
(1985) 03 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 693 of 1984

Ram Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 12-03-1985

Acts Referred:

Citation : (1985) 14 ILR HP 199

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; P.N. Nag, General, for Respondent Nos. 1 and 2 and P.A. Sharma, Central Government Standing Counsel, for the Respondent

Judgement

P.D. Desai, C.J.—The Petitioner, now aged 76, retired on superannuation on July 14, 1969. At the time of his retirement the Petitioner was holding the post of Head Mistry in the Water Works Section, Chamba Division, H.P. P.W.D. The pension case of the Petitioner was for the first time referred to the Accountant-General, Himachal Pradesh and Chandigarh, Shimla in the month of August, 1973. After exchange of some correspondence a certificate and report on the title to pension and death-cum-retirement gratuity was issued by the Accountant General in the month of July, 1975. The Petitioner was held entitled to superannuation pension not exceeding Rs. 36/- plus Rs. 17.50 ad-hoc increase per month and death-cum-retirement gratuity not exceeding Rs. 1123.75. The pensionary benefits were quantified accordingly after taking into account the qualifying service rendered by the Petitioner with effect from August 1, 1950 to July 14, 1969. The services rendered by the Petitioner in the erstwhile Chamba State up to July 31, 1950 were, however, not taken into account as qualifying service while determining the pensionary benefits as aforesaid. The Petitioner having made a representation in that regard to the competent authority it was decided that his service with effect from March 1, 1926 to July 31, 1950 should also be counted towards qualifying service for the purposes of pensionary benefits. Pursuant to the said decision a fresh reference was made to the

Accountant General in October, 1976 with a request to re-determine the pensionary benefits of the Petitioner on the basis of his having rendered service from March 1, 1926 to July 14, 1969. The Accountant General issued a revised certificate and report on the admissibility of pension and death-cum-retirement gratuity after allowing the benefit of maximum of qualifying service of 30 years as per the extant rules in September, 1981. The Petitioner was held entitled to superannuation pension not exceeding Rs. 59/- plus Rs. 17.50 ad-hoc relief per month and death-cum-retirement gratuity not exceeding Rs. 2015/-. Upon revision of pay scales of various categories of employees of the State Government with effect from February 1, 1968, the pay scale of the post held by the Petitioner was revised, as a special case, by the State Government, on February 9, 1983. A fresh reference was thereupon made once again to the Accountant General for revision of the pensionary benefits of the Petitioner in March, 1983. Thereupon a new certificate and report on the admissibility of pension and death-cum-retirement gratuity admissible to the Petitioner was issued by the Accountant General in December, 1984. The Petitioner was held entitled to superannuation pension not exceeding Rs. 76/- and ad-hoc relief in the sum of Rs. 32.50 per month and death-cum-retirement gratuity not exceeding Rs. 3250/-. Be it stated that the latest certificate and report were issued by the Accountant General after a letter dated October 31, 1984, addressed by the Petitioner to one of us (Chief Justice) was registered as a writ petition but before notice was ordered to issue thereon on December 26, 1984.

2. From the facts set out above, the incontrovertible position which emerges is that the Petitioner's pensionary benefits were for the first time determined nearly six years after his retirement and that the subsequent revisions took place nearly twelve years and fifteen years after his retirement. True it is that the Petitioner's case was not an ordinary pension case and that having regard to the chequered history of his service career some delay in the settlement of his pension case was inevitable. Even then, the delay of six years in determining the pensionary benefits initially and the subsequent revisions at the delayed intervals of twelve and fifteen years appear to be unreasonable. There is no reason why the creation of a supernumerary post for the Petitioner, which entitled him to claim pension after having put in about 44 years of service, should have been delayed till 1972, that is, until nearly three years after his retirement from service. There is also no reason why even thereafter a period of about one year should have elapsed before the pension case was referred to the Accountant General and why the clarification of the doubt raised by the Accountant General in regard to the admissibility of pensionary benefits to the Petitioner on the ground that he was merely a work-charged employee should have consumed nearly two more years. The grossly delayed action at all the three stages resulted in the pension case being finalised for the first time nearly six years after the retirement of the Petitioner. The Petitioner's claim for treating the services rendered by him in the erstwhile Chamba State as qualifying service appears to have been made way back in 1973. The competent authority took

nearly three years to decide upon the said legitimate claim and in forwarding the case for revision of pension on that basis to the Accountant General. The Accountant General took nearly five years to revise the pensionary benefits consequent upon such reference and for this gross delay on his part no explanation is coming forth. The process of the first revision, which entitled the Petitioner to draw the pensionary benefits at the rate legitimately due to him, thus consumed nearly twelve years. One cannot but regard this further delay as unconscionable. The revision of pay scales of employees of the State Government with effect from February 1, 1968 took place by an order issued on July 30, 1970, that is, within about one year from the date of retirement of the Petitioner. Still, however, the benefit of revision of the pay scale was granted to the Petitioner thirteen years later. Consequent upon the revision after such an inordinate delay, a reference for the re-determination of pensionary benefits in respect of the Petitioner came to be made. It again consumed nearly two years before the benefit actually reached the Petitioner. Indeed, before the benefit actually accrued to the Petitioner, he had already moved the Court and his petition was duly registered. It is thus clear that the true basis on which the pensionary benefits were due and payable to the Petitioner, who may be one of the lowliest amongst the lowly paid employees, came to be determined nearly fifteen years after his retirement when he was in his mid-seventies. The hardship, anxiety and agony through which the Petitioner must have passed all these years is not difficult to appreciate.

3. Chapter VIII of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Rules") deals with the determination and authorisation of the amounts of pension and gratuity. Rules 56 to 74 are comprised in this chapter. Briefly speaking, the rules, inter alia, contemplate the following steps to be taken in the sequence of time: (1) the preparation of a list every six months, that is, on the 1st January and the 1st July of each year, of all government servants who are due to retire within the next 24 to 30 months of that date and the supply of a copy of every such list to the Accounts Officer concerned not later than the 31st January or the 31st July, as the case may be, of that year, (2) the preparation of pension papers to commence two years before the date on which a government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement whichever is earlier; such preparatory work to consist of three consecutive stages, namely, verification of service record, making good of omissions in the service book and obtaining of requisite particulars from the retiring government servant; the last of the above-mentioned stages to be completed eight months prior to the date of retirement, (3) the completion of the pension and gratuity papers and the forwarding thereof to the Accounts Officer concerned not later than six months before the date of retirement; (4) the ascertainment and assessment of the government dues and furnishing of particulars thereof to the Accounts Officer at least two months before the date of retirement; (5) the assessment of the amount of pension and gratuity and the issue of the pension payment order by the Accounts Officer not

later than one month- in advance of the date of retirement, and (6) the determination by the Head of Office of provisional pension and death-cum-retirement gratuity without delay, in cases where the government servant is likely to retire before his pension and gratuity or both can be finally assessed and settled in accordance with law; the payment of such provisional pension and gratuity not to continue beyond the period of six months from the date of retirement by which time the final amount of pension must be determined.

4. These various time-bound stages in the process of determination of pensionary benefits as laid down in the Rules reflect the policy of the State to ensure the payment of such benefits to a retiring government servant on and from the date of his retirement. These Rules, which confer rights and prescribe duties, constitute the conditions of service of government servants. They fall within the realm of public law governing the relationship between the employer and employees in the field of public employment. The implementation and enforcement of those statutory conditions is the duty of every Head of Department/Accounts Officer and, indeed, of all those concerned at different stages and levels of the process of determination of the pensionary benefits. They must not forget that by the passage of time they too would be claiming those benefits and that any infringement of those conditions on their part may conceivably, recoil on them in course of time. They must also bear in mind the true object and purpose underlying a pension scheme, which has been succinctly spelt out in the following observations in *D.S. Nakara and Others Vs. Union of India (UOI)*, so that they act with desirable despatch in the discharge of their duty:

A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age. ... pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and, therefore, can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon

5. It is also well to remember that pension is not a bounty payable on the sweet will and pleasure of the State. The right to pension is a valuable right vesting in a government servant. 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 the employee not because of the said order but by virtue of the Rules (See: *Deokinandan Prasad Vs. The State of Bihar and Others*, Indeed, till the deletion of Sub-clause (f) of Clause (1) of Article 19 and of Article 31 by the Constitution (Forty-fourth Amendment) Act, 1978, with effect from June 20, 1979, the right to receive pension was regarded as "property" and, therefore, a fundamental right within the meaning of those constitutional provisions (See: *Deokinandari's case supra*) and a retrospective amendment in the Pension Rules made in exercise of the powers conferred by the proviso to Article 309 read with Article 313, which had the effect of depriving or abridging the fundamental right of a government servant to receive pension according to the rules in force on the date of his retirement, was struck down as void (See: *Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh*, . With the simultaneous deletion and enactment of Sub-clause (f) of Clause (1) of Article 19 and Article 31 on one hand and Article 300A on the other, the right to property has ceased to be a fundamental right but it still retains the character of a constitutionally recognised legal right. Since the right to receive pension was held to be "property" under Article 19(1)(f) and Article 31(1), it must be regarded as falling within the coverage of Article 300A which provides that no person shall be deprived of his "property" save "by authority of law". Article 300A thus safeguards the right to receive pension against executive interference which is not supported by law and "law" here means "enacted law" or "State law". Besides, such law must be a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and should not infringe on any of the fundamental rights which the Constitution provides for. It is apparent, therefore, that the substantive or procedural provisions of such law or the executive action supported by such law cannot be arbitrary, unfair, unjust, oppressive or unreasonable (See: *A.K. Gopalan Vs. The State of Madras*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, wherein the word "law" occurring in Article 21 has been given similar meaning and has been held to be subject to similar limitations). 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, not enforceable through Court, has thus been swept under the carpet by these judicial dicta of the highest Court which have interpreted the relevant constitutional provisions and statutory law.

6. Numerous cases involving denial or delayed processing of pensionary claims in varying circumstances have come up before the Courts, including this Court, from time to time. In some of such cases, the Courts have, besides expressing

the feeling of uneasiness and distress at the plight of those hapless pensioners, passed strictures against the negligence, or failure without reasonable cause, of the concerned officers in finalising the pension cases within the prescribed time-limit. In many of such cases, the Courts have awarded to the aggrieved employees equitable compensation in diverse forms and also exemplary costs. It would be pertinent to refer to some of the decision of the highest Court rendered in such cases.

7. In *Devaki Nandan Prasad Vs. State of Bihar and Others*, , a government servant who retired on superannuation in 1967 after rendering thirty-eight years of service was denied the pensionary benefits. due to him in accordance with law. In 1971, he obtained a direction from the Supreme Court for the payment of his pension in accordance with law (See: *Deokinandan Prasad's case supra*). On his pension having been fixed in 1976 but not in accordance with the decision of the Supreme Court, he approached the Supreme Court once again. A time bound direction with regard to the determination and payment of his pension in conformity with the decision was thereupon issued with a still further direction to pay interest on the arrears of pension at the rate of 6 per cent per annum from the date of his retirement till the date of payment and exemplary costs quantified at Rs. 25,000/-. Still, however, no payment was made to him and he moved a contempt petition which invited severe strictures against "heartless, unsympathetic and occasionally hostile bureaucracy" and the grant of prompt relief (See *Deokinandan Prasad Vs. State of Bihar and Others*, .

8. In *Ram Pal Singh Vs. Union of India and Others*, an injured armyman, legitimately entitled to disability pension on being invalidated from army service on account of disability attributable to or aggravated by military service, was denied such pension for a period of fifteen years. The denial of pension was found to be on grounds "wholly untenable" and it was further found that in the Court proceedings the claim was resisted on grounds "disclosing prevarications". In determining the relief, importance was attached to those aspects and the pensioner was held entitled to interest and some compensation for the "harassment" as also the costs of litigation. Keeping in view those considerations as well as the meagre amount payable to him by way of arrears and future pension, a lump sum amount of Rs. 50,000.00 in addition to the future monthly pension was ordered to be paid to the pensioner within specified time-limit.

9. In *Katheeja Bai Vs. Superintending Engineer and Others*, , a letter of the widow of a deceased employee of the Tamil Nadu State Electricity Board, who failed to get certain amounts claimed by way of provident fund and gratuity due to her deceased husband, was registered as a writ petition and having found that she was entitled to the payment of such amounts, a direction was issued in respect of the payment thereof with interest at the rate of 15 per cent per annum from the date on which the amount fell due with compensatory costs quantified at Rs. 2500/-. The Supreme Court made the following pertinent observations at the conclusion of the judgment:

....We must add that the case had left us with the feeling of uneasiness and distress at the plight of helpless persons like the Petitioner whose repeated representations to those in authority were left uncared for so long despite the tediously frequent protestations of social justice.

10. The last in the series is the decision in State of Kerala and Others Vs. M. Padmanabhan Nair, The Respondent in that case had retired on May 19, 1973. The pension and gratuity were determined and the amounts due were paid to him on August 14, 1975, that is, more than two years and three months after the retirement. The Respondent thereupon filed a suit mainly to recover interest by way of liquidated damages for the delayed payments. In defence, the State tried to put the blame on the Respondent on the ground that he had not produced the requisite Last Pay Certificate from the Treasury Officer. The defence was overruled and the suit was decreed by the District Court by awarding to the Respondent interest at the rate of six per cent per annum, although interest was claimed at the rate of twelve per cent per annum. The State carried the matter in appeal. The Respondent preferred neither an appeal nor cross objections. The decree was confirmed by the High Court which held that the duty was cast on the Treasury Officer to grant to every retiring government servant the Last Pay Certificate and that the grant of the Certificate in the Respondent's case had been delayed by the concerned officer for which neither any justification nor explanation had been given. On further appeal, the Supreme Court confirmed the finding aforesaid and up-held the decree observing that though the case justified award of interest at the rate claimed, that is, twelve per cent per annum, it would not be proper to order the enhancement since the Respondent had acquiesced in his claim being decreed at the rate of six per cent per annum. The following observations made in the course of the judgment bear reproduction:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement We are also of the view that, the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned officer had not been impleaded as a party Defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the

Government under whom they serve as also a sense of accountability to members of the public.

The Government and every officer dealing with pension cases would be well-advised to bear in mind the thrust of the extracted observations and, more particularly, the last portion thereof.

11. Against the aforesaid backdrop, we see no reason why in the present case the Petitioner should not be awarded interest at the current market rate on the delayed payments of his pensionary benefits. Accordingly, we direct that the Petitioner shall be paid interest at the rate of 12 per cent per annum on the amount of arrears of pension and death-cwm-retirement gratuity which became payable or were paid to him on three different occasions, namely, as a result of the issue of the certificates and reports of the Accountant General in July, 1975, September, 1981 and December, 1984. The interest payable accordingly shall be calculated from the date of the expiry of two months from the date the Petitioner retired, that is, from September 14, 1969 till the amounts of pensionary benefits were actually paid on the first occasion, that is, after the certificate and report were issued by the Accountant General in July, 1975. On the revised pensionary benefits, which became payable or were paid pursuant to the certificates and reports issued by the Accountant General in September, 1981 and December, 1984, interest accordingly will be calculated as follows:

(i) From March 1, 1973, that is, from the date of the expiry of two months from the date the Petitioner made a claim for counting the services rendered by him in the erstwhile Chamba State, till the differential amounts of revised pensionary benefits were actually paid on the second occasion, that is, after the certificate and report were issued by the Accountant General in September, 1981; and

(ii) From the date of the expiry of two months from the date the Petitioner retired, that is, from September 14, 1969 till the differential amounts of revised pensionary benefits were actually paid on the third occasion, that is, after the certificate and report were issued by the Accountant General in December, 1984 on the revision of the pay scale of the Petitioner.

The payment due to the Petitioner under these orders will be made within a period of three months from the date of the delivery of copy of this judgment. The State Government may, in light of the observations made by the Supreme Court in Padamanabhan Nair's case, consider whether an appropriate action against the concerned defaulting officer(s) is necessary on the facts and in the circumstances of the case so that the public exchequer is compensated for the loss sustained on account of the payment of interest as ordered hereinabove.

12. The petition stands disposed of in view of the aforesaid directions.

13. A copy of this order be sent to the Petitioner. Dasti copy be supplied to the Respondents on usual terms.