[2020] 2 S.C.R. 907

DR. HIRA LAL

v.

STATE OF BIHAR & ORS.

(Civil Appeal Nos. 1677-1678 of 2020)

FEBRUARY 18, 2020

[UDAY UMESH LALIT AND INDU MALHOTRA,JJ.]

Service Law:

Retiral benefits – 10% of pension and full amount of gratuity – Withholding of – On account of pending criminal proceedings – On the basis of Circulars dated 22.8.1974 and 31.10.1974 r/w. Government Resolution dated 31.7.1980 – Challenged in writ petition – Single Judge of High Court dismissed the petition – Order affirmed in LPA – Appeal to Supreme Court – Held: Rule 43(b) of Bihar Pension Rules, 1950 which provides for withholding of pension does not cover a situation where judicial or departmental proceedings are pending – The Circulars and the Government Resolution being administrative/executive orders (not issued in exercise of the power u/Art. 309 of Constitution) have no force of law – Right to receive pension and gratuity are right to property protected under Art. 300A of the Constitution – It cannot be taken away by an executive fiat or administrative instruction – In absence of statutory Rules, State could not have withheld the pension and gratuity on the basis of executive instructions – Therefore, the State was unjustified in withholding 10% pension – However, after amendment of r. 43 on 19.7.2012 by insertion of clause(c), State is empowered to withhold 10% of pension amount – State is directed to release the 10% of pension amount from 31.3.2008 (date of superannuation) till 19.7.2012 – As per r. 27 of Pension Rules, 'pension' includes 'gratuity' – Therefore, entire gratuity amount also could not have been withheld – State is directed to release 90% of the gratuity amount – Bihar Pension Rules, 1950 – rr. 43 and 27.

Allowing the appeals, the Court

HELD: 1. A reading of Rule 43(b) of Bihar Pension Rules, 1950 would indicate that the State Government was empowered to withhold or withdraw the whole or part of the amount of pension,

A **permanently or for a specified period, if the pensioner was "found to be guilty of grave misconduct" in any departmental or judicial proceeding, or to have "caused pecuniary loss to Government by misconduct or negligence", during the tenure of his service. Rule 43(b) did not cover a situation where judicial or departmental proceedings were pending. [Paras 11.2 and 12.1][913 G-H; 914-A]**

2. The Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were merely administrative instructions/executive orders. They were not issued in exercise of the power under Article 309 of the Constitution and cannot be said to have the force of law. The absence of statutory rules permitting withholding of pension or gratuity, the State could not do so by way of executive instructions. [Para 13.1][917 A-B; 918-H; 919-A]

State of Jharkhand and Ors. v. Jitendra Kumar Srivastava and Ors. **(2013) 12 SCC 210 : [2013] 8 SCR 177 – relied on.**

3. The position has however changed with the amendment to the Bihar Pension Rules on 19.07.2012 by the Governor of Bihar in exercise of the powers under Article 309 of the Constitution, whereby Clause (c) has been inserted in Rule 43. Rule 43 (c) provides that where a departmental proceeding or judicial proceeding is initiated during the service period of a Government servant, and prosecution had been sanctioned but not concluded till superannuation, the provisional pension payable shall be less than the maximum admissible amount, but shall in no case be less than 90%. [Paras 13.2 and 13.3][919-B; 919D-E]

4. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service. The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the Constitution. The right to receive pension has been

held to be a right to property protected under Article 300A of the Constitution even after the repeal of Article 31(1) by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20.06.1979. [Paras 13.4 and 13.6][919 E-F; 923 C-D]

Deokinandan Prasad v. State of Bihar **(1971) 2 SCC 330 : [1971] 0 Suppl. SCR 634;** *D.S. Nakara and Ors. v. Union of India* **(1983) 1 SCC 305 : [1983] 2 SCR 165 – followed.**

State of West Bengal v. Haresh C. Banerjee and Ors. **(2006) 7 SCC 651 : [2006] 5 Suppl. SCR 620 –** ***relied on.***

5. The Respondent-State was unjustified in withholding 10% pension of the Appellant under administrative Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980 after the Appellant had superannuated on 31.03.2008. It is directed that 10% of the pension amount which had been withheld after superannuation on 31.03.2008 till 19.07.2012 is liable to be paid to the Appellant. [Para 14][923 E-G]

6. After Rule 43(c) was inserted in the Bihar Pension Rules and brought into force on 19.07.2012, the State is empowered to legally withhold 10% of the pension amount of the Appellant, till the criminal proceedings in R.C. Case No. 48A/1996 are concluded. Consequently, the State will deduct 10% from the pension amount w.e.f. 19.07.2012 subject to the outcome of the criminal proceedings. [Para 14][923 G-H]

7. With respect to withholding of the full amount of gratuity, as per Rule 27 of the Bihar Pension Rules, "pension" includes "gratuity". With the insertion of Rule 43 (c) in the statute book w.e.f. 19.07.2012, it is clear that gratuity also could not have been withheld under administrative circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980. The State is directed to release 90% of the gratuity payable to the Appellant. The balance 10% will be released subject to the outcome of the criminal proceedings pending against him. [Para 15][924 A-C]

A *Vijay Kumar Mishra v. State of Bihar* **2017 (1) PLJR 575;** *Arvind Kumar Singh v. State of Bihar & Ors. etc. etc.* **(2018) 159 FLR 143 – referred to.**

Case Law Reference

B	**[2013] 8 SCR 177**	**relied on**	**Para 5**
	2017 (1) PLJR 575	**referred to**	**Para 9**
	[1971] 0 Suppl. SCR 634	**followed**	**Para 13.4**
	[1983] 2 SCR 165	**followed**	**Para 13.5**
C	**[2006] 5 Suppl. SCR 620**	**relied on**	**Para 13.6**
	(2018) 159 FLR 143	**referred to**	**Para 13.7**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1677-1678 of 2020.

From the Judgment and Order dated 21.03.2017 of the High Court D of Judicature at Patna in LPA No. 1529 of 2013 and order dated 23.08.2017 in Civil Review No. 207 of 2017.

Sunil Kr., Sr. Adv., Himanshu Shekhar, Advs. for the Appellant.

Ms. Pratistha Vij, Abhinav Mukerji, Parthiv K. Goswami, E Ms. Diksha Rai, Sibo Shankar Mishra, Mrs. Anil Katiyar, Advs. for the Respondents.

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

F Delay condoned. Leave granted.

1. The short issue which arises for consideration is whether the State of Bihar was justified in withholding 10% pension and full gratuity of the Appellant under Circulars dated 22.08.1974 and 31.10.194, and Government Resolution dated 31.07.1980, on the ground of pending criminal proceedings? G

2. The Appellant was appointed to the post of Touring Veterinary Officer (TVO) at Pawana, Bihar by the Respondent-State. While the Appellant was in active service, he was made an accused in the Fodder Scam lodged by the CBI in RC Case No.48A/1996 wherein a Charge-Sheet was filed against him on 21.11.2003. The Special Judge, CBI, H

Animal Husbandry took cognizance in the criminal case. The Appellant was placed under suspension on 31.05.2002 under Rule 49(a) of the Civil Services (Classification, Control & Appeal) Rules, 1930, which were in force prior to the enforcement of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. The Appellant continued to remain under suspension till he attained the age of superannuation on 31.03.2008.

3. On attaining the age of superannuation, the State Government *vide* Order dated 17.09.2008 sanctioned payment of 90% of the provisional pension of the Appellant, and withheld 10% of the pension, entire gratuity, leave encashment and GPF on account of pending criminal proceedings.

4. Aggrieved by the action of withholding 10% pension and other retiral benefits, the Appellant filed a Writ Petition before the Patna High Court praying for a writ of mandamus directing the Respondents to pay full pension, gratuity, leave encashment, and General Provident Fund along with interest.

5. The Appellant *inter alia* contended that the Bihar Pension Rules,1950 do not prohibit payment of full pension and gratuity to a retired Government servant against whom criminal proceedings were pending. Rule 43(b) of the Bihar Pension Rules is not applicable, until the delinquent employee is found to be guilty of grave misconduct in a departmental or judicial proceedings or to have caused pecuniary loss to the Government by misconduct or negligence. Consequently, Rule 43(b) would not be applicable during the pendency of criminal proceedings. Reliance was placed on the judgment of this Court in *State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Ors.*[1], wherein it has been that Rule 43(b) does not permit withholding of pension and gratuity when departmental or judicial proceedings are still pending. It was further contended the Government Resolution dated 31.07.1980, being an executive instruction had no force of law, and could not take away the right to receive pension, which is recognised as a constitutional right under Article 300A of the Constitution.

6. The State of Bihar filed its Counter-Affidavit stating that a sum of Rs.12,78,711/- towards G.P.F and Rs.1,35,256/- towards leave encashment had since been paid to the Appellant on 15.01.2009 and

[1] (2013) 12 SCC 210

03.02.2009 respectively. The State justified its stand on the basis of Circulars dated 22.08.1974 and 31.10.1974 issued by the Finance Department read with Government Resolution dated 31.07.1980, which lays down that if a government servant retires while under suspension, he will not be entitled to payment of full pension and gratuity, and at best, would be entitled to payment of 90% of the provisional pension till the conclusion of the departmental or judicial proceedings. It further provided that no gratuity or death-cum-retirement gratuity would be payable until the conclusion of the said proceedings, and the issuance of final orders thereon.

7. The issue which remained for consideration was with respect to withholding payment of 10% of the pension and full amount of gratuity.

8. The learned Single Judge of the High Court dismissed the Writ Petition *vide* Judgment & Order dated 23.01.2013 holding that the claim of full pension and gratuity until conclusion of the criminal proceedings was untenable both on facts, and in law. Since the order of Suspension dated 31.05.2002 was not revoked at any point of time till the Appellant attained the age of superannuation, the criminal proceedings would be deemed to be continuing during this entire period as per Rule 43(b) of the Bihar Pension Rules. As per the Government Circulars dated 22.8.1974 and 31.10.1974, and Government Resolution dated 31.7.1980, a conscious decision was taken by the State Government for temporarily withholding 10% of pension and full amount of gratuity till conclusion of the departmental or judicial proceedings.

9. Aggrieved by the Order of the Single Judge, the Appellant preferred an LPA, which was dismissed by a division bench of the High Court *vide* impugned Judgment & Order dated 21.03.2017. The division bench followed the judgment in *Vijay Kumar Mishra* v. *Stateof Bihar*[2] on the interpretation of Rules 43(b) and (c) of the Bihar Pension Rules, and dismissed the LPA. The division bench held that the Appellant would be required to await the outcome of the pending criminal case, before he becomes entitled to payment of 10% pension and full amount of gratuity, which had been withheld.

The Review Petition preferred by the Appellant was dismissed as not pressed *vide*Order dated 23.08.2017.

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[2] 2017 (1) PLJR 575

10. Aggrieved by the judgment of the High Court, the Appellant has filed the present SLP before this Court.

We have heard learned counsel for the parties, and have considered the submissions made on their behalf.

11. Relevant Statutory Provisions

11.1 The Bihar Pension Rules, 1950 were enacted under Section 241(2)(b) of the Government of India Act, 1935, and came into force on 20th January, 1950.

Rules 27 and 43 (a) and (b) are set out hereunder:-

"**27.***Pension includes a gratuity."*

*"***43 (a)** *Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.*

(b) *The State Government further reserve to themselves 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 proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:*

[emphasis supplied]

11.2 A reading of Rule 43(b) would indicate that the State Government was empowered to withhold or withdraw the whole or part of the amount of pension, permanently or for a specified period, if the pensioner was "found to be guilty of grave misconduct" in any departmental or judicial proceeding, or to have "caused pecuniary loss to Government by misconduct or negligence", during the tenure of his service.

12. Circulars and Resolutions

12.1 Rule 43(b) did not cover a situation where judicial or departmental proceedings were pending.

The Respondent-State had issued two Circulars on 22.08.1974 and 31.10.1974, under which a provision was made to pay 75% pension to an employee, who was facing a departmental or judicial proceeding at the time of retirement. The Circulars provided that no gratuity or death-cum retiral gratuity would be paid during the pendency of the proceedings.

12.2 The Circular dated 22.08.1974 issued by the Finance Department of the Government of Bihar reads as follows:

> "Subject-Payment of pension to Government servants who are under suspension or against whom departmental or judicial proceedings or enquiries have not been concluded on the date of compulsory retirement.
>
> The question of sanctioning pension to Government servants who are under suspension or against whom departmental or judicial proceedings or enquiries have not been concluded on the date of compulsory retirement has been under active consideration of Government.
>
> 2. The State Government have been pleased to decide that (i) where any departmental or judicial proceeding is instituted under rule 43(b) of Bihar Pension Rules a Government servant or where a departmental proceeding is continued against an officer who have retired on attaining the age of compulsory retirement, or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed 75% provisional pension of the pension which would have been admissible on the basis of his qualifying service upto the date of retirement, 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, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.
>
> (ii) Payment of provisional pension may under the above provision shall be adjusted against the final retirement benefits

sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional or the pension is reduced or withheld either permanently or for a specified period.

3. The grant of pension under the aforesaid provision shall not prejudice the operation of rule 139 of Bihar Pension Rules where final pension is sanctioned upon the conclusion of the proceedings.

4. These orders will be effective from the 1st November, 1970. All pending cases will be decided accordingly. (Vide F.D. Memo No. PC-11-40-28/74/9144F, dated 22.8.1974.)."

[emphasis supplied]

12.3 Subsequently, a clarificatory Circular was issued on 31.10.1974 which reiterated that provisional pension up to only 75% shall be paid till the conclusion of judicial or departmental proceedings.

The Circular dated 31.10.1974 reads as follows:

"Subject-Payment of pension to Government servants who are under suspension or against whom departmental or judicial proceedings or enquiries have not been concluded on the date of compulsory retirement.

In Finance Department's letter No. PC-11-40.28/74/9144F, dated 22.8.1974; which provided that a Government servant who has retired and against whom, any departmental or judicial proceedings are instituted or are continued shall be paid provisional pension to the extent of 75% of the admissible pension. The payment of provisional pension under the aforesaid orders is mandatory. But some administrative authorities appear to be under the impression that in cases where the departmental proceedings instituted against a Government servant were for major penalty and in which ultimately no pension might become payable on the conclusion of the proceedings after his retirement under rule 43 of Bihar Pension Rules, even the provision need not be sanctioned. This view is against the letter and spirit of the said rules. All Heads of departments etc. are therefore requested to bring to the notice of pension sanctioning authorities under them the correct position of the rules as well as the intention of the State Government so

A that the payment of 75% provisional pension is not denied to the retired Government servants. (Vide F.D. Memo No. PC-11-40-98/74-11260 F, dated 31.10.1974)."

[emphasis supplied]

B 12.4 The State Government issued Government Resolution No. 3014 on 31.07.1980, which reads as follows:

"7. To withhold or withdraw pension-

(a) The decision contained in Clause-6 shall not affect Rule-43 of Bihar Pension Rules under which power is vested to withhold or withdraw pension.

C

(b) If any kind of departmental proceedings, criminal case, judicial enquiry etc. has not been initiated against any government servant till the date of his retirement then in that situation, the Pension Sanctioning Authority shall not be empowered to withhold pension under any circumstances. Rule-43 of Bihar Pension Rules is a Statutory Rule. Hence, the provisions contrary to it by different departments and circulars in respect of obtaining clearance certificate from Vigilance Department shall be deemed to be cancelled automatically.

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E (c) Where the final disposal of departmental or judicial proceeding initiated during the service period of any government servant is not possible till the date of his/her retirement, then action to sanction provisional pension under provisions of Circular No. 9144/f, dated 22-8-1974 and 11260F, dated 31-10-1974 of the Finance Department be initiated so that that the government servant going to retire may not face any difficulty. Provisions contained in Clause 8(c) below shall not apply in matters of this category. In the cases of this category, the amount of provisional pension, as per rule, shall be less than the maximum amount of pension admissible, but it shall not be less than 90 per cent in any circumstance."

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[emphasis supplied]

The Government Resolution No. 3104 dated 31.07.1980, provided that where departmental or judicial proceedings were initiated during the service period of a Government servant, and were not concluded or

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finally disposed of till the date of retirement, then provisional pension under Circulars dated 22.08.1974 and 31.10.1974 would be paid. The amount of provisional pension was however increased from 75% to 90% of the maximum amount of pension admissible.

13.1 In our considered view, the Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were merely administrative instructions/executive orders. They were not issued in exercise of the power under Article 309 of the Constitution and cannot be said to have the force of law.

The Government Resolution dated 31.07.1980 came up for consideration before this Court in *State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Ors.*[3]. After considering Rule 43(b) of the Bihar Pension Rules and Government Resolution No. 3104 dated 31.07.1980, this Court held that the State had no authority or power to withhold the full amount of pension or gratuity of a Government servant during the pendency of judicial or departmental proceedings. This Court held that:

> *"9. Having explained the legal position, let us first discuss the rules relating to release of Pension. The present case is admittedly governed by the Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under:*
>
> .....
>
> *From the reading of the aforesaid Rule 43(b), following position emerges:*
>
> *(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.*
>
> *(ii) This provision does not empower the State to invoke the said power while the department proceeding or judicial proceeding are pending.*

[3] (2013) 12 SCC 210

A *(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.*

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

B ... . .

11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or
C *judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.*

D *14. .....A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A 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*
E *cannot be countenanced.*

15. 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 300A. On the basis of such a circular, which is not
F *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*
G *have been different."*

[emphasis supplied]

It was held that pension is 'property' within the meaning of Article 300A of the Constitution, and executive instructions which do not have any statutory sanction cannot be termed as "law" within the meaning of
H Article 300A. It was further held that in the absence of statutory rules

permitting withholding of pension or gratuity, the State could not do so by way of executive instructions. It was observed that "*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*".

13.2 The position has however changed with the amendment to the Bihar Pension Rules on 19.07.2012 by the Governor of Bihar in exercise of the powers under Article 309 of the Constitution, whereby Clause (c) has been inserted in Rule 43, which reads as follows:

> **"(c)** *Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).*"

13.3 Rule 43 (c) provides that where a departmental proceeding or judicial proceeding is initiated during the service period of a Government servant, and prosecution had been sanctioned but not concluded till superannuation, the provisional pension payable shall be less than the maximum admissible amount, but shall in no case be less than 90%.

13.4 It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service.[4] The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the Constitution by a Constitution bench of this Court in *Deokinandan Prasad* v. *State of Bihar*[5], which ruled that:

> *" 30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [AIR 1962 Punj 503]. It was held that such a right constitutes "property" and any interference*

[4] (2013) 12 SCC 210
[5] (1971) 2 SCC 330

will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR 1965 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [ILR 1967 Punj & Har 278]. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show-cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further

opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show-cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable..."

[emphasis supplied]

13.5 The aforesaid judgment was followed in *D.S. Nakara and Ors.* v. *Union of India*[6] by another Constitution bench of this Court, which held that:

"20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no

[6] (1983) 1 SCC 305

A *right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors*[7]*.: wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the*

B *Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to*

C *pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. v. Iqbal Singh.*[8]

D *29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one*

E *is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or*

F *emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison*

G *d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.*

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[7] (1971) Supp. S.C.R. 634

H [8] (1976) II LLJ 377 SC

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.."

[emphasis supplied]

13.6 The right to receive pension has been held to be a right to property protected under Article 300A of the Constitution even after the repeal of Article 31(1) by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20.06.1979, as held in *State of West Bengal v. Haresh C. Banerjee and Ors.*[9].

13.7 The Division Bench of the Patna High Court in the impugned judgment has relied solely on the earlier decision of a co-ordinate bench of the Patna High Court in *Vijay Kumar Mishra* v. *Stateof Bihar*[10] to deny the reliefs sought by the Appellant.Pertinently, the judgment in *Vijay Kumar Mishra* was overruled by a Full Bench of the Patna High Court in *Arvind Kumar Singh* v. *State of Bihar & Ors. etc. etc.*[11].

14. In view of the above, we hold that the Respondent-State was unjustified in withholding 10% pension of the Appellant under administrative Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980 after the Appellant had superannuated on 31.03.2008.

We direct that 10% of the pension amount which had been withheld after superannuation on 31.03.2008 till 19.07.2012 is liable to be paid to the Appellant within a period of 12 weeks from the date of this Judgment.

After Rule 43(c) was inserted in the Bihar Pension Rules and brought into force on 19.07.2012, the State is empowered to legally

[9] (2006) 7 SCC 651
[10] 2017 (1) PLJR 575
[11] 2019 Lab IC 2937 (FB): (2018) 159 FLR 143

withhold 10% of the pension amount of the Appellant, till the criminal proceedings in R.C. Case No. 48A/1996 are concluded. Consequently, the State will deduct 10% from the pension amount w.e.f. 19.07.2012 subject to the outcome of the criminal proceedings.

15. With respect to withholding of the full amount of gratuity, we find that as per Rule 27 of the Bihar Pension Rules, "pension" includes "gratuity". With the insertion of Rule 43 (c) in the statute book w.e.f. 19.07.2012, it is clear that gratuity also could not have been withheld under administrative circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980.

The State is directed to release 90% of the gratuity payable to the Appellant within a period of 12 weeks from the date of this judgment. The balance 10% will be released subject to the outcome of the criminal proceedings pending against him in R.C. Case No. 48A/1996.

The Civil Appeals are allowed in the aforesaid terms.

All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

Kalpana K. Tripathy Appeals allowed.