

(1986) 01 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1066 of 1985

Vidya Sagar Sharma

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 08-01-1986

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Constitution of India, 1950 — Article 19, 19(1), 21, 300A, 31
Income Tax Act, 1961 — Section 43

Citation : (1986) 15 ILR HP 20

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

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Shri L.S. Panta, D.A.G. for Respondents No. 1 to 4. and P.A. Sharma, Central Government Standing Counsel, for Respondent No. 5., for the Respondent

Judgement

P.D. Desai, C.J.—The petitioner, who was in the service of the State Government and was holding the post of Forest Ranger, retired on superannuation on September 30, 1981. At the time of retirement, the Petitioner was drawing pay in the sum of Rs. 825/-per month in the revised pay scale of Rs. 700-1200.

2. On November 6, 1981, the pension case of the Petitioner was forwarded to the fifth Respondent (Accountant General, Himachal Pradesh), by the third Respondent (Conservator of Forests, Nahan Circle). The communication in question contained the following endorsement:

The F.R. Shri Vidya Sagar is involved in the recovery case of Rs. 24767.50 with Divisional Forest Officer, Kullu, and Rs. 1264.90 with Divisional Forest Officer, Soil Conservation Division, Kullu. In addition to above departmental proceedings against F.R. is going on regarding excess payment in Muster Roll.

Pending finalisation of the pension case, the fourth Respondent (Divisional Forest Officer, Nahan Division, Nahan) made an order dated December 17, 1981 sanctioning in favour of the Petitioner provisional pension for a period of six

months with effect from October 1, 1981 at the rate of Rs. 410/-per month plus 25 per cent increase in the pension amounting to Rs. 102.50. It is an admitted position that the Petitioner duly received provisional pension on the said basis.

3. The fifth Respondent issued a Certificate and Report on February 5, 1982 authorising the payment to the Petitioner of pension at the rate of Rs. 398/- per month and Death-cum- Retirement Gratuity (hereinafter referred to as 'DCRG') in the sum of Rs. 13,200/-. Be it stated that the pensionary benefits were worked out accordingly on the basis that on the date of retirement the Petitioner should have been drawing Rs. 800/- and not Rs. 825/- as his basic pay. Paras 11, 13, and 14 of the said Certificate and Report contained the following observations in that regard :

11. The pay of the official should have been fixed at the scale of Rs. 700/- on 1-1-78 in the revised scale of Rs. 700-4200 and date of next increment will be 1-2-78. Revised entries may please be recorded in the Service Book under proper attestation and over-payment made on this account may be worked out intimated for recovery.

x x x x x x x

13. The result of the departmental proceedings and final position of recovery may be intimated.

14. Pension Payment Order is being issued separately. Service Book enclosed. Gratuity Order will be issued after compliance of above paras.

The fifth Respondent thereafter issued two reminders, one on July 22, 1982 and the other on December 12, 1984, requesting compliance to his observations so that the DCRG could be released to the petitioner.

4. On April 30, 1985, the fourth Respondent reported compliance to the fifth Respondent. The alleged error in the pay fixation was reported to have been set right and an over-payment in the sum of Rs. 1226.05 made on that account for the period from January 1, 1978 to September 30, 1981 was recommended to be recovered from the DCRG payable to the petitioner. Besides, the extant position relating to other alleged recoveries to be effected from the Petitioner was intimated as follows:

1. Rs. 24,767.50 Recovery intimated by the Divisional Forest Officer, Kullu.

2. Rs. 234.00 Recovery worked out by Divisional Forest Officer, Nahan on account of excess consumption of P. Bags in Nurseries.

3. Rs. 2,828.00 Recovery worked out by Divisional Forest Officer, Nahan on account of excess consumption of B. wire in plantations.

5. Since the total amount allegedly recoverable from the Petitioner accordingly amounted to Rs. 29055.55, which was in excess of the DCRG in the sum of Rs. 13,200/- payable to the petitioner, the fifth Respondent addressed a letter dated

July 1, 1985 to the fourth Respondent seeking instructions as to the mode of effecting the recovery and inquiring whether the recovery was to be effected from the monthly pension. Two reminders were thereafter issued by the fifth Respondent to the third Respondent. One on September 16, 1985 and the other on November 7, 1985. No reply to these communications is stated to have been received by the fifth Respondent till the institution of the present petition on December 16, 1985.

6. The Petitioner appears to have made representations to different authorities against the refixation of his pay as well as against the recovery and also as regards the delayed processing of his pension case. Two of such representations appear to have been made on May 25, 1984 and July 7, 1984. It is the case of Respondents No. 1 to 4 that the representations were not found acceptable and that due intimation thereof was given to the Petitioner by endorsing to him a copy of the letter dated April 30, 1985 addressed by the fourth Respondent to the fifth respondent which gave particulars of the refixation of pay and recoveries.

7. It is not in dispute that the DCRG due and payable to the Petitioner has still not been released in his favour and that it has been withheld in order to effect recovery of the excess payment made on account of the alleged wrong fixation of pay and of the other three sums which are stated to be recoverable from the Petitioner as per the particulars furnished in the aforesaid letter dated April 30, 1985 addressed by the fourth Respondent to the fifth Respondent.

8. The grievance of the Petitioner herein, briefly stated, is that the delayed processing of his pension case, the refixation of his pay after retirement and the consequential reduction in his pensionary benefits and the withholding of his DCRG on the ground of the alleged recoveries to be effected therefrom are all actions which are arbitrary, illegal, unjust and unfair and that despite his repeated efforts there has been a denial of the redressal of his just complaint. Be it stated that the Petitioner has cited in the petition a few instances of the fixation of pay of persons stated to be similarly situated and has complained of a discrimination against him in the matter of fixation of pay upon revision pursuant to the observations made in the Certificate and Report dated February 5, 1982 issued by the fifth Respondent. The relief which the Petitioner has sought is that his pay be directed to be refixed at Rs. 825 instead of Rs. 800 and that the fifth Respondent be consequently directed to refix the pensionary benefits accordingly and that the withheld amount of DCRG and the arrears of pension be directed to be released in his favour with interest.

9. The third Respondent has filed an affidavit-in-reply dated January 7, 1986 on behalf of Respondents No. 1 to 4. The Senior Deputy Accountant General (A&E), Shimla, has filed an affidavit-in-reply dated January 3, 1986 on behalf of the fifth Respondent.

10. The third Respondent in the course of his affidavit-in-reply has justified the

refixation of pay on the ground that the initial fixation of the pay of the Petitioner in the revised scale at a higher stage was the result of inadvertence ?due to clerical error of judgment? and that it was liable to be rectified as and when the mistake came to notice. The third Respondent has averred that the re-fixation of the pay of the Petitioner is strictly in accordance with the instructions issued in that regard by the State Government and the particulars with regard to the re-fixation of pay accordingly made are furnished in para 3 of the affidavit-in-reply. The third Respondent has also controverted the allegation with regard to delay in the processing of the pension case and has in this connection relied upon the fact that provisional pension was ordered to be paid to the Petitioner within a period of about two and a half months from the date of his retirement. The allegation with regard to the discriminatory treatment having been meted out to the Petitioner in the matter of re-fixation of his pay has also emphatically denied. The fact that the DCRG is withheld in order to effect recoveries is not disputed.

11. The affidavit-in-reply filed on behalf of the fifth Respondent is more or less a factual narration with regard to the processing of the pension case of the petitioner. The action of withholding the DCRG of the Petitioner is therein sought to be justified on the ground that recoveries are to be effected and the departmental proceeding is pending against the petitioner.

12. In order to appreciate the rival contentions, it is necessary to refer to a few provisions of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as ?the Pension Rules?). Before we do so, however, the general legal position bearing on the right to pension requires to be adverted to briefly. 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. The said right was, indeed, regarded as ?property? and, therefore, a Fundamental Right within the meaning of sub-clause (f) of Clause (1) of Article 19 and of Article 31 (See: *Deokinandan Prasad Vs. The State of Bihar and Others*, . With the simultaneous deletion and enactment of sub-clause (f) of Clause (1) of Article 19 and Article 31 on one hand and Article 300-A 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 300-A which provides that no person shall be deprived of his ?property? save ?by authority of law?. Article 300-A 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.

13. There is another aspect of the matter which must also be adverted to. As held in D.S. Nakara and Others Vs. Union of India (UOI), 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 ageing process and, therefore, one is required to fall back on savings. The Constitution having set up the political society which has a welfare-socialistic State as its goal and with the obligation created under Articles 39(e), 41 and 43(3) of the Constitution, pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The State, as well as all its agencies and instrumentalities, must, therefore, so regulate their dealings with the employees as to advance the aforesaid purpose and not to defeat it.

14. Against the aforesaid background, let us turn to the relevant provisions of the Pension Rules. Rule 3, sub-rule (1), defines the words and expressions used: in the various Rules. Clause (ii) defines the expression 'Government dues' to mean 'dues as defined in sub-rule (3) of Rule 71'. 'Gratuity' and 'Pension' are defined in clauses (j) and (p) respectively and, accordingly, 'gratuity' includes service gratuity, death-cum-retirement gratuity and residuary gratuity and 'pension' includes gratuity except when the term pension is used in contradistinction to gratuity. Rules 69, 71, 73 and 63 have a direct bearing in the present case and the true legal effect of those legal provisions is required to be appreciated. Clause (c) of sub-rule (1) of Rule 69 enjoins that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and the issue of final orders thereon unless the departmental proceedings have been instituted for the imposition of any of the penalties specified in clauses (i), (ii) and (iv) of Rule 11 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965. Under Rule 71, the Head of Office is under a duty to ascertain and assess Government dues payable by a Government servant due for retirement and the Government dues so ascertained and assessed, which remain outstanding till the date of retirement of the Government servant, are liable to be adjusted against the DCRG amount becoming payable to him. The Government dues include dues pertaining to Government accommodation, and dues other than those pertaining to Government accommodation and the latter category comprises, inter alia, overpayment of pay and allowances or leave salary. Steps relating to the ascertainment and assessment of the Government dues, other than those pertaining to occupation of Government accommodation, are required to be initiated under Rule 73 two years before the date on which a Government servant is due to retire on superannuation and the assessment must be completed eight months prior to the retirement. Under Rule 63, the Head of Office, after ascertaining and assessing the Government dues, must furnish particulars thereof to the Accounts Officer at least two months before the date of retirement so that the dues are recovered out of the gratuity before its payment is authorised. If any additional Government dues come to the notice of the Head of Office after the particulars thereof have been accordingly intimated to the Accounts Officer, the Head of Office must promptly report such additional dues to the Accounts Officer.

15. Now, in the present case, the payment of the DCRG amount has not been made to the Petitioner admittedly on account of the pendency of a departmental proceeding and in order to effect recoveries. It is necessary to examine whether the withholding of the DCRG on these grounds is in accordance with the provisions of the Pension Rules.

16. The reference to the pendency of a departmental proceeding against the Petitioner is to be found in the letter dated November 6, 1981 addressed by the third Respondent to the fifth Respondent at the time of forwarding the pension case. The information conveyed to the fifth Respondent was that such departmental proceeding was in respect of 'excess payment in Muster Roll'. The language, context and collocation clearly suggest that the said departmental proceeding, if any, does not concern itself with the alleged conduct of the Petitioner on the strength of which the recovery of the sums of Rs. 24,767.50, Rs. 234/- and Rs. 2828/- is sought to be affected from the DCRG amount. In other words, the said departmental proceedings, if any, relates to a matter other than those which are stated to have given rise to the above-mentioned recoveries. The precise particulars relating to the said departmental proceeding, if any, such as, when it was instituted, what were the specific charges, whether the proceeding had been instituted for the imposition of a minor or major penalty, what was the stage at which the proceeding stood, etc. were not communicated to the fifth Respondent nor have they been placed on the record of this case. It was the duty of the third Respondent to have intimated all the relevant facts to the fifth Respondent and that of the fifth Respondent to have satisfied himself on

the basis of such facts that his action in not releasing the DCRG amount was in accordance with the provisions of Rule 69 and, more particularly, in consonance with the proviso to clause (c) of sub-rule (1) of Rule 69. In the absence of such material, the fifth Respondent was not justified in withholding the DCRG amount pursuant to a request made in that regard based on the said ground. Indeed, for the want of any material on the record of the original pension case available to the fifth Respondent as well as of this case, it is not possible to uphold the withholding of the DCRG in the purported exercise of the power conferred by Rule 69.

17. The question then is whether the non-release of the DCRG is capable of being justified on the ground that ascertained and assessed Government dues, which were outstanding till the date of retirement of the petitioner, were to be adjusted against the DCRG amount. The so-called Government dues outstanding against the petitioner, as earlier pointed out, total upto Rs. 29055.55 and they consist of the alleged over-payment of salary in the sum of Rs. 122605 as a result of the wrong fixation of the pay and the alleged recoveries in the sums of Rs. 24,767.50, Rs. 234/- and Rs. 2828/-. These are two different kinds of alleged Government dues and it would be convenient to deal with them separately.

18. It would be appropriate, at this stage, to comprehend the true legal connotation of the word 'dues' and to examine the related aspect of the procedure which will be required to be adopted in order to ascertain and assess them. An eminent English Judge, Darling, J., has defined the expression 'due' thus : 'I think, in a legal sense, that money only can be said to be 'due', which may be recovered by action. That which a man is under no legal obligation to repay, for whatever reason, is in my opinion, no longer money 'due' [See : *Re Moss* (1905 2 K.B. 307)]. The word 'due'-means that which is owed and a debt or other obligation is due when it is legally enforceable, that is, when the creditor has a right to demand payment and to enforce collection (See: *Custodian General of Evacuee Property, New Delhi and Others Vs. Harnam Singh*, . While ascertaining and assessing under Rules 71 and 73 the Government dues, if any, remaining outstanding against a Government servant till the date of his retirement, the Head of Office must, therefore, be satisfied that such dues consist of a definite sum(s) of money answering the description contained in sub-rule (3) of Rule 71 and that the Government servant is under a legal obligation to pay the sum and that the Government has a right to demand payment and enforce collection thereof.

19. In light of the aforesaid meaning in law of the word 'dues', which governs also the Government dues of the nature specified in sub-rule (3) of Rule 71, it is apparent that the Head of Office, will have to, at the first instance, from different sources all the material particulars in order to satisfy himself whether any ascertainable sum(s) is factually owed by the Government servant to the Government and whether such sum is outstanding till the date of his retirement and, if so, whether the debt is legally enforceable and recoverable from the

Government servant. In the very nature of things, several questions of fact and law may arise in the process of such ascertainment, especially when the Government servant disputes his liability, and in order to determine those questions, the Head of Office will have to hold some sort of an inquiry, suitable to the occasion and appropriate in the circumstances of the case. The adoption of such a procedure is inevitable on the part of the Head of Office in order to arrive at a just, proper and legal decision in the discharge of the duty entrusted to him under the law. The association of the Government servant with such an inquiry must be regarded as essential in order to gather facts and/or to seek clarifications on issues of fact and law and/or to ascertain whether he admits or denies the liability wholly or partially, and to give him an opportunity to correct or controvert the material sought to be relied against him and/or to put forward his own version concerning the matter. The process of ascertainment of Government dues cannot but be regarded as quasi-judicial in nature, since, the ultimate decision may result in the recovery of such dues from the amount of DCRG, which is property, and may thus involve civil consequences for the Government servant. A reasonable opportunity of hearing coupled with the duty to act judicially and to arrive at a just and fair decision pursuant to an inquiry held in accordance with law must, therefore, be regarded as implicit in the relevant provisions of the Pension Rules and a sine qua non to the exercise of the power of ascertainment and assessment of Government dues and of their recovery out of or adjustment against the DCRG payable to a retiring or a retired [Government servant. Unless the Rules are so understood and enforced, they would be exposed to the vice of unconstitutionality.

20. Against the aforesaid background, the question may be first examined whether the non-release of the DCRG, on the ground that a recovery is to be effected therefrom on account of the alleged over-payment of salary in the sum of Rs. 122605 pursuant to the refixation of pay, is legally justified. The alleged excess payment in the afore-mentioned sum is stated to have resulted on account of the wrong fixation of pay of the Petitioner in the revised scale due to clerical mistake arising out of an error of judgement and the refixation is stated to have been made in accordance with the instructions issued by the State Government in that regard. The particulars furnished in para 3 of the affidavit-in-reply of the third Respondent show that the refixation accordingly done results in the reduction of the pay of the Petitioner in the revised scale by Rs. 25/- on and from January 1, 1978 and that the reduction accordingly made is reflected all throughout from month to month till the date of his retirement. It is not in dispute that no opportunity whatsoever was given by the concerned Respondents to the Petitioner before the aforesaid Government dues were ascertained and recovery was ordered. If such an opportunity had been afforded he could have pointed out that the pay was initially correctly fixed in the revised pay scale at the proper stage and that there was no over-payment either as a result of a mistake of law or of fact, or that the Government was not entitled to recover the alleged over-payment, spread over a period, after such a lapse of time, or that

the Government was estopped from claiming restitution since the over-payments, if any, were made due to the negligence in the discharge of duty on the part of the concerned employees of the Respondents to determine the emoluments correctly and not to misrepresent them, and since the petitioner, bona fide, in reliance on the conduct in making the payment from month to month over a period of time, was entitled to treat the money as his own, and without notice of thier claim, had spent the whole of the sums over-paid in ordinary living expenses or otherwise for his own purposes, and that it would be unjust and inequitable to recover from the pensionary benefits those sums. It would not be out of place to mention in this connection that the Petitioner has, in fact, raised a serious dispute with regard to the refixation of his pay upon revision on more than one ground and that the Petitioner could have legitimately pleaded, if a fair opportunity of hearing had been afforded to him, that there was, in fact, no over-payment of pay and allowances and that such over-payment, if any, should at least be waived of. Under the circumstances, the refixation of the pay of the Petitioner in the revised pay scale behind his back is arbitrary and illegal and so is the consequential decision to order the recovery of the sum of Rs. 1226.05 from the DCRG payable to him on the ground of the alleged excess payment of salary.

21. In regard to the withholding of the DCRG for the purposes of making adjustment against or effecting recovery therefrom of the alleged outstanding dues in the sums of Rs. 24,767.50, Rs. 234/- and Rs. 2828/-, the case stands on a still weaker footing. As earlier pointed out, clause (ii) of sub-rule (1) of Rule 3 of the Pension Rules defines the expression 'Government dues' to mean 'dues as defined in sub-rule (3) of Rule 71'. Sub-rule (3) of Rule 71 defines the expression 'Government dues' to include: '(a) dues pertaining to Government accommodation including arrears of licence-fee, if any; and (b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, over payment of pay and allowances or leave salary and arrears of Income Tax deductible at source under the Income Tax Act, 1961 (43 of 1961)'. Both these provisions read together indicate that the expression 'Government dues' is exhaustively defined therein. This interpretation appears to be reasonable since the definitions viewed conjointly are couched in the form of 'means and includes' and clause (b) of the inclusive definition, while describing Government 'dues other than those pertaining to Government accommodation', uses the word 'namely', which has the same meaning as the expression 'by name' or 'to wit' or 'that is to say', all of which have a restrictive property. It would thus appear that the provisions in the Pension Rules, which authorise the recovery/adjustment of the Government dues from the amount of the DCRG becoming payable to a retired or retiring Government servant, may not apply to the recoveries in the aforesaid three sums, since, the. dues, if any, on account of excess consumption of certain, articles etc., are not expressly specified as falling within the coverage of 'dues other than those pertaining to Government accommodation' in clause (b) of sub-

rule (3) of Rule 71 of the Pension Rules. Those recoveries would, therefore, appear to be wholly without authority of law.

22. For the purposes of the present case, however, it is not necessary to rest the decision on this issue on this ground only. The legality and validity of the recovery of the aforementioned sums may be alternatively and independently examined on the basis of an assumption that those sums may be covered within the meaning of the expression 'Government dues' and that, therefore, they are recoverable, as such, from the DCRG payable to the Government servant under the relevant provisions of the Pension Rules, if other conditions are satisfied.

23. Now, there is no material on record to show as to how the liability of the Petitioner to pay the aforementioned three sums was determined. In the first place, as found earlier, the pending departmental proceeding, if any, which was referred to in the letter dated November 6, 1981 addressed by the third Respondent to the fifth Respondent at the time of forwarding the pension case does not relate to the alleged conduct of the Petitioner on the strength of which the aforesaid sums are sought to be recovered. The recovery could not, therefore, have been ordered as a penalty imposed upon the Petitioner under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in the course of the said departmental proceeding, if any. No other departmental proceeding appears to have been pending against the Petitioner and, therefore, the recovery could not have been ordered to be effected as a penalty imposed upon him in the course of any other departmental proceeding. The Petitioner does not admit the liability to pay those amounts and, in fact, disputes the same. It hardly needs to be stated that the Divisional Forest Officers, Kullu or Nahan, have no legal authority to decide the dispute as to the alleged incurring of the liability nor as regards its quantum. They cannot be the judges in their own cause in the absence of any statutory provisions empowering them to act as such. No such statutory provision has been brought to out notice. Under these circumstances, it is difficult to comprehend as to how the recovery has been worked out and as to how it can be classified as Government dues within the meaning of the said expression as explained hereinabove. In the next place, the third Respondent appears to have acted merely as a conduit pipe in conveying the information as to the said recovery to the fifth Respondent. Even assuming that the recovery of these three sums could be effected by virtue of the power conferred on the Head of Office under Rules 71 and 73, it is not shown that the third Respondent or any other competent authority who was the Head of Office had himself ascertained and assessed these sums as Government dues in the manner indicated hereinabove. No inquiry of any sort is shown to have been held by such authority nor is the Petitioner shown to have been associated therewith and given a reasonable opportunity of being heard before the liability was fastened on him. Indeed, the mind of the concerned Respondents is not shown to have been precisely applied to the case in hand from the various relevant and pertinent angles adumbrated above. Under the circumstances, the decision, if any, 'with regard to the determination of the

liability, if any, of the Petitioner to pay those three sums, namely, Rs. 24,767.50, Rs. 234/- and Rs. 2828/-, could not be regarded as having been arrived at in accordance with law. The Petitioner cannot, therefore, be regarded as being under a legal obligation to pay those sums and the Government cannot be regarded as being within its right to demand the payment and to enforce collection thereof. As such, the recovery of those sums as Government dues and the withholding of the DCRG amount for adjustment against or for effecting recovery therefrom is wholly arbitrary and illegal.

24. For the foregoing reasons, the impugned refixation of the pay of the Petitioner in the revised pay scale of Rs. 700-1200 at the stage of Rs. 800/- on January 1, 1978 and the consequential order of adjustment against or recovery from the DCRG amount, due and payable to the petitioner, of the sum of Rs. 1226.05, on the ground of the alleged over-payment of salary, is quashed and set aside. No such recovery shall be effected from the DCRG amount save and except in accordance with law and in light of the observations made hereinabove. Further more, the impugned action of the Respondents in withholding the DCRG amount for effecting the alleged recovery of the sum of Rs. 24,767.50, Rs. 234/- and Rs. 2828/- stated to be outstanding against the Petitioner as Government dues, is declared to be illegal and void and the Respondents are restrained from making adjustment against or recovering from the DCRG amount the said sums of money except in accordance with law and in light of the observations made herein above. Liberty is reserved to Respondents No. 1 to 4 or anyone on or more of them to take appropriate action in regard to the refixation, if any, of the pay of the Petitioner and in regard to the fixation of the liability of the Petitioner concerning any other Government dues in accordance with law and in light of the observations made in the course of this judgment. The concerned Respondent(s) will initiate such action, if any, within a period of fifteen days from the date of the delivery of a certified copy of this judgment by the issue of a show-cause notice to the Petitioner and arrive at an appropriate decision in regard to those matters, in accordance with law and in light of the observations made in this judgment, within a period of four weeks from the date of service of such notice upon the petitioner. The fresh decision, arrived at accordingly, will be communicated by the concerned Respondent(s) to the Petitioner as well as to the fifth Respondent within a period of one week thereafter. The fifth Respondent will, within a period of two weeks thereafter, issue a revised Certificate and Report and issue the authority, if any, for the payment of the DCRG amount to the petitioner, if it becomes necessary so to do, in conformity with such decision and in accordance with law and in light of the observations made hereinabove. If the fifth Respondent does to receive any communication from Respondents No. 1 to 4 or any of them on or before March 15, 1986, he will issue the gratuity order and authorise the payment of the DCRG amount of Rs. 13,200/- to the petitioner.

25. The question which still survives for consideration is whether the Petitioner is entitled to any interest on account of the illegal withholding of the DCRG amount. In *State of Kerala and Others Vs. M. Padmanabhan Nair*, the law on the subject

has been declared in no uncertain terms by the highest Court. The pertinent observations made in that case are reproduced herein below:

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.

Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. 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.

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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.

These observations laying emphasis on the prompt payment of the retirement dues to a retiring Government servant on the pain of penalty of payment of interest at the current market rate and the desirability of initiation of appropriate action against the erring official (s) /Officer (s), so that the State Government could be compensated for the loss sustained by lapses on his/ their part, are attracted in the present case. As earlier pointed out, in the course of this judgment, Rules 73 and 63 lay down a time-bound procedure in order to facilitate the expeditious payment of pensionary benefits to a retiring Government servant and, accordingly, the process of ascertainment and assessment of Government dues (other than those pertaining to the allotment of

Government accommodation) is required to be initiated two years before the date of retirement of a Government servant and particulars in regard thereto have to be furnished to the Accounts Officer at least two months before the date of retirement, in order to enable the recovery, if any, being made out of the DCRG amount. In the instant case, not only no such steps were taken in accordance with law within the time-limits indicated in the statutory rules but there was also a culpable delay in compliance with the observations made and information sought by the fifth Respondent from the third/fourth Respondent in regard to these matters. The compliance was reported as late as April 30, 1985, that is, nearly 3? years after the retirement of the Petitioner and that too after repeated reminders. The result apparently is that the DCRG amount has been withheld for an unduly long period after the retirement on account of a culpable delay on the part of the dealing official (s)/officer (s). Under the circumstances, the Petitioner is held entitled to interest at the rate of 12 per cent per annum on the amount of DCRG, if any, which may be ultimately found to be due and payable to him after a fresh decision, if any, is arrived at in that regard pursuant to this judgment. The interest will be paid along with the DCRG amount, if any, which becomes payable to the petitioner.

26. Rule made absolute accordingly with no order as to costs. Liberty is reserved to the Petitioner to approach the Court again if he is aggrieved as a result of the fresh decision.

27. A copy of this judgment will be sent under the seal of the Court and the signature of the Registrar to the Chief Secretary of the State Government with a direction to circulate the same- to all the Administrative Secretaries and to all the Heads of Departments duly instructing them to punctually follow the law declared by the Court in terms aforesaid and to bring the same to the notice of all the Heads of Offices subordinate to them. A copy each of the judgment will be similarly endorsed to the Accountant General, Himachal Pradesh, and to the Senior-Deputy Accountant (A&E), Himachal Pradesh, with a similar direction insofar as it may apply to them and drawing the specific attention of those two authorities to the observations on pages 11 and 12 of the judgment.