



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 14891/2023

Mahesh Chandra Soni

----Petitioner

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, Department Of Medical, Health And Family Welfare, Govt. Secretariat, Govt. Of Rajasthan, Jaipur, Rajasthan.
2. The Director (Non-Gazetted), Directorate Of Medical And Health Services, Jaipur, Rajasthan.
3. The Suprintendent, Shri Kalyan Government Medical College, And Attached Hospital Group, District Sikar.
4. The Assistant Director, Directorate Of Pension And Pensioners Welfare, Govt. Of Rajasthan, Jaipur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Harendra Neel &
Ms. Sarah Sharma for
Mr. Vigyan Shah

For Respondent(s) : Dr.Vibhuti Bhushan Sharma, AAG with
Ms. Malti, AGC

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reserved On :: February 06, 2024

Pronounced On :: March 6, 2024

1. This petition has been filed by the petitioner with the following prayers:-

"i) the impugned order dated 01.09.2023 passed by Assistant Engineer, Pension and Pensions Welfare Department for stopping of payment of pension and other retiral benefits to petitioner and



the impugned actions of respondent authorities of non-payment of payment and other retiral benefits to humble petitioner may kindly be declared illegal and arbitrary and therefore, same may kindly be quashed and set-aside;

ii) by issuing appropriate writ, order or direction in the nature thereof respondents may kindly be directed to grant due pension & gratuity and other retiral and terminal benefits to humble petitioner at the rate of 12% per annum with consequential benefits."



2. The basic issue before this Court is 'Whether because of pendency of proceedings of a criminal case in regard to the offences under Sections 498A & 406 IPC and Sections 4 & 6 of the Dowry Prohibition Act, 1961, the retiral benefits including gratuity and pension can be withheld by the authorities more particularly in a case when no departmental proceeding is pending against an employee ?'.

3. The factual matrix of the case is that the petitioner was initially appointed on the post of Male Nurse Grade-II on 17.01.1985 and he joined the duty on the very same day in the office of Chief Medical & Health Officer, Sikar. On the basis of recommendations of the Departmental Promotion Committee (for short 'the DPC') constituted in exercise of the provisions given under the Rules, the petitioner was promoted on the post of Male Nurse Grade-I vide order dated 12.08.2008.



On attaining the age of superannuation, the petitioner was retired from the service vide order dated 22.03.2023 w.e.f. 31.08.2023.

4. When the petitioner was in service, an FIR No.0065/2021 came to be registered at Police Station Mahila Thana (Nagaur), District Nagaur, on 10.07.2021 for the offences under Sections 498-A, 406, 420, 323, 354 IPC and Sections 4 & 6 of Dowry Prohibition Act, 1961. The aforesaid case was registered by the in-laws of the petitioner's son. After completion of the investigation, the police submitted the charge-sheet against the petitioner and other persons for the offences under Sections 498-A & 406 of IPC and Sections 4 & 6 of the Dowry Prohibition Act, 1961 and the trial of the case is pending before the Trial Court.

5. The Police Officers also submitted a misconduct report dated 24.08.2022 to the Chief Medical and Health Officer, Sikar for taking action against the petitioner. A Committee was constituted by the department vide order dated 26.02.2023 for conducting an inquiry into the allegations of misconduct. The Enquiry Committee concluded that since the allegations are in regard to the family disputes and have nothing to do with the official duties, found no case for departmental proceedings and finally, the Director (Non-Gazetted), Medical and Health Services, Rajasthan, Jaipur,





vide order dated 12.04.2023 closed the departmental case on the recommendations of the Enquiry Committee.

6. The Assistant Director, Pension and Pensioners' Welfare Department vide order dated 25.08.2023 directed the Treasurer, Sikar for stopping the process of retiral benefits payment and other retiral benefits of the petitioner.

7. An order dated 01.09.2023 was also issued by the Assistant Director, Pension and Pensioners' Welfare Department in regard to stopping the process regarding payment of pension and other retiral benefits of the petitioner.

8. Mr. Harendra Neel and Ms. Sarah Sharma for Mr. Vigyan Shah appearing for the petitioner submitted that though the petitioner retired from service w.e.f. 31.08.2023, he has not been given the retiral benefits including gratuity, pension etc. Counsel further submitted that the petitioner is facing a great financial hardship because he has encountered serious diseases. Counsel also submitted that the respondents have withheld the retiral benefits of the petitioner merely on account of pendency of a trial of a criminal case, however, the aforesaid case pertains to a family dispute, lodged by the in-laws of the petitioner's son in regard to demand of dowry on false and fabricated facts. Counsel further submitted that the marriage of the son of the petitioner was solemnized in the year 2016 and the case has





been registered in the year 2021 after five years of the marriage, with a false and fabricated story. Counsel further submitted that the petitioner has served with the respondent department for about 38 years and has received various appreciation certificates and he was never subjected to any departmental proceedings for any kind of misconduct pertaining to the official duties. Counsel also submitted that withholding of the retiral benefits including the pension and gratuity is violative of right to life because the petitioner has only the retiral benefits as the sources of income for livelihood.

9. Counsel also submitted that the action of the respondents in withholding the retiral benefits including the pension and gratuity, is illegal, arbitrary and therefore, the respondents be directed to release the retiral benefits to the petitioner with interest.

10. Dr. Vibhuti Bhushan Sharma, learned AAG assisted by Ms. Malti, AGC submitted that it is not in dispute that the judicial proceedings are pending against the petitioner and therefore, in view of Rule 90 of the Rajasthan Pension Rules, 1996, the respondents have rightly withheld the retiral benefits of the petitioner.

11. Considered the submissions made by the counsel appearing for the respective parties.



12. The facts stated in the above paras are not in dispute.

13. The respondents have not come out with any case that the petitioner has ever been subjected to any kind of disciplinary proceedings or any disciplinary proceedings related to the official duties or misconduct are pending against him. Rule 90 of the Pension Rules, 1996 is quoted as under:-



"90. Provisional pension and provisional retirement gratuity where departmental or judicial proceedings are pending

(1) (a) In respect of a Government servant referred to in sub rule (4) of Rule 7, the Director, Pension Department, Rajasthan, on receipt of pension case alongwith sanction of provisional pension from the appointing authority shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension: Provided that in cases where pension case could not be prepared finally for one or the other reason the appointing authority shall sanction provisional pension in Form 33 after following procedure laid down in sub-rule (3) of Rule 86 and send the case to the Director, Pension for issue of Provisional



Pension Payment Order till the Departmental Enquiry is finalised.

(b) The provisional pension shall be authorised by the Director, Pension Department, during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority: Provided that no recovery shall be made from the provisional pension paid under sub-rule (1), where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

(c) In respect of the Government Servant referred to in sub-rule (4) of rule 7, the provisional retirement gratuity may be paid as under:-

(i) fifty percent amount of gratuity of the Government Servant against whom departmental proceedings have been instituted under rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 or against whom criminal case involving moral turpitude or offence relating to his official duty is pending; and

(ii) twenty percent of amount of gratuity to the Government Servant against whom amount of House Building Advance has been set apart for recovery out of retirement gratuity at the time of grant of House Building Advance or against house rent of Government Accommodation is due.

(2) The provisional retirement gratuity paid under clause (c) of sub-rule (1),-





(i) shall be adjusted against final retirement gratuity sanctioned to such Government servant upon conclusion of departmental proceedings or Judicial proceedings and if amount paid is in excess of amount payable, such excess amount shall be recovered; and

(ii) shall be recovered from the Government servant who is removed or dismissed from the service on finalization of departmental proceedings under rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 or criminal case involving moral turpitude or offence relating to his official duty."

14. The service and retiral service gratuities are being paid under the provisions of the Pension Rules, 1996 on completion of minimum service by an employee which is equal to one-fourth of his emoluments for each completed three monthly period of qualifying service subject to a maximum of 16.5 times the emoluments. The pension is also allowed to an employee on retirement on the basis of qualifying service and the rate prescribed. The provisions of the Pension Rules, 1996 clearly speaks that the pension and gratuity are the amounts credited to the petitioner on the basis of services rendered by him with the respondents. The benefits accruing under the Rules in regard to the services rendered by the petitioner on retirement cannot be withheld because of any proceedings which do not relate to the official



duties and more particularly in the matters like family disputes etc. which have nothing to do with the official duties. The judicial proceedings as referred in Rule 90 of the Rules of 1996 certainly relates to any act of an employee committed by him/her in his/ her office or in connection with the official duties. A superannuated employee has no other source of income. Any deprivation of superannuation benefits therefore has serious consequences for the retired employee and his family. He may have to garner resources at this stage at considerable cost to maintain his standard of living or alternatively be forced to reduce his standard of living for no fault of his. Pension and gratuity are not bounty but constitute a right to property under Article 300A of the Constitution which cannot be deprived except in accordance with law.

15. The Division Bench of this Court in the case of ***H.R. Choudhary Vs. Central Administrative Tribunal, Jaipur Bench, Jaipur & Ors.(D.B. Civil Writ Petition No. 12437/2012), decided on 27.01.2017*** has observed as under:-

"Rule 69 of the Pension Rules provides for grant of provisional pension where departmental or judicial proceedings are pending. Even if the appeal against conviction preferred by the Petitioner be treated as a continuation of the criminal case, the words "judicial proceedings" will naturally have to





be read in the context of the rules as being confined to a proceeding related to conduct in service which led to conviction on a criminal charge. To read into it the pendency of an appeal preferred by the petitioner against his conviction under Section 306 IPC to withhold full pension would be doing complete violence to Rule 69 and shall be completely beyond its jurisdiction and scope. In (2009) 3 SCC 709(Paul Enterprises v. Rajib Chatterjee & Co.) it was observed as follows :-

"24. In a situation of this nature, the interpretation clause should be given a contextual meaning. It is not exhaustive. It is trite that when a statutory enactment defines its terms, the same should govern what is proved, authorised or done under or by reference to that enactment....."

The counter affidavit filed by the Respondents before the Tribunal is a bundle of contradictions reflecting a state of complete apathy unconcerned with the duty to assist the Tribunal in dispensation of justice. The Respondent acts through its officers who are reposed power in trust to be used in good faith to protect the interest of the Respondents and not to involve it in unnecessary litigation frittering away time and money. We are constrained to observe that the trust has been completely belied by action reflecting complete non application of mind if not in abuse of the trust placed. The shifting stands taken in official orders and that before the Tribunal has resulted in illegal denial of



full pension and gratuity to the petitioner since his superannuation in the year 2004. Regrettably, the Tribunal failed to grasp issues for consideration properly.

A superannuated employee has no other source of income. Any deprivation of superannuation benefits therefore has serious consequences for the retired employee and his family. He may have to garner resources at this stage at considerable cost to maintain his standard of living or alternately be forced to reduce his standard of living for no fault of his. Pension and gratuity are not bounty but constitute a right to property under Article 300A of the Constitution which cannot be deprived except in accordance with law.

The withholding of full pension and gratuity is therefore held to be arbitrary and illegal. The Petitioner is held entitled to full pension from date of superannuation alongwith gratuity and other superannuation benefits, if any. The Respondents shall pay interest on Gratuity as provided for in Rule 68 of the Pension Rules or any statutory interest as the case may be. Relying on (1994) 2SCC 406 (R.R.Bhanot v. Union of India) the Petitioner is held entitled to interest on the arrears of pension @12% p.a. from the date of superannuation till the actual date of payment.”

16. The Hon'ble Supreme Court in the case of **Pramod Singh Kirar Vs. State of Madhya Pradesh & Ors. (Civil Appeal Nos. 8934-8935 of 2022)**, decided on December





02, 2022, in a matter regarding non-appointment of a candidate because of a criminal case for the offence under section 498A IPC has directed to allow appointment to that candidate on the post of Constable. The Hon'ble Apex Court in the aforesaid judgment has observed as under:-



"6. At the outset, it is required to be noted that the appellant applied for the post of Constable in the year 2013 and as such was found to be meritorious and was found eligible to be appointed as Constable. In the verification form itself he declared that he was tried for the offence under Section 498A of IPC earlier. Therefore, as such there was no suppression on the part of the appellant in not disclosing true and correct facts. It is also required to be noted that the appellant came to be acquitted for the offence under Section 498A of IPC vide judgment and order dated 30.10.2006 i.e., 7 years before he applied for the post of Constable. From the judgment and order of acquittal passed by Trial Court it appears that there was a matrimonial dispute which ended in settlement and the original complainant did not support the case of the prosecution and was declared hostile in view of settlement out of the court and the other prosecution witness(s) examined in the case did not corroborate the prosecution story. Thus, it can be seen that the appellant did not face the prosecution for the other offences of IPC. Therefore, for whatever has happened in the year 2001 and the criminal case for the offence under Section 498A resulted in



acquittal in the year 2006, the appellant should not be denied the appointment in the year 2013/2014. The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court. Under the circumstances and in the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498A of IPC and that too, for the offence alleged to have happened in the year 2001 for which he was even acquitted in the year 2006 may be on settlement (between husband and wife).

7. Now so far as the reliance placed upon the decision of this Court in the case of Anil Kanwariya (supra) relied upon by the learned counsel appearing on behalf of the respondent – State is concerned on facts the said decision shall not be applicable. It was a case where the candidate as such suppressed the antecedents and by suppressing the material facts obtained appointment by fraud/misrepresentation and suppression of material fact. In that case the employee was convicted for the offences under Section 343 and 323 of IPC. Therefore, at the time of appointment he was found to be convicted. Therefore, his termination came to be upheld by this Court. In the present case such is not the situation. Neither there was any suppression of material fact on the part of the appellant nor he was convicted for any offence under the IPC. The



alleged incident was of the year 2001 which resulted into acquittal in the year 2006 and he applied for the post of Constable in the year 2013/2014.”



17. This Court in the case of **Lalit Kumar Jain Vs. State of Rajasthan & Ors., reported in RLW 1996 (1) Raj. 126**, in regard to a matter pertaining to suspension of an employee has observed as under:-

“17. We now proceed to examine the case in the light of the above pronouncements. The undisputed facts narrated in earlier part of the judgment reveal:

- (i) the charge levelled against the petitioner is not related to performance of his official duties;*
- (ii) the allegations against the petitioner lost its penetration and gravity after his discharge from the offences punishable under Sections 306 and 304B I.P.C. The petitioner was put under suspension for criminal offence U/s. 306 I.P.C. which was pending against him and this ground was not available for continuation of suspension order after his discharge from this offence ;*
- (iii) more than 87 months have passed from the date of suspension, but still the trial of the case has not commenced, in as much as, the charge has not been framed as yet. The trial is likely to take a long time;*
- (iv) there is no allegation or material on record to show that in case the petitioner is allowed to discharge his official duties, it would be against the*



public interest or it is likely to interfere in administration of justice, specially, in the changed circumstances after discharge of the petitioner from the offences under Sections 306 and 304B I.P.C.

(v) the petitioner has already suffered agony of prolonged suspension and its adverse effect on him and his family members."

18. In the case of ***P.K. Pradhan v. State of Sikkim, reported in 2001 CriLJ 3505*** it has been observed as under:-

"The legislative mandate engrafted in Sub-section (1) of Section 197 debarring a court from taking cognizance of concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197,



unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly I excess of the needs and requirements of the situation.”

19. In the case of **Sau Sheela Rameshchandra Bargaje vs. The Administrative Officer, Municipal Education Board & Anr., writ petition No.12817 of 2017**, the High Court of Bombay has observed as under:-

*"18. In our view, the criminal proceedings filed at the instance of the daughter-in-law of the petitioner under [Section 498A](#) of the Indian Penal Code and other related provisions against the petitioner have nothing to do with the employment of the petitioner with respondent nos. 1 and 3. If any criminal proceedings would have been filed and pending investigation relating to the employment of the petitioner with the respondent no.1, the situation would have been different. The principle laid down by this Court in case of *Shrikant Ramchandra Inamdar (supra)* applies to the facts*



of this case. We do not propose to take any different view in the matter.”

20. In the present case, the petitioner has served with the respondents for about 38 years with an unblemished service record as nothing has been brought before this Court by the respondents that his conduct was ever found to be inappropriate during the whole service tenure. The pension, gratuity and other retiral benefits are the earnings of an employee for the services rendered by him with the respondents. Taking away or withholding such benefits after retirement amounts to depriving the petitioner from the right to life because the retiral benefits are the sources by which the petitioner and his family arrange for their bread and other necessities.

21. On consideration of the law, referred in the above paras, a convicted candidate for the offences in regard to the family disputes can also be given appointment and after his appointment he will also earn the service benefits which he will get on his retirement. Whether any appointment of such a person can deprive him from the retiral benefits after his retirement, the answer would be no.

22. The basic object behind crediting the benefit of pension, gratuity and other retiral benefits is that after retirement when an employee is of an old age, may not face





any financial problem for his livelihood or necessities more particularly in cases who are alone or are neglected by the persons who are supposed to maintain them. If we go into the facts of the case, the petitioner has served with the respondents for about 38 years and by making contribution from his salary and other contributions aided by the State employer, the pension, gratuity and other retiral benefits have been credited to him. Because of pendency of criminal proceedings and that too in regard to any family dispute which has nothing to do with the official duties, in no manner can be said to be justified. The judicial proceedings, as referred in Rule 90 of the Pension Rules, 1996 in view of this Court, is in regard to the proceedings of an act of an employee pertaining to the official duties or in the office. The words 'judicial proceedings' as referred in Rule 90 of the Pension Rules, 1996 cannot be treated for the proceedings related to the "family disputes", which has nothing to do with the official duties or functioning of the employee in his office. The respondents themselves on a misconduct report after inquiry have decided not to initiate disciplinary proceedings against the petitioner.

23. Hence, in view of the discussions made above, the writ petition deserves to be allowed and is accordingly allowed. The order dated 01.09.2023 passed by the Assistant Director, Pension & Pensioners' Welfare Department,



Rajasthan, Jaipur, for stopping the process of payment of pension and other retiral benefits of the petitioner is hereby set aside.



24. The respondents are directed to allow the retiral benefits including the pension, gratuity etc. to the petitioner within a period of two months from the date of submitting the certified copy of this order.

25. In case the petitioner is not made the retiral benefits including the pension, gratuity etc., within the above given time, he would be entitled to get interest @ 9% per annum on the due retiral benefits from the date of passing of this order.

26. In view of the order passed in the main petition, the stay application and pending application/s, if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar