

Chhattisgarh High Court

Ramlal Sharma vs State Of Chhattisgarh And Ors on 27 November, 2015

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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 352 of 2014

Ramlal Sharma S/o Late Ratiram Sharma, Aged about 62  
years R/o-32/1020 Shyam Nagar, Raipur, In Front of Vriddha  
Ashram, Post Ravigram, P.S. Telibandha, District Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh Through-Secretary, Department Of  
Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur,  
Chhattisgarh
2. Collector, Dhamtari, District Dhamtari, Chhattisgarh
3. Chief Executive Officer Janpad Panchaya-Kurud, District  
Dhamtari, Chhattisgarh

---- Respondents

For Petitioner : Mr.Pawan Shrivastava, Advocate For Respondent No.1 & 2 : Mr. S. Awasthy, Panel  
Lawyer For Respondent No.3 : Mr. Vaibhav Goverdhan, Advocate Hon'ble Shri Justice Sanjay K.  
Agrawal Order on Board 27/11/2015

1. Central issue falling for consideration would be whether "gratuity payable" to retired government servant, which is "property" within the meaning of Article 300-A of the Constitution of India can be withheld on the ground of pendency of criminal case ?

2. The petitioner superannuated from the post of Assistant Grade-II on 31.7.2012 from the establishment of the Collector (Land Record), Dhamtari. He is facing trial for an offence under Sections 7 read with Section 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "PC Act") registered on 9.11.2009. Upon retirement, the petitioner was not paid service benefits namely gratuity, pension, leave encashment and balance salary against his suspension. He filed writ petition being W.P.(S) No.3420 of 2013 (Ramlal Sharma v. State of Chhattisgarh & Others), in which this Court directed the State/respondents to consider the representation and take a decision of payment of retiral benefits to the petitioner on petitioner's representation, respondent No.3 herein by order dated 16.1.2014 (Annexure P/1) held that the petitioner is entitled for anticipatory pension, but he is not entitled for other retiral benefits including gratuity. Against which, this writ petition has been filed stating inter-alia that withholding of gratuity, leave encashment and salary against suspension is impermissible in law and as such, a writ of mandamus be issued to the respondents for payment of gratuity, leave encashment and other admissible amount.

3. Mr. Pawan Shrivastava, learned counsel appearing for the petitioner would submit that by virtue of sub-rule (4) of Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter referred to as "Pension Rules"), a government servant who has retired on attaining the age of superannuation and against whom judicial proceedings are instituted or pending consideration, a

provisional pension and death-cum-retirement gratuity as provided in rule 64 shall be sanctioned. He would further submit that Rule 64 (1) (a) of the Pension Rules provides for payment of provisional pension and 50% of gratuity, taking into consideration the gravity of charges levelled against such Government servant and as such, non-payment of gratuity, leave encashment and part of salary is unsustainable and bad in law as the order passed by the respondent No.3 is blissfully silent with regard to gratuity, leave encashment and salary against suspension, therefore, the impugned order be set aside and appropriate writ(s)/direction be issued for making payment of aforestated due.

4. Mr.D.R.Minz, learned Deputy Government Advocate for the respondents No.1 and 2/State would submit that Rule 64 of the Pension Rules gives discretion to the Head of the Department to grant 50% of provisional pension and 50% of gratuity, taking into consideration the gravity of charges levelled against such government servant and as such, looking to the charges levelled against the petitioner for obtaining an illegal gratification, non-grant of gratuity is justified and as such, the writ petition deserves to be dismissed with cost(s).

5. Mr.Vaibhav Goverdhan, learned counsel appearing for the respondent No.3 has also supported the submission of Mr.Minz holding that the petitioner is not entitled for gratuity, leave encashment etc.

6. I have heard learned counsel appearing for the parties, also considered the rival submissions made therein and gone through the record of the case with utmost circumspection.

7. It is not in dispute that the petitioner stood superannuated on 31.7.2012 and presently he is facing trial for an offence under Sections 7 read with Section 13 (1) (d) and 13 (2) of the PC Act for obtaining an illegal gratification.

8. At this stage, it would be appropriate to notice Rule 9(4) and Rule 64 (1) (a) of the Pension Rules which provides as under:-

"9 (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in rule 64, as the case may be, shall be sanctioned.

64 (1) (a) In respect of Government servants refer to in sub-rule (4) of rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date of immediately preceding the date on which he was placed under suspension."

9. A conjoint reading of the aforesaid Rules would show that the State/competent authority is entitled to withhold the amount of pension and gratuity not exceeding 50% and the concerned government servant is entitled for a provisional pension and gratuity not exceeding 50% subject to consideration the gravity of charges levelled against such government servant admissible on the basis of qualifying service up to the date of retirement.

10. In the matter of State of Jharkhand and others v.

Jitendra Kumar Srivastava and another<sup>1</sup>, it has been held by Their Lordships of the Supreme Court that gratuity and pension are not bounty and 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. It has been held following the decisions of the Supreme Court in the matters of Deokinandan Prasad v. State of Bihar<sup>2</sup> and D.S. Nakara v. Union of India<sup>3</sup>. The report states as under:-

"It is an accepted position that gratuity and pension are not the bounties. An employee earns these bene- fits by dint of his long, continuous, faithful and unblem-

ished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the 1 (2013) 12 SCC 210 2 (1971) 2 SCC 330 3 (1983) 1 SCC 305 Bench, in his inimitable style, in the following words: (SCC pp.319-20, paras 18-20) "18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pen- sion? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?"

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial di- vision of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

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 right to pension can be enforced through Court has been swept un- der the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Govern-

ment but is governed by the rules and a Govern- ment servant coming within those rules is enti- tled 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 matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the offi- cer 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 (1976) 2 SCC 1."

It is thus 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.

14. The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in Deokinandan Prasad v. State of Bihar."

11. Applying the law laid-down by the Supreme Court in the aforesaid cases and as per the Rules, it appears that the Government is entitled to retain the gratuity during pendency of judicial proceedings not more than 50% subject to consideration the gravity of charges levelled against such government servant.

12. The respondent No.3 in its order dated 16.1.2014 (Annexure P/1) has not assigned any reason for not considering the petitioner's case in the light of Rule 64(1)

(a) of the Pension Rules as to why the petitioner is not entitled for 50% of gratuity amount, whereas it has held in the foregoing paragraphs that gratuity and pension are not bounties, but is a property in the hands of the government servant. The respondent No.3 was obliged to consider the case of the petitioner in terms of the said Rules especially this Court by its order dated 17.12.2013 clearly directed consideration of the petitioner's case in accordance with Rule 64 of the Pension Rules. Such a course adopted by the respondent No.3 is wholly impermissible in law ignoring the law laid down by the Supreme Court in the aforesaid judgment (supra).

13. Consequently, order dated 16.1.2014 (Annexure P/1) passed by the respondent No.3 declining to grant gratuity in terms of Rule 64 of the Pension Rules is hereby set aside. The respondent No.3 is directed to consider the case of the petitioner for grant of 50% of gratuity in terms of Rule 64 of the Pension Rules within thirty days from the date of receipt of certified copy of this order.

14. This brings me to the question of non-payment of leave encashment and balance salary against suspension period as the petitioner claimed the same in the instant writ petition. The respondent No.3 would consider and pass a reasoned order with regard to leave encashment and balance salary against his suspension period as no provision has been brought to notice of this court by which amount of leave encashment and salary against suspension period can be withheld during pendency of judicial proceedings within thirty days from the date of receipt of certified copy of this order.

15. Accordingly, the writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal) JUDGE B/-

HIGH COURT OF CHHATTISGARH, BILASPUR WPS No. 352 of 2014 Ramlal Sharma Versus State of Chhattisgarh and others (English) Gratuity is property of retired Govt. servant and property within the meaning of Article 300-A of the Constitution of India.

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