

(2021) 04 SHI CK 0122
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1121 Of 2021

Satnam

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(f), 19(5), 31(1), 32, 148, 300A, 309
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11, 16
Central Civil Services (Pension) Rules, 1972 — Rule 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 69(1)(c), 70, 71, 72, 73, 74
Central Civil Services (Leave) Rules, 1972 — Rule 39(3)
Indian Forest Act, 1927 — Section 32, 33
Indian Penal Code, 1860 — Section 120B, 420
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2021) 04 SHI CK 0122

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : J. L. Bhardwaj, Ashok Sharma, Vikas Rathore, Vinod Thakur, Shiv Pal Manhans, J.S. Guleria, Bhupinder Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Pension is succor for post retirement period. It is not a bounty payable at will, but is a social welfare measure, as also a post retirement entitlement

to maintain the dignity of an employee. This is what the Courts in India including the Honâ??ble Supreme Court have repeatedly held.

2. The instant case is a glaring example where the respondents have flagrantly and in most brazen manner denied the petitioner part of his retiral

benefits, constraining him to file the instant petition for the grant of following substantive reliefs:

(i) That the writ in the nature of mandamus may kindly be issued directing the respondents to release the amount of DeathÂcumÂretirement gratuity

amounting to Rs.9,47,117/Â, leave encashment of 300 days, TA bills of 2016Â17 and medical bills amounting to Rs.78059/Â submitted by the

petitioner alongwith interest @ 12% per annum on the amount of DeathÂcumÂretirement gratuity and leave encashment w.e.f. 01.11.2017 till its

realisation and justice be done.

(ii) That the respondents may kindly be directed to pay the compensation to the petitioner to the tune of Rs.1,00,000/Â for unnecessarily harassing

him.â??

3. The petitioner was appointed as Forest Guard on 27.02.1981 and thereafter in the year 2005, promoted to the post of Deputy Ranger and then in the

year 2015, the petitioner was promoted as Range Officer and consequent upon his promotion was ordered to be transferred and posted as Range

Forest Officer, Naina Devi Ji, Forest Division Bilaspur in the year 2016 i.e. on 17.03.2016 and ultimately retired on superannuation from the said

Range Zone on 31.10.2017.

4. It is not in dispute that certain retiral benefits have been withheld by the respondents and explanation for not releasing these benefits is contained in

paraÂ?3 of the preliminary submissions of the reply filed by respondents No.1 to 4, which inter alia reads as under:

â??3. That during tenure of petitioner as RFO Naina Devi Ji Range, the felling of private Khair trees during the year 2015Â16 under approved ten

year felling programme (Annexure RÂIII) and under extension permissions during the year 2016Â17 was going on in Kot, Saloa and Badoh blocks of

Naina Devi Ji range. The respondent department as well as State Anti Corruption Bureau has received complaints regarding illicit felling of Khair

trees from Govt. forests, in Naina Devi Ji range. Keeping in view of illicit felling in Naina Devi Ji range and ongoing investigation by State Vigilance &

Anti Corruption Bureau, the DCRG and leave encashment of the petitioner is withheld to meet with the Govt. loss if found due to

negligence/conspiracy of the petitioner by the competent court of law. Since petitioner is suspect in said illicit felling case which has also been

communicated by Deputy Superintendent of Police, State Vigilance & Anti Corruption Bureau, Bilaspur vide his letter No. 568 dated 25.3.2021

(Annexure RÂIV). The State Vigilance and Anti Corruption Bureau has carried out detailed investigation into the complaints and found illicit felling of

4743 trees from the Govt. land of Saloa Block of Naina Devi Range with criminal conspiracy of field staff of Naina Devi Range. Further in this regard

Station House Officer, State Vigilance & Anti Corruption Bureau, Police Station, Bilaspur had registered FIR No. 0001/2018 dated 25.2.2018 under

Section 32, 33 of Indian Forest Act, 1927, Section 120B, 420 IPC , 1860 and under Section 13(2), 13(1) (d) of Prevention of Corruption Act, 1988 and

has also interrogated petitioner many times along with others. Copy of FIR is annexed as Annexure RÂV. That matter with regard to payment of

gratuity to petitioner was examined in the office of Deputy Controller (F&A) o/o PCCF (HoFF) HP where as per Annexure RÂVI who opined that

â??No gratuity is paid to the retired Govt. servant until the conclusion of Departmental/judicial proceedings against him unless the department

proceedings are instituted under rule 16 of CCS (CCA) Rules, 1965 for imposing minor penalties specified in clause I, ii & iv of Rule 11 of said rules

i.e. if no recovery of Govt. money is expected to fall due towards the retiree. Therefore, the action needs to be taken keeping in view the rule under

which the enquiry is being held which has not been indicated in the communication please.â? Since the matter is serious in nature as involving illicit

felling of 4743 of Khair trees from Govt. land thus causing huge financial loss to the Govt. alongwith making damage to environment and forest.

Hence gratuity was not payable to the petitioner on this count. Further as per Rule 69 (1) (c) of CCS (CCA) Pension Rules, 1972 which reads as

under:Â?

â??No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders

thereonâ??.

Further as per CCS(CCA) Leave Rules, rule 39(3) clearly specifies with regard to withholding cash equivalent to earned leave as under:

â??39(3). The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant

who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against

him, if in the view of such authority there is a possibility of some money

becoming recoverable from him on conclusion of the proceedings against him.

On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues if any.â??

Since the matter is pending and judicial proceedings are to be completed and petitioner being one of the suspect and FIR in this regard has already

been filed by Vigilance Department and since the matter is involving financial implication as huge loss has been done to the Govt. and petitioner being

one of suspect as being made by the investigating /prosecuting agency and also as per Annexure RÂIV some documentary evidences are against the

petitioner and hence looking into all such aspects DCRG and leave encashment of the petitioner has been rightly been withheld and if on completion of

inquiry/judicial proceedings petitioner is discharged/acquitted his remaining dues as submitted above shall be released to the petitioner.â??

5. Certain retiral benefits have been released to the petitioner and details of some of which are contained in paraÂ3 of the reply, the relevant portion

whereof reads as under:

â??â??â?¦...In fact, after the retirement of petitioner, pension of Rs.12110/Â per month and commuted value of pension amounting to Rs.4,86,590/Â has

been paid to petitioner vide PPO No. 1117163675 dated 28.9.2017 (Annexure RÂVII & VIII). On the request of petitioner vide application dated

16.11.2017 (Annexure RÂIX), the petitioner has been allowed by respondent No.4 vide office order No. 179/2017Â18 dated 25.11.2017 (Annexure

RÂX) to retain his GPF accumulation in GPF account until unless his request for final payment is not received. Thereafter, petitioner has applied for

advance to the tune of Rs.5 lakh which has been paid to him from his GPF account by the respondent No.4 vide his office order No. 256/2020 dated

4.12.2020 (Annexure RÂXI). Further, on receipt of medical bills from petitioner, the payment of medical bills amounting to Rs. 45287/Â has been

made to petitioner by respondent No.4 vide bill No. 100720, 100721 both dated 16.3.2021 & 100765 dated 18.3.2021 (Annexure RÂXII & XIII) and

there is no travelling allowance bill of petitioner is pending with respondent departmentâ?¦.â??

6. It would clearly be evident from the reply filed by the respondents that as on the date of retirement i.e. 31.10.2017, there was neither a

departmental inquiry nor any criminal case pending against the petitioner. Even

the FIR No. 0001/2018 that was registered was after the retirement of the petitioner on 25.02.2018 wherein again the petitioner has not even been arraigned as an accused.

7. Now, in such circumstances, the moot question arises as to whether the respondents could have at all withheld the retiral benefits.

8. 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 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.

9. 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.

10. As observed above, the petitioner on the date of his retirement did not have a criminal case or any departmental inquiry contemplated or pending

against him. Therefore, in the given circumstances, there was no reasonable basis or ground available with the respondents for withholding the retiral

benefits of the petitioner and the same is, therefore, contrary to law.

11. It is more than settled that once an employee retires from service on attaining the age of superannuation, there is no authority vested with the

employer (like the respondents in the instant case) for initiating disciplinary proceedings even for the purpose of reduction in the retiral benefits

payable to the employee. This has so been held by this Court in CWPOA No. 138 of 2019 titled Lokinder Dutt Sharma vs. Board of Directors H.P.

Horticulture Produce Marketing and Processing Corporation Ltd. and another, decided on 18.03.2020.

12. The pension and gratuity, as stated above, are not mere bounties, or given out of generosity of employer, but these are benefits earned by the

employee by virtue of his long, continuous faithful service.

13. This aspect of the matter has recently been considered in detail by the Honâ??ble Supreme Court in Hira Lal vs. State of Bihar and others

(2020) 4 SCC 346, wherein it was observed as under:

â??22. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are

not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and unblemished service.

The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1)

of the Constitution by a Constitution bench of this Court in *Deokinandan Prasad v. State of Bihar*, ((1971) 2 SCC 330, which ruled that: (*Deokinandan*

Prasad case, SCC pp. 343-44, paras 30-31 & 33)

30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab

High Court in *Bhagwant Singh v. Union of India* [AIR 1962 Punj 503]. It was held that such a right constitutes "property" and any interference

will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the

right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by

the Union of India. Letters Patent Bench in its decision in *Union of India v. Bhagwant Singh* [ILR 1965 Punj 1] approved the decision of the learned

Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of

Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on

the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the

whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. State of Punjab* [ILR 1967 Punj & Har

278]. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in

the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet

will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government

servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for

showing cause against the imposition of penalty for lapse or misconduct on his

part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

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33. 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... [emphasis supplied]

23. The aforesaid judgment was followed in *D.S. Nakara and Ors. v. Union of India*, (1983) 1 SCC 305, by another Constitution bench of this Court, which held that: (SCC pp. 320 & 323-24, paras 20, 29 and 31)

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable

as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench

in *Deoki Nandan Prasad v. State of Bihar and Ors*⁷: wherein this Court authoritatively ruled that pension is a right and the payment of it does not

depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim

pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount

having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive

pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Anr. v. Iqbal*

Singh. (1976) 2 SCC 1.

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29. Summing up it can be said with confidence that 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

power is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give

your best in the heyday 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 allowance 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 or 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.

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31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer

and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by

the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the

past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly

toiled for the employer on an assurance that in their old age they would not be left in lurch..â?? [emphasis supplied]

24. The right to receive pension has been held to be a right to property protected under Article 300A of the Constitution even after the repeal of

Article 31(1) by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20.06.1979, as held in *State of West Bengal v. Haresh C. Banerjee*

and Ors.(2006) 7 SCC 651).â??

14. In view of the aforesaid exposition of law, the action of the respondents in not paying the entire retiral dues to the petitioner is not only unjustified,

but is clearly illegal.

15. As already noticed above, there are various time bound stages in the process of determining the pensionary benefits as laid down in the Rules and

in case these are not adhered to and result in denial or delay in processing the pensionary claims, then the Courts are required to intervene and impart

justice to the parties by awarding interest and may also where the facts otherwise justify, levy costs. (See: *Devaki Nandan Prasad vs. State of Bihar*

and others AIR 1983 SC 1134, *Ram Pal Singh vs. Union of India and others* AIR 1984 SC 504, *State of Kerala and others vs. M. Padmanabhan Nair*

(1985) 1 SCC 429, *Y.K. Singla vs. Punjab National Bank and others*, (2013) 3 SCC 472 and *State of Uttar Pradesh and others vs. Dharendra Pal*

Singh (2017) 1 SCC 49).

16. In view of the aforesaid discussion, the present petition is allowed and the respondents at the first instance are directed to pay the entire retiral

benefits to the petitioner alongwith 9% interest within a period of 30 days from today. Further, the respondents shall conduct an inquiry and fasten

responsibility on the officer/official, whether serving or retired, responsible for the delay in finalising and thereafter not releasing the pensionary

benefits in favour of the petitioner, so that the amount to be remitted to the petitioner towards interest by the respondents can be recovered from the

salary /pensionary benefits of the erring officer/official, who is responsible for delaying the retiral benefits, as the case may be. This exercise be

completed within a period of six months from today.

17. The instant petition is disposed of in the aforesaid terms, so also the pending application(s), if any.

18. For compliance, list on 18.10.2021.