

(1959) 02 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3919 of 1958

Shaukat Husain Beg Mirza

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 20-02-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Pensions Act, 1871 — Section 3, 4, 5, 6

Citation : AIR 1959 All 769

Hon'ble Judges : Jagdish Sahai, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The petitioner has come to this Court under Article 226 of the Constitution of India on the allegation that he retired from the service of the State of Uttar Pradesh as a jailer on 10-7-11956 and at the time of his retirement was receiving a salary of Rs. 325/- per mensem, After his retirement his papers were sent for fixation of his pension to the Accountant General, U. P. Under the orders of the Inspector General of Prisons dated 2-2-1951 the petitioner's salary was fixed at Rs. 220/- p. m., with effect from 1-4-1947. There was some dispute between him and the Accountant General about the amount at which his pension was to be fixed. He filed a writ petition in this Court which was rejected having become infructuous because the Accountant General had decided the dispute that existed between him and the petitioner.

The Accountant General fixed the petitioner's salary at Rs. 210/- p.m. from 1-4-1947 and is proceeding to fix the petitioner's pension on that basis. The petitioner's case is that under Rule 4(b) of the U. P. Revised Rates or Pay Rules, 1931 and paragraph 10(2) of the Pay Committee Report 1947 he was entitled to a higher salary and his pension should be fixed on the basis of that higher salary. On these facts the petitioner has prayed for the issue of a writ of certiorari or

order or direction in the nature of certiorari quashing the order of the Accountant General, U. P. dated 26-9-1958 (annexure C to the petition).

2. I have perused annexure C. Actually that is a letter addressed to the petitioner by the Deputy Accountant General, U. P. By this letter the petitioner's pension has not been fixed. All that has been done by this letter is that the petitioner has been informed that his salary for the purposes of pension has been considered to be Rs. 210/-per month on 1-4-1947. He was also informed that an anticipatory pension order had already been issued in his favour and a final report has been submitted to the Prison Department and a final pension payment order will be issued as soon as the sanction is received. In my opinion this writ petition cannot be admitted for several reasons. In the first place in my view no one can claim pension as of right and a right to recover a pension is not actionable.

The word "pension" has not been defined anywhere. However, it has been held that it implies I periodical payments of money to a pensioner (see AIR 1931 160 (Privy Council) and Lachmi Narain v. Mukund Singh ILR 26 All 617. It appears to me that two essentials are necessary in order to constitute a pension: (1) it must be a periodical payment, and (2) it must be a grant not in respect of any right privilege, perquisite or office but on political considerations or on account of past services or present infirmities or as a compassionate allowance (see AIR 1937 202 (Nagpur) Shiv Narain Singh v. Munj Lal AIR 1934 Lah 881 and Bansi Ram Vs. Narsingha Santra, .

It has been held to be a periodical payment of money for past services (see Municipal Council, The Municipal Council, Salem Vs. B. Gururajah Rao, . It is a bounty for past services rendered to the public or to the State. It is mainly designed to assist the pensioner in providing his daily wants. It is a mere bounty or gratuity given by the government in consideration or recognition of meritorious past services rendered by the pensioner or by some Kinsman or ancestor. (See the Law Lexicon of British India by P. R. Iyer, 1940 edition).

3. Those mentioned above being the attributes of pension it is obvious that it cannot be claimed as of right. Under the provisions of Section 4 of the Pensions Act (Act No. XXIII of 1871) a suit relating to pension is barred. Section 4 runs as follows:

"Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted."

A pension is also not attachable because of the provisions of Section 11 of the Pensions Act which runs as follows:

""No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate

allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in Part A States and Part C States, at the instance of a creditor, for any demand against the pensioner, or in satisfaction or a decree or order of any such Court.

This section applies in Part A States and Part C States also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma."

These provisions clearly show that the pension of a person is not his property and he has no vested right over it. It is given by way of a bounty for past services mainly to assist the pensioner in providing for his daily needs. Section 5 of the Pensions Act which is reproduced below clearly provides that for the claim of pension the remedy lies only by way of a representation to the Collector of the district or Deputy Commissioner or other officer authorised in this behalf by the appropriate Government:

"5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorised in this behalf by the appropriate Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue authority may, subject to the general control of the appropriate Government, from time to time prescribe in this behalf."

In this connection the provisions of Section 6 of the Pensions Act should also be noticed. The said section runs as follows:

"6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorised in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly."

The provisions of the Pensions Act especially those of Sections 4 5 and 6 clearly reveal that a claim to pension cannot be enforced in a court of law and the proper remedy is to make departmental representations. Even if a civil court, upon receiving a certificate from the Collector or Deputy Commissioner u/s 5 is authorised to try a case it would have no right to order or decree any suit the result of which would be to make the Government liable to pay the pension directly or indirectly. For these reasons it appears to me that the pensioner cannot claim pension as of right or enforce it by means of an action in a court of law. I have already said above that a pension is not attachable which would be if it belonged to the pensioner as of right.

4. The case of *The State of Bihar Vs. Abdul Majid*, also does not help the petitioner because that relates to salary and not to pension. The main reason on which their Lordships of the Supreme Court held that a government servant can file a suit for the recovery of his salary was the statutory provision of Section 60 of the CPC which rendered a salary attachable under that section and Order 21 Rule 48 of that Code. That is not the position with regard to pension.

5. The provisions of the Civil Service Regulations also point in the same direction. Article 351 of the C. S. R. runs as follows:

"Future good conduct is an implied condition of every grant of pension. The Local Government, the Government of India and the Secretary of State in Council reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner was convicted of serious crime or be guilty of grave misconduct

The decision of the Secretary of State in Council on any question of withholding or withdrawing the whole or any part of pension under this Regulation shall be final and conclusive."

Article 348-A runs as follows:

"Every pension shall be held to have been granted subject to the conditions contained in Chapter XXI."

Article 350 runs as follows:

"The pensions of all other officers are regulated by the rules in this part : Provided that it is open to a local Government to rule that the service of any class of officers serving under it does not qualify for pension."

This again would show that pension is not received as of right. Article 351 again empowers the government to recover certain amounts from the pension of an officer. The said article runs as follows:

"The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or negligence, during his service including service rendered on re-employment after retirement"

Article 353 again makes it clear that pension cannot be claimed as of right. That article runs as follows:

"No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency but to officers so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration provided that the allowance granted to any officer shall not exceed two thirds of

the pension which would have been admissible to him if he had retired on medical certificate.

Provided further that no allowance shall be granted to an officer under the rule making control of the Secretary of State in Council without his sanction."

6. All the provisions mentioned above therefore lead me to the conclusion that a person cannot claim pension as of right and in any case the right to recover pension is not actionable. On this ground alone in my opinion the petition is liable to be rejected. Apart from it, the copies of the orders fixing the petitioner's pay at a particular amount have not been filed in this case. Without looking into those orders it is not possible to know as to why his pay has been fixed for purposes of pension at a particular amount, and if any mistake has been committed in fixing that amount.

Annexure C which the petitioner wants to get quashed is only a letter addressed to the petitioner by the Deputy Accountant General. Even if that letter is quashed the petitioner gets nothing until the orders on the basis of which that letter has been issued are quashed. The third hurdle in the way of the petitioner is that the final pension payment order has not yet been issued and only anticipatory pension orders have been issued. It is not known as to what would be the position after the final pension payment orders have been issued. I am of the opinion that in a matter like this the proper remedy of the petitioner is to have recourse to departmental remedies, and that a writ petition is misconceived.

It would also be seen that the petitioner had originally moved a writ petition (No. 3183 of 1957) in this court. The prayer in that petition was for the issue of a writ of mandamus commanding the State of U. P., the Inspector General of Prisons and the Accountant General, U. P. to decide the question of the amount of pension of the petitioner at once according to law and also the question of balance of salary for the period of leave taken by the petitioner before his retirement and also the question of increments which were not given to him. There was also a prayer for a writ of mandamus directing the respondents to pay the pension due to the petitioner. That petition came up for hearing on 14-11-1958 and it was not pressed by the learned counsel for the petitioner on the ground that it had become infructuous and was consequently dismissed.

Learned counsel has stated before me to day that in as much as the letter dated 26-9-1958 had been sent to the petitioner and papers have been sent for the final pension payment order and an anticipatory pension has been fixed, that writ petition was not pressed and was consequently got dismissed. In my opinion under those circumstances the second petition would not lie and the petition is liable to be rejected on this ground also. The petitioner could have got the earlier writ petition No. 3183 of 1957 amended if he thought that the reliefs he had claimed were not wide enough to cover the situation arising because of the letter dated 26-9-1958 having been sent to him. Having considered all these matters I am of the opinion that the petition is misconceived and is liable to be rejected It

is accordingly rejected.