
(1995) 07 CAL CK 0029
In the Calcutta High Court
Case No : Matter No. 1424 of 1992

Sambhu Pal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 300A, 31

Citation : (1995) 2 ILR (Cal) 403

Hon'ble Judges : Bhagabati Prasad Banerjee, J

Bench : Single Bench

Advocate : Nigam Chakraborty, for the Appellant; S.K. Mitra, for A.G.W.S., B.R. Talukdar, for State, for the Respondent

Final Decision : Allowed

Judgement

Bhagabati Prasad Banerjee, J.—In this writ application, the Petitioner alleged the non-payment of Retirement Benefits according to law. The Petitioner joined the West Bengal Health Service as Medical Officer on September 20, 1958, and served in different capacities from time to time. He was posted as Medical Officer in the capacity of Surgeon (Oncologist) at Chittaranjan Cancer Hospital, Calcutta, since 1977. At that time, the said institute formed part of a complex along with another institution by the name and style of "Chittaranjan Seva Sadan" and both were under the Government of West Bengal. By a Government order dated March 27, 1987, the State Government handed over assets and liabilities of Chittaranjan Cancer Hospital, Calcutta, with a newly established institute by the name and style of "Chittaranjan National Cancer Hospital & Institute, Calcutta". It was further directed by the said Government order that the members of the staff of the erstwhile Chittaranjan Cancer Hospital would continue to work under Chittaranjan National Cancer Hospital & Institute on existing terms and conditions until the Governing Body of the said Institute is to issue necessary order fixing the necessary terms and conditions of working in the said new Institute and exercise of option in this regard by the members of the staff.

Subsequently, the Petitioner continued to serve in the same capacity under the said Institute on the same terms and conditions and no change was brought about in this regard.

2. The Petitioner claimed that the tenure of his employment under the Chittaranjan National Cancer Hospital & Institute ought to be treated on deputation on foreign service terms under the provisions of the West Bengal Service Rules and the relationship between the Petitioner and the State Government as employer-employee was not terminated and that the Petitioner, at no point of time, became employee directly under the said new Institute. Thereafter, the Petitioner was posted under the State Government as a Medical Officer of Chittaranjan Seva Sadan, which took place only a few months before his retirement on superannuation. From this, it is clear that the Petitioner was all through under the employment of the State Government on June 20, 1990, the Petitioner represented to the State Government for transferring him from Chittaranjan Cancer Hospital to any other hospital to avoid possible complication at the time of superannuation. The Petitioner was transferred by an order dated October 31, 1990, to the Chittaranjan Seva Sadan as a Medical Officer (Surgeon) on supernumerary duty. Pursuant to the said Government order, the Petitioner joined his due posting at the Chittaranjan Seva Sadan, Calcutta, on November 12, 1990, and continued to serve at the said Institute till his retirement from service on superannuation on February 28, 1991, on which date he duly took over charge to the office of the supernumerary Medical Officer (Surgeon), Chittaranjan Seva Sadan.

3. After the Petitioner retired from service with effect from February 28, 1991, the petitioner was going on making representation after, representation to the various authorities including the Secretary, Government of West Bengal, Health and Family Welfare, Secretary Finance Department, Director of Health Service, as well as the Accountant-General, Government of West Bengal, etc. regarding payment of arrears of salary and full retirement benefits inclusive of gratuity and pension with the benefit of commutation of pension and final withdrawal of balance plus Provident Fund, after retirement from service. But all the representations made by the Petitioner to various authorities from time to time for settling up those issues remained un-attended, and as a result thereof, the Petitioner was not paid his dues including the retirement dues.

4. The Supreme Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, held that pension was not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension was a valuable right vesting in the Government servant and, further, it was held that right to receive pension was a property under Article 31 of the Constitution and by mere executive order the State had no power to withhold the same. Similarly, the claim is also property under Article 19(1)(f).

5. Article 19(1)(f) and Article 31 of the Constitution have since been deleted, and under Article 300A it has been provided that no person shall be deprived of the

property save by the authority of law. Accordingly, a right to get pension is admittedly a constitutional right which cannot be deprived by the executives save by the authority of law.

6. The Supreme Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., held that Article 21 of the Constitution together with? liberty, dignity of a person with the means of livelihood without which the glorious content of dignity of a person would be reduced to animal existence. When it is interpreted that the colour and content of procedure, established by law, must be in conformity with the minimum fairness and procedural justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunity of defence. Order of termination of service of an employee proceeds with consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependants.

7. The Supreme Court in the aforesaid case clearly held that the fundamental right envisaged under Article 21 of the Constitution include right to means of livelihood.

8. The Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, held that?

Right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Article 14 and Article 21 etc. All matters relating to employment include right to continue in service till the employment reaches superannuation and until his service is terminated in accordance with just, fair and reasonable procedure.

9. Thus, it is well-settled in law that right to life enshrined under Article 21 of the Constitution would include right to livelihood.

10. The modern welfare State believes it to be for people's own good that they should not be exposed to any risk of being overreached.

11. The House of Lords, as far back as in 1926, held in *Guardians of Salford Union v. Dewherst* (1926) A.C. 619 wherein Pollock MR expressed in somewhat quaint language:

?the public should be safeguarded from the melancholy spectacle of seeing a man who had done work and been in a responsible position during years of his life, suffering from poverty and distress by reason of the fact that no adequate provision had been made to enable him to spend his latter years in reasonable comfort.

12. For an employee who has retired from Government service after serving the Government for a long time, who had been in responsible position during the concluding years of his life, could not be? allowed to suffer from poverty and distress by reason of the fact that the authority had chosen not to pay the pension and the retirement benefit and/or to delay the pension on some plea or

pretext causing tremendous suffering and distress to the Petitioner.

13. According to the rules and instructions issued by the State Government regulating the authorisation and grant of pension to retired Government employees, the Head Office was required to initiate pension case two years before the date of retirement of the Government servant. The actual work of preparation of the pension paper was required to be taken up eight months before the date of retirement so that the retirement and the process of determining the service and the amount reckonable for pension and the admissible amount of pension of gratuity and family pension are positively completed within a period of two months and the pension was assessed two months before the retirements, completed in such a manner that the pension papers are sent to the Audit Officer responsible for issuing pension payment and gratuity etc., not less than six months from the date of retirement of the Government servant. The elaborate procedure has been laid down which the Head Office was required to comply with.

14. Rules and instructions have been issued in such a manner that the retired Government employee can get pension immediately after retirement. But unfortunately, in the instant case, even though the Petitioner retired from service on superannuation on February 28, 1991, till date, he has been deprived of his pension, gratuity and other benefits including arrears of salary etc.

15. In the writ petition the Petitioner claimed payment of his retirement dues and other dues with interest at the rate of 18% as made in the demand of justice dated March 18, 1991. It appears that the Assistant Director, Health Service, called for reasons in details as to why the Petitioner's pension and allowances were withheld by letter dated April 22, 1991, addressed to the Principal Superintendent, Chittaranjan Seva Sadan. The Principal of the said Seva Sadan submitted a para-wise statement of fact to the Health Secretary and the Director of Health Service, for taking appropriate steps towards the redressal of the - grievances of the Petitioner. The Petitioner submitted a detailed and para-wise rejoinder to the above statement of facts by a letter dated June 20, 1991, to the Health Secretary, Director of Health Service," and disputed certain allegations made in this behalf.

16. in the writ petition, the Petitioner claimed the following amounts under different heads as due and payable to him under?

(1) Gratuity ? Rs. 85,000-00

(2) Computation value of 1/3rd of the pension ? Rs. 1,01,888-00

(3) Arrear salary ? Rs. 31,478-00

(4) Deputation allowance ? Rs. 8,667-00

(5) T.A. & D.A. for attending conference ? Rs. 2,072-00

(6) Arrear leave salary ? Rs. 1,524-60

(7) Cash equivalent of leave salary ? Rs. 60.448-00

(8) Group Insurance ? Rs. 3,404-00

(9) G.P.F. ? Rs. 62 095-00

(10) Pension per month for continuous period of service ** from 20.9.1958 to 28.2.1991 @ not less than Rs. 3,000.00 (approximate amount roughly calculated by the Petitioner, the final amount to be determined by the Accountant General, West Bengal).

(N.B. *For the period of posting under Chittaranjan National Cancer Institute by the Government order dated 27.3.1987.

**(i) As regards the period between 20.9.1958 to 31.12.1969, referred to in item (iv) of the Accountant General's letter dated 31.1.1995, the Petitioner has furnished the requisite details in paragraph 12 of the affidavit affirmed on 7.4.1995 supported by copies of relevant Government orders and notifications in Annexure "C thereto (pp. 14 to 29).

(ii) The Specialist pay granted by the State Government and enjoyed by the Petitioner till the date of retirement has also to be taken into consideration in computing the pension.

(iii) The allegation in paragraphs 9 and 16 of the affidavit of Dr. Ram Chandra Dey affirmed on 30.11.1992, as to the Petitioner not having deposited the foreign service contribution for the period. under deputation to Iran has been categorically controverted in paragraph 22A and 29 of the Petitioner's affidavit-in-reply affirmed-in February 1993 by stating that the foreign service contribution has been paid as early as in 1980 by cheque, which was duly cashed by the authorities concerned and nothing is outstanding on the said account as far as he is concerned. The said credit is recorded in the books of the Accountant General, West Bengal.

17. On the basis of the writ application, the writ application was entertained by this Court on March 4, 1992. Various directions and orders have been passed from time to time. But the Respondents remained significantly inactive in the matter of settling the issue and, in the facts and in the circumstances of the case, I have no hesitation in holding that the action of withholding the pension was arbitrary, deliberate and calculated to cause distress and harassment to the Petitioner.

18. Right to get pension is not merely a statutory right under the West Bengal Services (Retirement) Benefit Rules, 1971, it is a fundamental right under Article 21 of the Constitution. The right to get pension is a fundamental right as pension is the only means of livelihood for a retired Government servant who has served the golden years of life in the service of the State and, in the facts and in the circumstances of the case, the Respondents have clearly exhibited callous and indifferent attitude in spite of repeated requests. The matter was taken up by me

at least fifteen days for the last few months, but the State machinery remained stationary. Shri Subramania Iyer Gurumoorthy, Principal Accountant-General, State of West Bengal, had affirmed an affidavit on September 3, 1992, wherein it was disclosed that several semi-official letters by way of reminder to the State Government asking for submission of the pension case to the Petitioner have been disclosed. From the said affidavit, it appears that at least five semi-official letters, dated April 2, 1992, May 4, 1992, May 22, 1992, July 14, 1992 and August 10, 1992, had been sent to the Health Secretary, Office of the Accountant-General also sent semi-official letter, dated August 31, 1992, to the Chief Secretary, Government of West Bengal, but things remained stationary. An order was passed on September 30, 1994, by this Court, and till November 7, 1994, the Respondents were directed to finalise in the meantime, the retirement benefits of the Petitioner. The Accountant-General was also directed to submit a report with regard to this matter on November 7, 1994. The report was filed on that date and the matter appeared in the list on February 3, 1995, when the Accountant-General was directed to appear in person on the date.

19. Thereafter, on February 14, 1995, a report was filed to this Court in two parts, one sent by the Senior Accounts Officer and the other sent by Deputy Accountant-General (Pension). From the said report, it appears that in between October 22, 1992, and March 31, 1994, ten semiofficial letters had been sent to the State Government for submission of pension account and in spite of the aforesaid, pension papers of the Petitioner were not sent from the office of the Principal Superintendent, Chittaranjan Seva Sadan, and from the said report it was clear that the office of the Accountant-General was not in a position to settle the pension papers of the Petitioner. The second part of the report mentions about pension papers of the Petitioner, having received on October 20, 1994, from the above respondent, but the same had to be returned with semiofficial letter dated January 31, 1994, with the observation as to the defects and omissions in the papers submitted. It is clearly evident from the said letter dated January 31, 1994 that the points referred to are for compliance by the State Government authorities, and the Petitioner was in no way responsible or connected with the same.

20. On June 20, 1995, one Seikh Salim, Secretary of the Chittaranjan Seva Sadan, came to this Court with relevant files and instructed the learned Counsel in the matter and who was examined by the Court and he had stated on oath that only for a short period of time when the Petitioner was under the Cancer Institute, after the same was made over to by the Government and before the Petitioner was brought back to the Chittaranjan Seva Sadan by the State Government, his service had to be regularised and as regards when it was made by the Accountant-General's office, Files Nos. 1,2,5, 6 and 7 they could comply with the same excepting File No. 4 which had to be done by the State Government. When he had missed some papers from the file, he had orally brought the fact to the notice of the highest authorities, but did not lodge any diaries with the Police authorities and nor had drawn the notice of the highest

authorities in writing. He could not explain why steps were not taken to recover the missing ,papers. Further, it was stated by him that he had lost the papers, but when and how, it was not explained to the Court. This is the horrible state of affair which had been brought to the notice of this Court and still then it appears that the State Government is not ready and willing to pay the pension unless a mandate is issued by this Court.

21. I have gone through the entire records and am fully satisfied that the Petitioner, on his part, has complied with all the requisite that were required to be met under the law and all the rules and regulations for getting pension and other benefits, but it is the officers of the State Government who were sitting tight over-the matter in a manner which is contrary to public interest and/or the interest of the public service. These officers are paid by the Public Exchequer to perform their duties, and these officers have forgotten that they will also retire from service one day and they will have to face the same situation.

22. In Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, it has been held by the Supreme Court that an action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duties vitiates the action without anything more. An action is bad without proof of motive if the authority is found to have acted contrary to reasons.

23. The Supreme Court, in the case of M.C. Mehta and another Vs. Union of India and others, observed that the law of the past did not fit in the present context. The Court should evolve a new law and the law should keep pace with the changing socio-economic norms.

24. Accordingly, I have no hesitation in holding that the attitude of the Respondents in the matter of withholding pension, gratuity and other benefits and emoluments are mala fide, deliberate and calculated to harass and to force the Petitioner to live in? a distressed condition which is not permissible under the law of this country. This is a clear case where the Respondents deliberately failed and neglected to discharge their statutory duties with a mala fide intent, and for that purpose they have exposed themselves to damages, otherwise the fundamental rights of the citizens would become more lip service.

25. Accordingly, the Supreme Court, in the case of R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, had directed protection of interest @ 18% p.a. instead of 10% for withholding of gratuity. In that case, gratuity was withheld for not acting the Government accommodation. It was held that the right of such a retired employee to get gratuity was not dependent on vacating the Government accommodation. Even under those circumstances, the Respondent was also so directed to pay interest @ 18%.

26. Accordingly, in the instant case, there is no valid plea and/or explanation forthcoming from the Respondents why the pension was withheld so long. Temporary withholding of pension also amounts to deprivation of property. In this

case the Respondents have deliberately failed and neglected to perform their statutory duties and/or obligation causing deprivation of property of the Petitioner unlawful.

27. Accordingly, I direct the Health Secretary, Director of Health Service, as well as authorities of the Chittaranjan Seva Sadan to send all papers, including the order for regularization of service and other materials and/or information?s as required by the Accountant-General, West Bengal, within a period of two weeks from today so that the pension papers could be made ready and paid by the office of the Accountant-General within a period of two weeks from the date of receipt of the relevant papers from the State Government authorities. It is made clear that all information?s including reports made by the office of the Accountant-General shall be complied with and carried in toto within the aforesaid period and sent to the office of the Accountant-General so that the office of the Accountant-General can process the matter and sanction it according to law.

28. Apart from pension, the arrears of salary and other allowances which are admissible to the Petitioner, including cash equivalent to leave salary, after pay fixation. Group Insurance, Provident Fund etc. as claimed by the Petitioner should also be paid to the Petitioner within a period of four weeks from today. Since the Petitioner has made commutation value of one-third of the pension, the same should also sanctioned in accordance with the rules and regulations in this behalf.

29. Accordingly, the writ application succeeds and is allowed with cost assessed at Rs. 5000. The State Government shall pay this amount and thereafter realize it from the erring officers who are responsible for this long and inordinate delay and proportionate sum should be realised from their salaries. The entire arrear amount shall be paid within the aforesaid period with interest @ 18% and this interest should also be realised from the officer or officers concerned who are responsible for this inordinate delay. It should be paid from the Public Exchequer, initially and the same should be realised from those erring officers. For deliberate fault of some officers Public Exchequer should not suffer. These officers must realize that they are discharging public duties at the cost of Public Exchequer and for their deliberate lapses, laches and negligence, the Public Exchequer should not suffer but they have to bear the burden. This order is passed so that in settling pension cases the State Government officials become conscious of their duties and obligations in this regard.