



2025:DHC:7589-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 14115/2009

YASH KATARIA

.....Petitioner

Through: Mr. Aman Varma and Ms. Riya
Wasade, Advs.

versus

UOI AND ORS

.....Respondents

Through: Mr. B.S. Rana and Mr.
Deepanshu Singha, Advs. for R-2
Mr. Kamal Mehta, Adv. for R-3
Ms. Arti Bansal, SPC with Ms. Shruti Goel,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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28.08.2025

C.HARI SHANKAR, J.

1. The petitioner was working as a Development Officer in the National Insurance Company Ltd for nearly 23 years when, on 19 August 2005, he was issued a memorandum proposing to initiate disciplinary proceedings against him on the ground of having remained absent from duty without authorisation.

2. Disciplinary proceedings followed, resulting in an order dated 11 May 2006, by the competent Disciplinary Authority, penalising the petitioner with a punishment of compulsory retirement.



3. Though the enquiry report during these proceedings was in the petitioner's favour, the disciplinary authority disagreed with the report, issued a disagreement note and, thereafter, proceeded to pass the aforementioned punishment order dated 11 May 2006.

4. An appeal preferred by the petitioner against the said order was also dismissed by the Appellate Authority on 8 September 2006.

5. Aggrieved thereby, the petitioner approached this Court by means of WP (C) 6946/2007, challenging the order of compulsory retirement. That writ petition was unconditionally withdrawn on 8 October 2009.

6. The petitioner has, thereafter, instituted the present writ petition. The only grievance ventilated in this writ petition is with respect to forfeiture of the petitioner's past service for the purposes of his pensionary benefits, as envisaged by Clause 22 of the General Insurance (Employees) Pension Scheme, 1995¹.

7. The petitioner has impugned the vires and constitutional validity of Clause 22 of the GIEPS and has sought release of pensionary benefits to him, despite the fact that he had been compulsory retired from service.

8. Clause 22 of the GIEPS reads thus:

22. Forfeiture of service- Resignation or dismissal or removal or termination or compulsory retirement of an employee

¹ "GIEPS" hereinafter.



from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

9. We have heard Mr. Aman Varma, learned Counsel for the petitioner, Mr. B.S. Rana, learned Counsel for Respondent 2 and Mr. Kamal Mehta, learned Counsel for Respondent 3. Respondent 1 is only a proforma party and is not represented today.

10. Though the main challenge in this writ petition is with respect to the validity of Clause 22 of the GIEPS, Mr. Varma essentially sought to argue that the forfeiture of the entire service of the officer for the purposes of the pensionary benefits, consequent on his compulsory retirement, was inordinately harsh and, therefore, unsustainable in law. He has sought to place reliance on the judgment of the Supreme Court in *A.P. Srivastava v UOI*².

11. Having heard learned Counsel for the parties, we confess our disinclination to interfere in this matter.

12. Though Mr. Varma did not, at the Bar, advance any submissions with respect to the issue of whether the provision for forfeiture of past service for the purpose of pensionary benefits could be contained in Clause 22 of the GIEPS, nonetheless, inasmuch as the said ground has been taken in the writ petition and the written submissions filed by the petitioner, it becomes necessary for us to address it.

² (1995) 6 SCC 227



13. The position in law in this regard is no longer *res integra* and stands covered by the judgment of Supreme Court in *State of West Bengal v Haresh C. Banerjee*³, which considered the earlier judgment of the Supreme Court in *Deokinandan Prasad v State of Bihar*⁴.

14. The Supreme Court has observed, in *Haresh C. Banerjee*, thus:

“4. Pension is not a bounty payable on the sweet will and the pleasure of the Government and to receive pension is a valuable right of a government servant is a well-settled legal proposition. The question in the present case, however, is not about the deprivation of the said right by the Government by an executive order but is about the constitutional validity of Rule 10(1) providing for withholding of pension or part thereof in certain cases.

5. Articles 19(1)(f) and 31(1) have been repealed by the Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979. The right to property is no longer a fundamental right. It is now a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was a fundamental right at the time of framing of the Rules in 1971. The question is whether a rule framed under proviso to Article 309 of the Constitution providing for withholding of the pension would ipso facto be *ultra vires*, being violative of Article 19(1)(f) as it stood in 1971 when the Rules were framed.

6. The High Court has, in the impugned judgment, made reference to a decision of this Court in *Deokinandan Prasad v State of Bihar* for coming to the conclusion that the rule in question is *ultra vires*. In the said case, this Court held that the right to receive pension was wrongly withheld by an executive order. The judgment in *Deokinandan Prasad case* in fact lends support to the *vires* of the rule since it was held in that case that an employee can be deprived of the pension by an authority of law. That authority, in the present case, is contained in the Rules [Rule 10(1)], that were framed providing for withholding of the pension.

7. Various State rules or regulations vest power of withholding or reduction of pension on compliance with the principles of natural justice. The question of an order withholding

³ (2006) 7 SCC 651

⁴ (1971) 2 SCC 330



or reducing pension being invalid and bad in law on a legally permissible ground is one thing but to hold the rule *ultra vires* is another. In *State of U.P. v Brahm Datt Sharma*⁵: this Court observed that if the Government incurs pecuniary loss on account of misconduct or negligence of a government servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings, he is found guilty of misconduct, negligence or any other such act or omission as a result of which the Government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. In *State of Punjab v K.R. Erry*⁶: it was held that the State Government could not direct cut in pension of officers without giving a reasonable opportunity of hearing. In *State of Maharashtra v M.H. Mazumdar*⁷: it was observed that the State Government's power to reduce or withhold pension by taking proceedings against a government servant, even after his retirement is expressly preserved by the Rules.”

15. Thus, the position in law which obtains is that there, while a provision for forfeiture of past service consequent on compulsory retirement cannot be contained in executive instructions, there is no embargo on such a provision figuring in statutory rules. The right to property is no longer a fundamental right and can, therefore, be deprived by competently enacted law.

16. In the present case, the GIEPS is not a mere executive instruction. It is a scheme which has been brought into the force in exercise of the powers conferred by Section 17A⁸ of the General

⁵ (1987) 2 SCC 179

⁶ (1973) 1 SCC 120

⁷ (1988) 2 SCC 52

⁸ 17A. Power of Central Government to regulate the terms and conditions of service of officers and other employees. –

(1) The Central Government may, by notification in the Official Gazette, frame one or more schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company.

(5) A copy of every scheme, and every amendment thereto, framed under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

(6) The provisions of this section and of any scheme framed under it shall have effect



Insurance Business (Nationalisation) Act, 1972. Sub-section (1) of Section 17A requires the Scheme to be by way of notification in the Official Gazette. Sub-section (5) requires a copy of the Scheme to be laid before each House of Parliament, and sub-section (6), most importantly, accords, to the provisions of the Scheme, overriding effect, over anything to the contrary contained in any other law for the time being in force.

17. The GIEPS, therefore, has statutory colour and complexion. The inclusion of a provision, in such a scheme, of forfeiture of past service consequent on an order of compulsory retirement passed by way of punishment is, therefore, permissible, applying the law laid declared in *Haresh C. Banerjee*.

18. Insofar as the reliance placed by Mr. Varma on the decision in *A. P. Srivastava* is concerned, we are of the opinion, having studied the said decision, that it cannot be of avail to the petitioner. We may reproduce the following paragraphs from *A. P. Srivastava* for ready reference:

“4. In view of the aforesaid opinion the appellant having been deprived of the pensionary benefits, has approached this Court. The learned counsel for the appellant contended that if a temporary government servant who voluntarily retires after completion of 20 years of service would be entitled to the pension, there is no reason to deny the same when the employer compulsorily retires him after the employee has completed 20 years of service. In other words when Rule 56(j) of the Fundamental Rules confers power on the employer to retire government servant in public interest after giving three months' notice under the circumstances mentioned therein and Rule 56(k) similarly entitles a government servant to

notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument for the time being in force.]



voluntarily retire after giving three months' notice, there should not be any different criteria in the matter of award of pension. Learned counsel appearing for the respondents on the other hand contended that in view of the specific provision of the Rules and the Rule being given its literal meaning there is no escape from the conclusion that a temporary government servant will not be entitled to any pension even if he has completed more than 20 years of service when the employer compulsorily retires him in exercise of power under Rule 56(j) of the Fundamental Rules.

5. In view of the rival submissions at the bar, the question for consideration is whether there is any rationale behind the rule disentitling pension to a government servant when an order of compulsory retirement is passed in exercise of power under Rule 56(j) of the Fundamental Rules? As has been noticed earlier after completion of a particular period of service the employer has a right to compulsorily retire the employee in public interest and similarly the employee has a right to voluntarily retire on giving three months' notice. It has been held by this Court time and again that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated government servant. If a temporary government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, there is no justification for denying the right to him when he is required to retire by the employer in the public interest. In other words, the condition precedent for being entitled to pension in case of a temporary government servant is rendering of 20 years of service.

6. In view of the legal position that an order of compulsory retirement is not a punishment and pension is a right of the employee for services rendered, we see no justification for denying such right to a temporary government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules. In our considered opinion a temporary government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules.”

19. The Supreme Court was, in *A. P. Srivastava*, concerned with the issue of whether compulsory retirement of an employee under FR



56(j)(ii)⁹ would result, *ipso facto*, in the employee becoming disentitled from pension, even if the employee had completed more than 20 years' service. The Supreme Court compared an order of compulsory retirement under FR 56(j) with an order of voluntary retirement under FR 56(k)¹⁰ and opined that if voluntary retirement, at the option of the employee, would not entail forfeiture of past service for the purpose of pension, it was incongruent if such a consequence would visit the cessation of the service of the employee under FR-56(j), at the will of the employer.

20. Significantly, in para 6 of *A. P. Srivastava*, the Supreme Court has noted that it was *not* dealing with a situation in which the order of compulsory retirement was passed by way of punishment.

21. In the present case, the petitioner has not been compulsory retired under FR-56(j). The order of compulsory retirement is by way of punishment. The analogy between voluntary retirement and compulsory retirement under FR-56(j) which has informed the decision in *A. P. Srivastava*, therefore, does not apply in the present case.

22. The submission of Mr. Varma that the forfeiture of the entire

⁹ (j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;

¹⁰ (k)(1) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:



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past service of the officer consequent on compulsory retirement is unduly harsh cannot, in our view, quite obviously be a ground for us to declare Clause 22 of the GIEPS to be unconstitutional or illegal in any manner. Mere harshness does not invalidate or render a provision unconstitutional. On this, too, the position is no longer *re integra* having been declared from as far back as in *A.K. Gopalan v State of Madras*¹¹, in which it was held that Section 3 of the Preventive Detention Act, 1950, though unquestionably harsh in its terms, did not abrogate the rights available under Articles 21 or 22 of the Constitution of India and were not, therefore, unconstitutional.

23. We, therefore, regret that we are unable to come to the aid of the petitioner.

24. The writ petition is accordingly dismissed.

C.HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 28, 2025/AR/AT

¹¹ 1950 SCC 228