

(1975) 03 GUJ CK 0006
In the Gujarat High Court
Case No : Sp. Civil Appeal No. 194 of 1973

Laxman Popatbhai Solanki

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 03-03-1975

Acts Referred:

Constitution of India, 1950 — Article 136, 19(1), 226, 227, 31(1)
Prevention of Corruption Act, 1988 — Section 12A(4), 5

Citation : (1976) GLR 370 : (1976) 2 LLJ 208

Hon'ble Judges : J.B. Mehta, J;D.A. Desai, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—This is one of the most unfortunate cases where a Government servant after he attained the age of superannuation in 1958 has still not been able to recover his full pension and gratuity as per the relevant service rules because of the various infructuous proceedings which were attempted against him.

2. The short facts which have given rise to this petition are as under :

The petitioner was born on October 9, 1903 and was employed as a Civil Engineer in the then Jamnagar State service on December 30, 1926. He was absorbed in the Saurashtra State service as a Deputy Engineer on April 1, 1948. The Government of Saurashtra had issued relevant Pension and Gratuity rules for the Government servants by the Government Resolution No. 12 of 1948 on October 19, 1949, and subsequently the Liberalised Pension Rules were also applied. The petitioner was promoted as Executive Engineer on February 17, 1950, and was confirmed on that post on June 28, 1954. The petitioner reached the age of superannuation of 55 years on October 5, 1958. As, however, the Government suspended the petitioner on October 4, 1958, the petitioner continued in service but thereafter even for two years no departmental action was taken against him. Finally on October 12, 1960, the Government of Gujarat reinstated the petitioner and permitted him to retire with effect from the date of

that order. The order further stated that the question of treatment of the suspension period would be subsequently decided. Thereafter, the petitioner was prosecuted under S. 5 of the Prevention of Corruption Act along with the store-keeper M. P. Parekh in two criminal cases No. 2 of 1961 and No. 3 of 1961 before the Special Judge, Rajkot, where Mr. Parekh was convicted while the petitioner was completely acquitted as the Government failed to prove the charges against him, to hold him vicariously liable by invoking S. 34. Thereafter departmental enquiry was instituted against the petitioner by the Government resolution, dated April 5, 1963. On August 20, 1962, almost the same three charges as the charges in question were served on the petitioner in the same departmental enquiry. On October 30, 1962, the departmental enquiry was kept in abeyance and finally by the order of the Governor, dated April 13, 1964, the departmental enquiry against the petitioner was dropped and the Special Officer was requested to return the report of the Anti Corruption Bureau and other papers forwarded to him earlier in connection with the enquiry. Thereafter the Government even filed a civil suit, being Civil Suit No. 13 of 1962 for recovery of the alleged loss of Rs. 1,28,253 from the petitioner and the store-keeper Parekh, where the same facts as in the first two charges were relied upon regarding negligence, dereliction of duty and inefficiency of the petitioner which had resulted in the aforesaid loss and even a conspiracy was alleged between both the persons to misappropriate the said amount. Even it was alleged that the non-checking of the account books and non-verification of the stores resulted in this loss by active connivance of the petitioner. Even though the said suit was decreed against the store-keeper Mr. Parekh, it was dismissed against the petitioner, and that decision was final so far as the petitioner was concerned. As regards the earlier suspension order of October 4, 1958, the Government resolution was passed at Annexure D on February 8, 1965, after conclusion of all proceedings against the petitioner, that the period of suspension shall be considered as spent on duty for all purposes under the provisions of the B.C.S. Rule 152, and the Accountant General was directed on March 20, 1965, that as the suspension period was treated as duty period between October 8, 1958 and October 11, 1960, for all purposes, he should accordingly revise the amount of his pension. The Accountant General fixed up the provisional pension mentioning the gratuity amount, as even on October 11, 1966, the Government had certified that no departmental enquiry was either pending or proposed to be held against the petitioner. Therefore, on January 7, 1967, the Government resolution at Annexure P directed payment of arrears of salary of the period of suspension to the petitioner in pursuance of the order of February 8, 1965, and as per the Government orders the petitioner's pension had thus been fixed accordingly at Rs. 231.20 P. and his gratuity was fixed at Rs. 9,652.50 P. on the basis of 33 years service under the aforesaid provisional fixation. Government, however, by the order, dated October 11, 1966, purported to impose a reduction of 50% in the pension amount and the full amount of gratuity was sought to be deducted. The said order was, however, quashed by the decision of this Court in Special Civil Application No. 47 of 1968, decided on April 24, 1970, where my learned Brother spoke for both of us, as no

opportunity was given to the petitioner to show cause against the proposed reduction sought to be imposed under Rule 76(b) of the Pension Rules. As the petitioner had retired from the service on October 12, 1960, and since then the question of the petitioner's pension and gratuity remained pending, the matter being very old, it was considered of utmost importance that the amount payable should be decided as early as possible. Therefore, we had directed the authority to decide the said questions within a period of two months from the date of that order. In spite of this order of this Court, for 18 months no show cause notice was issued and the impugned show cause notice on the very same charges, which formed the subject-matter of the chargesheet of the departmental enquiry of 1962, was issued on December 21, 1971, proposing 50% reduction of the petitioner's pension and withholding of the entire gratuity amount except Re. 1. The petitioner filed a detailed reply on January 18, 1972. Thereafter he was heard by the Secretary, P.W.D. on July 24, 1972, and the impugned order was passed at Annexure A, dated December 12, 1972, imposing this 50% cut in pension and reducing the gratuity amount only to Re. 1 as per the show cause notice. Thereafter the petitioner has challenged the impugned order in this petition and has demanded now a mandamus that he should be paid up his full pension and gratuity due to him with 6% interest for all these years.

3. On behalf of the State an affidavit has been filed by the Deputy Secretary who decided this matter nor even any reasoned order has been produced. An affidavit was filed by the Dy. Secretary Thakar who had merely perused the papers. In the affidavit in reply in para 7 it has been categorically stated that there was a shortage of store material estimated to be of the value of Rs. 1,28,000. This was due to inefficiency, negligence and lack of proper control and supervision of and over the staff in respect of the physical verification of the stores on the part of the petitioner. Therefore, even this one incident which involved the Government into heavy financial loss was sufficient for the Government to conclude that the service of the petitioner was not thoroughly satisfactory. This is the sole ground which has been relied upon in other parts of this affidavit. The order is not sought to be justified on any other ground for obvious reasons to which we will presently refer. Mr. Shah for the State has also now made the file of this order available as on the present state of the record, there was no proper affidavit of the Deputy Secretary who had decided this matter and as he had failed to give any reasoned order, in such matter involving such serious consequences by forfeiting the petitioner's accrued right to pension and gratuity for the long service put in by the petitioner. Even though the State has pursued such a serious of infructuous proceedings against the petitioner, even in the present case, we are constrained to state that the State has miserably failed to support the legality of this order or even to justify the order, even when such a later attempt was made to convince us by showing us the relevant file.

4. The legal position in this connection is so well settled that it is surprising that Mr. Shah contends that such an order forfeiting the petitioner's due pension and gratuity is not a quasi judicial order which has to be passed after due compliance

with principles of natural justice. Such a penal order is bound to be a quasi judicial order as it deprives the petitioner of his fundamental right of the property and it must be a reasoned order. In *Kanti Lal Babulal Vs. H.C. Patel*, , even in the context of taxation measure which sought to penalise a subject by forfeiture of a part of the refund, it was held that such an order which seeks to forfeit the refund due to the subject has to be proposed only as a measure of penalty and the authorities would have to establish that the said amount was liable to be forfeited. It was observed that under our jurisprudence no one could be penalised without a proper enquiry. Penalising a person without an enquiry is abhorrent to our sense of justice. It was a violation of the principles of natural justice which we value so much. Even the relevant tax provision in S. 12A(4) which provided for such forfeiture was held to infringe Art. 19(1)(f) because it did not provide for the requisite machinery and procedure and the whole thing was treated as purely of an administrative character. That is why their Lordships observed that imposition of a penalty on a person was at least of a quasi judicial character and such a penalty may be imposed only after a reasonable enquiry in which the person complained of could plead and prove his case or satisfy the authorities that their assumptions were either wholly or partly wrong.

5. Rule 76 in the present case is in the same language as R. 6.4 of the Punjab Civil Services Rules (Pension Rules), which had come up for interpretation before their Lordships in *State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta*, , their Lordships pointed out the settled legal position laid down in the earlier decision in *Deokinandan Prasad Vs. The State of Bihar and Others*, , holding that the claim to pension was property under Art. 19(1)(f) and under Art. 31(1) and, therefore, by a mere executive order the State did not have the power to withhold the same. Therefore, after that decision, it was pointed out by their Lordships that it could never be contended that the pension was a matter of bounty of the State. Their Lordships thereafter considered the pertinent question as to whether the orders imposing a cut in the pension or which forfeited the rights acquired by length of service on the ground of the fault required the authority to act judicially. After considering the entire settled legal position it was pointed out that such a penal order by the very nature of this wide power involved the duty to act judicially. The authority was affecting the vested right and even the fundamental right of property and, therefore, it had a duty to act judicially in passing such an order forfeiting pension and gratuity. The authority was under a duty to give opportunity to the person against whom an enquiry is held to set up his version or defence and also an opportunity to correct or to controvert any evidence in the possession of the authority which was sought to be relied upon to his prejudice. Therefore, the person concerned must be informed of the case he was called upon to meet and the evidence in support thereof. This was one of the fundamental rules of our constitutional set up that every citizen was protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed. If the essentials of justice be ignored and the order to the

prejudice of a person was made, the order was a nullity. That was the basic concept of the rule of law and importance therefore transcends the significance of a decision in the particular case. In this context their Lordships also emphasised further observations as under :

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rule of natural justice after informing the person concerned of the case of the State, the evidence in support thereof, and after giving an opportunity of being heard and meeting or explaining the evidence."

Therefore, it was held that without giving reasonable opportunity to make a defence as explained by their Lordships, no cut in pension can be imposed by the authorities treating the matter as a matter of mere discretion or bounty. In that context their Lordships have further pointed out that the State Government would have necessarily to apply its mind when the show cause notice is issued for the proposed cut to the material question as to whether the alleged specific faults on the basis of which this forfeiture was sought to be done, which were either overlooked or condoned by granting promotion to the person concerned, had now become so grave as to justify punishing person by inflicting such a serious cut in the pension. Therefore, it is clear from this decision that it was only by reading down the aforesaid R. 76, in the context of such penal order seeking to forfeit a fundamental right of property of the concerned Government servant by implying all these procedural safeguards before passing such a quasi judicial penal order, that the impugned rule could be saved from this inherent vice, as otherwise it would have to be struck down as was done in the case of S. (12)(A)(4) in Kantilal's case, as earlier stated. Once this penal order is held to be a quasi judicial order it is too late in the day to contend that it must not be a reasoned order or a speaking order in the analogy of certain decisions relied upon by Mr. Shah in the context of administrative orders based on mere subjective satisfaction or subjective opinion. In *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, , Their Lordships emphasised various reasons why giving of reasons was essential in support of the conclusion by judicial and quasi judicial authorities. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusion. The very search for reasons would put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority would adduce reasons which would be regarded as fair and legitimate by a reasonable man and would discard irrelevant or extraneous considerations. Second, it was a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions might be just but they might not appear to be just to those who read them. Reasoned conclusions, on the other hand, would have also the appearance of justice. Third, it should be remembered that an appeal generally lay from the decisions of judicial and quasi judicial authorities to the Supreme Court by special leave under Art. 136. Equally, these decisions are subject to the superintendence or writ jurisdiction

under Art. 227 or 226 of the Constitution and, therefore, the judgment which did not disclose reasons would be of little assistance to this Court and it would have to weigh the entire record and the evidence to see whether the decision in question was right or wrong. In many cases this investment of time and industry would be saved if reasons were given in support of the conclusion. Therefore, reasons are always insisted upon in quasi judicial orders which are subject to the judicial review by this Court. Mr. Shah in this context could hardly rely on the absolute language of R. 76 as the same has to be read down to make it intra vires as pointed out by their Lordships by implication of all the principles of natural justice and the entire procedure thereof in the context of such a penal order for a specific fault, which can be passed to forfeit fundamental right of property of the public servant concerned. In *Bhagat Ram Patanga Vs. The State of Punjab*, a removal order by way of penalty from the membership of a municipal committee was also held to be a quasi judicial order and as such it was held at page 1577 that the State was bound to give reasons in its order for forming the necessary statutory opinion about misconduct in question. It was further pointed out that when such an order was challenged, the State must place before the Court the necessary material which was available before it and which was taken into consideration for forming the opinion to remove the person concerned as a member of the committee. In *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, , where the member of the Electricity Board was removed by way of punishment, it was held that such a punishment could be awarded as per the principles of natural justice after informing the person concerned of the charges and giving him a reasonable opportunity consistent with the charges levelled against him to rebut the said charges. The order must also disclose how the authority had applied its mind to the material on record and as to whether all the charges were established against the person concerned. Therefore, finally at page 2086 it was held that the order being not a speaking order, it was arbitrary to the core and could not be upheld. In view of this settled legal position Mr. Shah's contention can never be accepted that such forfeiture of a civil servant's right of property-pension and gratuity could be done without following these minimum principles of natural justice, of a proper enquiry after giving a proper show cause notice setting out specific instances against him, along with the evidence in the possession of the authorities so that he could rebut that evidence. The authority also would have to pass a reasoned order after considering all the disputed questions of facts and law and after fully applying the mind as to which of these specific instances were established and a reasoned order in that connection has to be passed so that this Court could review the same in the exercise of the powers of judicial review under Arts. 226 and 227 of the Constitution when the order is challenged before this Court. In the present case the authority has all along treated the matter as a mere administrative matter and the show cause notice has been thought to be a mere empty formality. As earlier pointed out the authority who had decided this matter has not filed any affidavit and the affidavit of the Deputy Secretary who has read the papers merely states that the sole ground of serious shortage of stores which

involved the Government into a heavy financial loss was sufficient to conclude that the service of the petitioner was not thoroughly satisfactory. The other charges have rightly not been relied upon in the affidavit in reply. Mr. Shah could not improve this matter by even pressing in aid the relevant file. On June 9, 1972, opinion of the Legal Department is set out and it merely states that the decision in Erry's case would not help the petitioner because there was no question of imposition of a punishment involved in the present case, when the order was being passed with regard to fixation of pension and gratuity after giving an opportunity to the petitioner which would be effective from the date of his retirement. The legal opinion further pointed out that there was no question of any principle of res judicata being attracted because of the decision in criminal and civil proceedings or because dropping of departmental enquiry. Finally, as regards grounds No. 3 in the show cause notice it was stated that although charge could not be exactly said to be vague, it was not doubt defective as the period concerned ought to have been indicated. That defect could be remedied even during the enquiry. It was further pointed out that charge can be relied upon if the use of the Government driver may amount to misconduct and this averment was satisfactorily established, in which event, this could be taken into account in the matter of fixation of pension and gratuity. Even personal hearing was recommended by way of abundant caution as per the trend of the recent judicial decisions. After this legal opinion was accepted by the Department and nothing was made on June 27, 1972 the petitioner was given oral hearing accompanied by his legal counsel on July 14, 1972. Thereafter the submission made on July 17, 1972 discloses that various pleas taken by the petitioner were examined in the light of the aforesaid opinion of the legal department. It was further stated in para 6 that in the show cause notice three grounds were mentioned for considering his services as not thoroughly satisfactory. The Government did not consider that as proved at all and he gave his final reply and it was taken into consideration. It was mentioned that it was for the petitioner to prove the reasons as invalid. Thereupon, a further reply was sought from the petitioner as per the said report. In the further reply, dated August 9, 1972, the petitioner repeated specific grievance that the documents relied upon against him or the evidence proposed to be used against him had not been supplied to him and so he could not render any explanation. In this connection, he nothing made on August 12, 1972, categorically states that when the matter arose from the past record it was very difficult for any concerned Government servant to give explanation from his memory and therefore, it would appear that proper opportunity for defence was not given. It was, however, pointed out that as per the departmental practice in such cases, evidence was never informed to the delinquent and even those documents could not be permitted to be seen by the delinquent. The note even wanted clarification regarding this material question. Thereafter we find the material noting on August 16, 1972 of Mr. P. R. Pandya, Deputy Secretary, P.W.D. which categorically states that in the legal opinion, earlier referred, all the points raised by the petitioner in his earlier as well as subsequent applications to the Government had been completely trashed out.

The petitioner was heard in person accompanied by his advocate as suggested in the said legal opinion. No new point was s

tated by the Pleader of the petitioner during the hearing. In these circumstances, it was stated that the Government may adhere to the decision taken to reduce his pension by 50% and to reduce his gratuity to Re. 1/-. Orders were accordingly sought as the G.A.D. (general Administration Department) agreed with this proposal. Accordingly, the impugned order was passed against the petitioner.

6. From the aforesaid notings in the file it is obvious that the whole enquiry was a mere farce, as Erry's ratio in *State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta*, , was wholly misunderstood. The alleged documents or the evidence on the basis of which three specific faults were alleged against the petitioner were denied to the petitioner on the ground that was departmental practice not to supply those documents with the show cause notice nor even to permit the delinquent to see those documents. The prejudice was inherent in such a procedure when the faults were alleged from a long past period when the delinquent could never give any reply from his memory. Even as regards ground No. 3, the legal department had categorically stated in its opinion that the charge was defective and that defect should be remedied. It was also pointed out that that charge could be relied upon for fixation of pension and gratuity, if the use of the Government driver amounted to misconduct and that allegation was satisfactory established. The authorities, therefore, rightly did not pursue the matter further in view of this legal opinion and they did not remedy the said defect in the charge. The reason is obvious because as per the legal opinion the Government had to establish that charge for relying on that allegation and it had to show that the use of the Government driver in the circumstances alleged amounted to misconduct. Therefore, this specific charge is not even relied upon in the present affidavit. Therefore, this vague charge which has not even been relied upon in taking the impugned action and for which no evidence is suggested could not come in the way of the petitioner. As regards the other two charges, it should be borne in mind that they formed the subject-matter of the criminal proceeding in which the petitioner was acquitted, while the companion accused storekeeper was convicted under S. 5 of the Prevention of Corruption Act by the Special Judge, Rajkot. The decision, dated August 6, 1961, was not challenged in appeal. Thereafter the departmental enquiry was no doubt started on April 5, 1962 and the charge-sheet, dated August 16, 1962 at Annex. HH contained the very same three charges, with the only difference that for all these charges it was then stated that they had taken place while the petitioner was in charge of Gondal Division from May 20, 1955, to April 30, 1958. The departmental enquiry was ultimately dropped by the order of the Governor on April 30, 1964, at Annex. I and even the papers from the Special Enquiry Officer including the Anti-Corruption Bureau report, etc., were recalled. Thereafter even a civil suit was filed for recovering the entire loss relying upon not only on the fact of conspiracy of the two defendants but also on the fact of gross negligence,

serious dereliction of duty and failure not to check the account books and to verify the stores physically on the part of the petitioner. Wide issues were raised in that suit for proving these charges against the petitioner, but still this suit had been dismissed so far as the petitioner was concerned with costs against the State. No appeal was filed against this decision. It is true that in the opinion of the legal department it has been stated that those proceedings could not be relied upon by the petitioner to invoke the bar of *res judicata*. What the legal department has missed is the most important facts that the petitioner was suspended by the order on October 4, 1958, and was reinstated by the State of Gujarat by the order, dated October 12, 1960, and was retired with effect from that date. At that time the specific order was passed that the question as to how the period of suspension should be treated would be decided in due course. Thereafter, by the order at Annex. O, dated February 8, 1965, as per the Government resolution it has been decided to treat the said period of suspension as duty period for all purposes under the provisions of B.C.S. Rule 152 even though at that time back wages for the entire suspension period from October 8, 1958 to October 11, 1966 were not paid pending finalisation of the question of his liability for the alleged deterioration of 983 bags of cement. Even those arrears were made good on January 7, 1967. As earlier pointed out even the Accountant General had, therefore, provisionally fixed pension and gratuity on the basis of the entire service including the suspension period as per the direction of the State. Therefore, if as per B.C.S. Rule 152, the entire suspension period has been treated as duty period paying all the back wages, it is obvious that the petitioner was treated as honourably acquitted in respect of the relevant charges against him. Even the civil suit in that connection had failed when an attempt was made to recover the loss. After that it could hardly be urged that merely because not a fresh attempt is made to forfeit the pension such charges could be made again ground of action, especially when they were merely allegations unsupported by any evidence. Therefore, when finally the authorities assumed that the burden was on the petitioner to show that the alleged reasons were invalid, it is obvious that the authorities are under a strange conception of law that mere allegations amount of proof to such serious misconduct alleged against a public servant. When both the criminal and civil Courts have refused to believe these charges and when the Government itself has treated the suspension period as duty for all purposes under B.C.S. Rule 152 after finally going into that question of finalisation of his liability for these faults, as per order at Annex. O, these unsubstantiated allegations could not form the basis, on which the petitioner's rights can be forfeited. Therefore, in the present case, not only the order fails for non-compliance with the mandatory procedure of such a penal order but also as there is not material worth the name on which such enquiry could be proceeded against the petitioner.

7. Mr. Shah vehemently argued that this Court had no jurisdiction except to quash the impugned order as it was the Government's right to hold a fresh enquiry in respect of the proposed cut in pension and gratuity. We are surprised

at this contention that the Government has a right of holding endless, infructuous enquiries and holding a civil servant under the terror of such a cut in his well-earned pension even at the end of 15 years after his retirement, till they choose to hold him guilty on the allegations in question, which have remained unsubstantiated although they formed the subject-matter of various infructuous proceedings as earlier stated. To consider any such right to the State would be to permit complete abuse of power in the context of such cases and deny the guarantee of the rule of law enshrined in our Constitution to all civil servants. Mr. Shah in this connection vehemently relied on the decision in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, where their Lordships observed : "they agreed that the High Court had been impelled by a right judicial instinct to undo justice to an individual, but their Lordships felt that a finer perception of the limits of judicial review would have forbidden it from going beyond directing the executive to reconsider and doing it on its own, venturing into an area of surmise and speculation in regard to the possibilities of escalation in service of the appellant. Judicial expansionism, like allowing the judicial sword to rust in its armoury where it needed to be used, could upset the constitutional design of our founding document". These observations were made in the context where the High Court had after quashing the promotion orders passed an order of promotion of the concerned servant which matter should have been left to the executive. That decision could never be pressed into service in the present context when the Government clearly seeks to abuse its powers by passing a penal order amounting to forfeiture of the fundamental right of property in the shape of pension of the concerned Government servant, even when the earlier Court proceedings have been found to be infructuous and the matter has even after the order of this Court to dispose of the same within two months been delayed so long and has remained at the stage of mere allegations. It would be needlessly prolonging the agonies of the Government servant if we concede any such right to the State. Fortunately, there is a precedent for this course of action. In *C.L. Subramaniam Vs. Collector of Customs, Cochin*, after their Lordships quashed in a writ petition the order against the concerned Government servant in violation of the mandatory rule 15(5), it was held that the facts of the case were not such as would justify any fresh enquiry against the appellant, and, therefore, it was directed that no fresh enquiry shall be held against the appellant and he shall be restored to the post to which he would have been entitled to but for the impugned order. This decision would all the more be applicable to the facts of the present case where in the proper exercise of our superintendence jurisdiction, we would be entitled to hold that no fresh enquiry in the present case shall be held against the petitioner and the hatchet shall be buried once for all because it would be gross abuse of power to permit any such enquiry after all these infructuous proceedings when the State had ample opportunity to prove its alleged charges and when it itself had treated the concerned Government servant as honourably acquitted and even a civil suit had failed. Much was said of the last charge No. 3 but after legal advice it was never pursued further for obvious reasons, as the Government after such long period could hardly adduce any

evidence to connect the Government servant by establishing such charge. In the matter of such fundamental right of property like pension or gratuity the Government is in a fortunate position because monies well earned by the employee remained in the State coffers as they have been withheld; and all the moneys which became due to him right from 1960 have not been paid to the concerned Government servant. Even payment of interest would be a poor solace to the petitioner. Therefore, in the context of such a fundamental right there would be all the greater reason to invoke this salutary principle even in the exercise of power of judicial review in a writ petition, when the facts of the case are such that it does not justify any fresh enquiry against the petitioner. Therefore, a direction is called for in the interest of justice in this case that no fresh enquiry shall be held against the petitioner and his long withheld pension and gratuity shall be paid immediately to him.

8. In the result this petition is allowed by quashing the impugned order imposing cut in pension and gratuity at Annex. A and it is directed that the State now shall not hold any fresh enquiry against the petitioner and that it shall pay up the full amount of pension and gratuity due to the petitioner with 6% interest right from the day it became due till the amount is paid up within a period of two months from today. Rule is accordingly made absolute with costs. The file is returned to Mr. Shah.