in the old age to the employee who has rendered services to the Master(herein the 'Society' run by the Government) to his best when he was physically and mentally fit and who (the Master) is expected to look after him at the advanced stage of his age after he has superannuated from the service rendered for his Master. It is to be held an important limb of the Welfare State which admittedly our body politic is. It is for the employer in a Welfare State to ensure that the employee who has retired is able to live his post-retiral life with dignity and independence and his self-respect is not tarnished. Classification made does not withstand the touchstone of reasonableness and which could be saved by Article 14. Fixing of cut-off date in such a manner is to be bracketed as unconstitutional and so struck down.

Petitioner has to be held to have entitlement to pension and all other retiral benefits as are vested in terms of the order No.216-TSM of 2014 dated 22.05.2014 in favour of all other employees superannuating on or after 01.01.2014.

23. Hon'ble Supreme Court in '(2011) 3 SCC 436 State of Orissa & Anr. Vs. Mamata Mohanty', re-affirmed the necessity of fairness in taking administrative decisions. Proper it may be to quote Para 59 of the said judgment:-

"59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favoritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision-making process remains bad."

24. Their lordships referred to the judgment of Constitutional Bench in 'State of A.P. Vs. Nalla Raja Reddy, AIR 1967 SC 1458' and also judgment rendered in 'S.G.Jaisinghani Vs. Union of India AIR 1967 SC 1427' in Mamata Mohanty's case(supra). Paras 60 and 61 of Mohanty's case shall be advantageous to be quoted herein- under:-

"60. In State of A.P. v. Nalla Raja Reddy a Constitution Bench of this Court observed as under: (AIR p. 1468, para 23)

'23....Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately.'

61. Similarly, in S.G.Jaisinghani v. Union of India, a Constitution Bench of this Court observed as under: (AIR p. 1434, para 14)

'14..... absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based.

.... the rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

25. It is noted above that the petitioner has been initially employed on 04.06.1981 and has retired on attaining the age of superannuation on 31.05.2010 after serving SKICC and some Government Departments.

26. Reliance is placed on the judgment of the Hon'ble Apex Court in Deokinandan

Prasad Vs. State of Bihar, AIR 1971 SC 1409 to lend support to the plausibility of argument raised on behalf of the petitioner. Their lordships have observed that the 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 vested in a Government servant. Paras 32 and 34 of the said judgment as may be apt to be quoted read as under:-

"32. 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, ILR(1967)1 Punj & Har 278 (FB). 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. 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 Pensions 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."

19. The petitioner is, thus, held entitled to the relief. By issuance of writ of mandamus the condition (a) in the Government Order No. 216-TSM of 2014 dated 22.05.2014 restricting the benefit of the Defined Pension Rules, 2014 only to the employees retiring on or after 01.01.2014, is declared non-est in law. Respondents in particular respondent No.1 is directed to release all the retiral benefits including gratuity etc. due and payable to the employees covered by Order No.216-TSM of 2014 dated 22.05.2014 in favour of the petitioner on his superannuation w.e.f. 31.05.2010. The monetary benefits due and payable in favour of the petitioner shall carry the interest @ 6% per annum from the date same has accrued in favour of the petitioner till it is actually paid.

20. Disposed of in terms of the above.

