

**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND****Order****17/02/2023****Reportable**

“Withholding of pension and other retiral benefits of a retired employee for years together is not only illegal and arbitrary act but also a sin though not an offence since no law has declared so.”¹

“The pain and torture faced by a retired employee and his family in the circumstances created by the authorities, can be easily visualized and felt but cannot be assessed in the way only those who really suffer, know it. This pain and humiliation cannot be compensated in terms of money.”¹

Instant case is a glaring example where the petitioner retired more than half a decade back but did not receive the pension and retiral benefits. Fighting for his rights against the cruel system for years, the petitioner knocked the doors of the temple of justice, by way of filing this petition.

Instant petition has been filed by the petitioner with the following prayer:-

“i) By an appropriate writ, order or direction direct in the nature thereof the direct to respondents to pay the gratuity and other retiral benefit of the petitioner with interest @ 18% p.a.

¹ Sant Lal V. Chief Audit Officer and Ors. : 2016 SCC OnLine All. 2916



ii) By an appropriate writ, order or direction direct in the nature thereof the direct to respondents to grant the benefit of 7th pay commission to the petitioner from due date.

iii) By an appropriate writ, order or direction direct in the nature thereof the respondents may further be directed to sanction the pensionary benefit of the petitioner from the date of his retirement and also pay arrears thereof with interest @ 18% p.a.

iv) Any other relief which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be given in favour of the petitioner."

Counsel for the petitioner(s) submits that the petitioner was working on the post of Inspector Audit in the Cooperative Department and he stood retired on 31.01.2018 after attaining the age of superannuation. Counsel submits that in spite of passing of more than five years, the respondents have not released the pension and other retiral dues to the petitioner without any justified reason. Counsel submits that no departmental inquiry or criminal case was pending against the petitioner. Counsel submits that when the retiral benefits were not extended to the petitioner even after passing of almost two years, the petitioner was not left with any other option except to approach this Court for redressal of his grievance by way of filing of this writ petition under Article 226 of the Constitution of India in the year 2020. Counsel submits that fighting his battle against the mighty Government-respondents, the petitioner lost his life on 21.07.2021, and thereafter the legal representative of the deceased petitioner were taken on record. Counsel submits that



even the respondents are sitting over the matter and they have not released the due retiral benefits to the family members of the deceased petitioner. Counsel submits that under these circumstances, appropriate orders be passed directing the respondents to release the due retiral benefits with interest to the legal representatives of the deceased petitioner forthwith without any further delay.

Per contra, counsel for the respondents has opposed the arguments raised by the counsel for the petitioner and has submitted that the deceased petitioner was working as Inspector Audit in Cooperative Department, Churu and thereafter he was sent on deputation and thereafter his services were returned back to the parental Department vide order dated 06.11.2017. Counsel submits that because of the above fact the requisite service record of the petitioner could not be collected and delay had occurred in finalizing the pension claim of the petitioner. Counsel submits that the respondents are in the process of releasing the due retiral amount to the petitioner in short time.

Counsel for respondent No. 5 submits that after completing all formalities, the entire service record of the deceased petitioner has been sent to the Cooperative Department. Counsel submits that even the arrears of salary of Rs. 9,81,107/- has been paid to the petitioner and remaining necessary requisite exercise would be completed within a short period of time.

Heard and considered the arguments raised by the counsel for the parties and perused the material available on the record.



It is quite surprising and shocking on the part of the State-respondents that in spite of retirement of the deceased-petitioner in the year 2018, the retiral dues have not been released by the respondents even after passing of more than five years. The officials of the State-respondents compelled the deceased petitioner to approach this court in the year 2020 but losing his battle fighting against the mighty State Government-respondents, the deceased-petitioner had lost his life. But the respondents kept their ears closed like a deaf. Thereafter, the legal representatives were taken on record.

It is worthy to note here that neither any criminal case nor any departmental inquiry was pending against the petitioner, hence there was no reason available with the State-respondents to withhold the retiral dues of the petitioner. Such arbitrary act of the State-respondents is high-handed and is liable to be deprecated by this Court. This is not a case of the respondents that there was any lapse on the part of the petitioner to complete any requisite formality. When the entire service record of the petitioner was available in the offices of the respondents, then there was no reason to withhold the retiral dues of the petitioner for more than five years.

It is an accepted position that pension and gratuity are not bounty. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. The Constitutional Bench of Hon'ble Apex Court in the case of **Deokinandan Prasad V. State of Bihar** reported in **(1971) 2 SCC 330** 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 anyone's discretion. The right to receive pension flows to the officer not because any order of the authority is required but by virtue of statutory Rules. This view was reaffirmed by the Hon'ble Supreme Court in the case of **State of Punjab V. Iqbal Singh** reported in **(1976) 2 SCC 1** and it has been held that "It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India."

The right to receive pension was recognized as a right to property by the Constitutional Bench of Hon'ble Apex Court in the case of **Deokinandan Prasad** (supra) and is apparent from the following discussion in paragraph Nos. 27 to 33 which reads thus:-

"27.The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The



respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1966. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr. Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that 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 an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

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 reported in 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. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh reported in ILR (1965) 2 Punj 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. The State of Punjab reported in AIR 1967 Punj 279. 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.

32. This Court in *State of Madhya Pradesh v. Ranojirao Shinde* reported in AIR 1968 SC 1053 had to consider the question whether a 'cash grant' is 'property' within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing 'it is obvious that a right to sum of money is property'.

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 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may





be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

Similarly in the case of **State of Jharkhand and Ors.**

Vs. Jitendra Kumar Srivastava and Anr. reported in **(2013)**

12 SCC 210 Hon'ble Supreme Court has held that a person cannot be deprived of pension without the authority of law, which is a constitutional mandate enshrined in Article 300-A of the Constitution of India. It has been held in paragraph Nos. 16 and 17 as under:-

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300 A of the Constitution of India reads as under:

"300-A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300-



A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

Chapter – VI of the Rajasthan Civil Services (Pension) Rules, 1996 (for short 'the Rules of 1996') deals with the provisions of determination and authorization of the amounts of pension and gratuity. Rule 78 of the Rules of 1996 deals with the provisions of preparation of list of the government servants due for retirement. Rule 80 deals with preparation of pension papers and Rules 81 and 82 deal with stages and completion of pension papers. Likewise Rules 83, 84 and 85 deal with the procedure to deal with the pension papers by the Pension Department and release of pension and in case any delay occurs, the pensioner is entitled to get interest @ 9% per annum on delayed payment of pension and gratuity under Rule 89 of the Rules of 1996.

The law is well established that the government servant becomes entitled for pension and other benefits in terms of the Pension Rules. The State is duty bound under the statutory Rules of 1996 to ensure the disbursement of pension and other benefits to the retired employee in proper time. What is proper time would depend upon the facts and circumstances of each case but normally it would not exceed two months from the date of retirement and even this time limit has been fixed by the Hon'ble Apex Court in the case of **State of Kerala Vs. M. Padmanabhan**



Nair reported in **AIR 1985 SC 356**. In case the State commits any default in payment of retiral dues, the retiral person is entitled to get interest on the delayed due payment.

Coming down heavily with such like situation, the Division Bench of Allahabad High Court in the case of **Sant Lal V. Chief Audit Officer and Ors.**, reported in **2016 SCC OnLine All. 2916** held that amount of pension and General Provident Fund ("GPF") is obviously the money which belongs to an employee and if a person is not paid his earned money for considerable long years, there can be nothing more serious and harsh on the part of the authorities. Such arbitrary act of the authorities was condemned by the Division Bench with the following strongest words:-

"It is like a person starving today is assured food to be provide after a month or two by which time he may die of hunger or the foodstuff itself may rot. If this is not unconstitutional then what else can be."

The Division Bench further held that :- "In our system, the Constitution is supreme, but the real power vest in the people of India. The Constitution has been enacted 'for the people, by the people and of the people'. A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee." Expressing severe disapproval, the Court held that "withholding of pension and other retiral benefits of retired employees for years together is not only illegal but also arbitrary. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillars



of our Constitution". The Court critically observed that "A system controlled by bureaucrats can create wrangles to device something which is formulated by policy-makers for the benefit of the citizen is writ large. A beneficial scheme made for social welfare of old and retired employees, can be twisted by the system creating a nightmare to retired employees, as is quite evident. The constitutional obligation though pen down to reach the people but Executive, habitual of remaining static or move slow or no movement at all, can render such scheme quite ineffective and inoperative. The pain and torture faced by retired employee and his family, in such circumstances, can be easily visualised and felt but cannot be assessed in the same way only those who really suffer, know it. This pain and humiliation cannot be compensated in terms of money." On the aspect of award of interest on delayed payment, the Court observed that if retiral benefits are paid with extraordinary delay, the Court should award suitable interest which is compensatory in nature so as to cause some solace to the harassed employee. No government official should have the liberty of harassing a hopeless employee by withholding the lawful dues for a long time and thereafter to escape from any liability. Every authority howsoever high must always keep in mind that nobody is above law. It is also the constitutional duty of a court of law to pass suitable orders in such matters so that such illegal acts may not be repeated and serve as a lesson to everyone committing such unjust act."

Looking to the consistent view of Hon'ble Supreme Court and the Rules of 1996, it is clear like a noon day that the



retiral dues of an employee like the petitioner cannot be allowed to withhold because the documents were not received by any department from the other department. The respondents cannot be allowed to take shelter that the delay was caused by any authority in not sending the required file and paper of the petitioner, such action on the part of the respondent/authority is unfounded and virtually arbitrary, illegal and contrary to law.

In view of the discussion made herein above, instant petition stands allowed with directions to the respondents to release all the retiral benefits to the legal representatives of the deceased petitioner within a period of thirty (30) days from the date of receipt of a certified copy of this order with interest @ 9% per annum from the date of retirement of the deceased petitioner till its actual payment.

Since, the petitioner and after his death his widow has been dragged to the Court for a valid claim of pension and retiral dues, in order to do complete justice between the parties, this Court is inclined to impose cost of Rs.50,000/- (Rupees Fifty Thousand) upon the respondents, which shall be payable to the widow of the deceased employee at the time of payment of retiral dues as per the direction of this Court.

Needless to observe that after paying the cost to the widow of the deceased petitioner, the respondents would be at liberty to recover the same from pocket of the erring officers as per Rules, after holding an inquiry.



Stay application and other applications (pending, if any)
also stands disposed of accordingly.

(ANOOP KUMAR DHAND),J

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