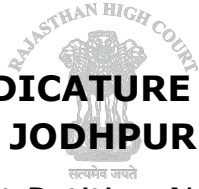




[2024:RJ-JD:42230]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 8786/2022

Smt. Sunita Dixit W/o Shri Bhupendra Dixit, Aged About 60
Years, R/o Badi Sadari District Chittorgarh (Raj.).

-----Petitioner

Versus

1. The State of Rajasthan, Through The Director, Secondary Education, Government Of Rajasthan, Bikaner.
2. The District Education Officer (Secondary), Chittorgarh.
3. The Deputy Director, School Shiksha Udaipur Zone, Udaipur.
4. Government Higher Secondary School, Binota, District Chittorgarh.

-----Respondents

For Petitioner(s) : Mr. Prem Dayal Bohra

For Respondent(s) : Mr. N.K. Mehta, Dy.G.C.

**HON'BLE MR. JUSTICE FARJAND ALI
Order****15/10/2024**

1. By way of filing this writ petition, the petitioner has challenged the order dated 25.01.2022 (Annexure-3) passed by the respondent No.2 to the extent it relates to withholding her all the retiral benefits.

2. Bereft of elaborated details, the brief facts necessary for disposal of the instant writ petition are as under :-

2.1. The petitioner was appointed as Librarian in the respondent-department in the year 1985; however, in a criminal case registered against her in the year 1996, she was convicted and sentenced for the offence under Section 306 of IPC by the learned trial court vide judgment dated 01.05.2000.





2.2. Against the judgment of conviction and sentence, the petitioner preferred a criminal appeal¹ before this Court, which was admitted and the sentence awarded to her was suspended vide order dated 23.05.2000. The appeal is pending for final adjudication.

2.3. Subsequently, the respondent-department vide order dated 01.06.2000 suspended the petitioner while serving her a charge-sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958² for her conviction in a criminal case and for failing to inform the higher officer about the conviction as well as for her absence from service from 04.05.2000 to 29.05.2000.

2.4. Being aggrieved by the above suspension order, the petitioner moved several representation for dropping the charges levelled against her and for revoking the suspension as she was paid only subsistence allowances during suspension period; however, no heed was paid by the respondent-department and vide order dated 18.03.2021 (Annexure-1) her services were terminated while invoking the provision of Rule 19 of the Rules of 1958.

2.5. The said suspension order dated 18.03.2021 (Annexure-1) was challenged by the petitioner before this Court by filing a writ petition³, wherein a Coordinate Bench of this Court vide order dated 06.07.2021 ordered to admit the writ petition and at the same time stayed the suspension order dated

1 S.B. Criminal Appeal No.215/2000 (Smt. Sunita Dixit Vs. State of Rajasthan).

2 For brevity hereinafter to be referred as 'the Rules of 1958'.

3 S.B. Civil Writ Petition No.6163/2021 (Smt. Sunita Dixit Vs. State of Rajasthan & Anr.).



18.03.2021 (Annexure-1) and the respondents were directed to reinstate the petitioner forthwith. As a result of which, the petitioner was reinstated in service.

2.6. Thereafter, the petitioner was superannuated from her services vide order dated 31.01.2022 (Annexure-4) but in pursuance of the order dated 25.01.2022 (Annexure3); all the retiral benefits accruable to the petitioner were withheld stating therein that the same would be subject to the final outcome of the criminal appeal filed by her.

2.7. The petitioner submitted a representation dated 03.02.2022 (Annexure-5) for granting her provisional pension and benefits of services in accordance with law. However, the respondent-department vide letter dated 24.02.2022 (Annexure-6) sought directions from its higher authorities regarding the issue in question, but no heed was paid to her request. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner has served with the respondent-department for about 37 years with utmost dedication, zeal and with unblemished services. It is further submitted that except the criminal case registered against the petitioner in the year 1996 for the offence 306 of IPC, she was never subjected to any departmental proceedings for any kind of misconduct pertaining to the official duties. It is also submitted that though respondent-department has withheld the retiral benefit and pension of the petitioner merely on account of pendency of a criminal appeal filed by her against the order of conviction, but the said appeal was admitted



and her sentence was suspended by a Coordinate Bench of this Court. It is also stated by learned counsel for the petitioner that withholding of retiral benefits including pension is violation of right to life of the petitioner because she has no other source of income for livelihood and as such she is facing great financial hardship. It is contended that the action of the respondent-department in withholding the retiral benefits including the pension is illegal and, therefore, the impugned order may kindly be quashed and set aside and the respondent-department be directed to release the retiral benefits to her with interest.

3.1. In support of the above submissions, learned counsel appearing for the petitioner has placed reliance on the judgment dated 14.08.2013 rendered by Hon'ble Supreme Court in the case of ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. (Civil Appeal No.6770/2013)***, judgment dated 27.01.2017 rendered by the Division Bench of this Court at Jaipur Bench in the case of ***H.R. Choudhary Vs. Central Administrative Tribunal & Ors. (D.B. Civil Writ Petition No.12437/2012)*** and the order dated 06.03.2024 passed by a Coordinate Bench of this Court at Jaipur Bench in the case of ***Mahesh Chandra Soni Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.14891/2023)***.

4. Per contra, learned Dy.G.C. appearing for the respondent-department submits that the order impugned passed by the respondent-department is not illegal because Rule 6(1)(b) of the Rajasthan Civil Services (Pension) Rules, 1996⁴ provides

4 For brevity hereinafter to be referred as 'the Rules of 1996'.





that the appointing authority may, by order in writing, withhold or withdraw the pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct and in the present case, the petitioner was convicted for the offence under Section 306 of IPC by the learned trial court and sentenced to undergo six years' rigorous imprisonment. It is further submitted by learned Dy.G.C. that against the impugned order, the petitioner has a statutory remedy of filing appeal before the Rajasthan Appellate Tribunal, however, without availing the said remedy the petitioner has filed instant writ petition directly before this Court. In these circumstances, the writ petition does not require any interference and, therefore, the same is liable to be dismissed.

4.1. Learned Dy.G.C. while placing reliance of the decision rendered by Hon'ble Supreme Court in the case of **Bharat Singh & Ors. Vs. State of Haryana & Ors.** reported in **AIR 1988 SC 2181** has argued that the petitioner has not placed on record any documentary evidence regarding her appointment, therefore, the writ petition filed by her may not be entertained due to lack of supporting documents.

5. Heard learned counsel for the petitioner as well as learned Dy.G.C. and perused the material as made available to this Court.

6. The respondent-department has not come with a 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 her.



7. So far as contention of learned Dy.G.C. of not annexing the supporting documents related to her appointment is concerned, it is emanating from the annexed documents that the petitioner superannuated from the respondent-department and as such her appointment order does not require to be annexed with the writ petition because the case in hand does not involve the issue of appointment; rather it pertains to retiral benefits.

8. The objection raised by learned Dy.G.C. regarding maintainability of the instant writ petition on account of availability of statutory remedy is not sustainable because when there is an immediate need for relief one cannot wait for the alternative remedies to be exhausted and herein this case though the petitioner has challenged the order dated 25.01.2022 (Annexure-3) to the extent it relates to withholding her all the retiral benefits but she has filed the instant writ petition essentially with a prayer for grant of provisional pension only, which is emanating from her representation dated 03.02.2022 (Annexure-5), and as such she needs immediate relief to avoid financial problem for her livelihood or necessities and so as to protect her fundamental rights.

9. The Coordinate Bench of this Court at Jaipur Bench in the case of **Mahesh Chandra Soni** (supra) while dealing with the catena of judgments has held that the pension and gratuity are earned by the employee and cannot be withheld due to proceedings unrelated to the official duties.

10. The Division Bench of this Court at Jaipur Bench in the case of **H.R. Choudhary** (supra) has held that the pendency of an



appeal preferred by the petitioner against his conviction under Section 306 of IPC is not sufficient enough to withhold full pension accruable to him and doing so would be a complete violation of Rule 69 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall be completely beyond its jurisdiction and scope. It is further held that a superannuated employee has no other source of income and any deprivation of superannuation benefits thereof has serious consequences for the retired employee and his family, therefore, withholding of full pension and gratuity is therefore held to be arbitrary and illegal.

11. The Rule 90 of the Rules of 1996 speaks about the 'Provisional pension where departmental or judicial proceedings may be pending' and for ready reference, the same is reproduced hereunder :-

"Rule 90. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub rule (4) of Rule 7, the Director, Pension Department, Rajasthan, 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.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, for imposing any of the penalties specified in clauses(i) and (ii) of Rule 14 of the said Rules, the payment of gratuity shall be authorised to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made 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.

GOVERNMENT OF RAJASTHAN'S DECISION

Grant of cent per cent provisional pension under Rule 90 mandatory even if departmental or judicial proceedings are continued See Government of Rajasthan's Decision 5 below Rule 7.

5. Grant of cent per cent provisional pension under Rule 90 mandatory even if departmental or judicial proceedings are continued

The payment of provisional pension under these rules is mandatory. The view that in cases where the departmental proceedings instituted against a Government servant were for a major penalty and in which ultimately no pension might become payable on the conclusion of the proceedings after his retirement under Rule 7 of the R.C.S. (Pension) Rules, 1996, even the provisional pension need not be sanctioned, is against the letter and spirit of the rule. The provisional pension under Rule 90 ibid should not be denied to the retired Government servants.

Rule 90 provides that the provisional pension in such cases should not exceed the maximum pension which would have been admissible on the basis of the qualifying service up to the date of retirement of the Government servant. It has





been decided that even in cases covered by the above mentioned rule, hundred per cent pension, which is otherwise admissible to the Government servants should be authorised as provisional pension, as in cases of normal retirement. No gratuity shall, however, be paid at this stage.”

12. The judicial proceedings, as referred in Rule 90 of the Rules of 1996, is with 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 that Rule, cannot be treated for the proceedings unrelated to the office duties, which has nothing to do with the official duties of functioning of the employee in his/her office. Here in this case, the criminal case in which the petitioner has been convicted, has no nexus with her official duties; rather it was a family dispute.

13. Upon consideration of the law, referred above, it is observed that 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/her livelihood or necessities.

14. In the present case, the petitioner has served with the respondent-department for about 37 years with unblemished serve record as nothing has been brought before this Court by the respondent-department that her 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/her with the department. 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 her family arrange for their bread and other necessities. Only on account of pendency of a criminal proceedings and that too with regard to the offence under Section 306 of IPC, which has nothing to do with the official duties, in no manner can be said to be justified.

15. In view of the above discussions, it is felt appropriate that the petitioner is entitled for grant of provisional pension from the date of her superannuation except all other retiral benefits.

16. Thus, this writ petition is disposed of with the following directions :-

- (a)** Till final out come of the criminal appeal filed by the petitioner, the respondent-department is directed to grant provisional pension to the petitioner from the date of her superannuation.
- (b)** After decision of the criminal appeal filed by the petitioner, a fresh decision shall be taken by the respondent-department with regard to the full pension as well as all the other retiral benefits along with consequential benefits of the petitioner.

17. Stay petition also stands disposed of.

(FARJAND ALI),J

Abhishek Kumar
S.No.230