



2025:DHC:7231



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

% ***Decided on: 22.08.2025***

+ W.P.(C) 16729/2024

SWARAJ BASU

.....Petitioner

Through: Mr. Abhik Chimni, Ms. Pranjal
Abrol, Mr. Ayan Dasgupta & Mr.
Gurupal Singh, Advocates.

versus

INDIRA GANDHI NATIONAL
OPEN UNIVERSITY

.....Respondent

Through: Mr. Aly Mirza, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

CM APPL. 70738/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 16729/2024

1. By way of this writ petition, under Article 226 of the Constitution, the petitioner seeks regularisation and commutation of his pensionary benefits, payment of leave encashment, and release of gratuity.

2. The petitioner served in respondent – Indira Gandhi National Open University [“IGNOU”], from December 1988 until his superannuation on 31.12.2023. He was originally appointed as a Lecturer in History in the School of Social Sciences. He subsequently served as Director, Distance



Education Council [“DEC”], IGNOU, from October 2005 to October 2008, and as Director, School of Social Sciences, IGNOU, from July 2016 to June 2019.

3. In anticipation of the petitioner’s superannuation, the Academic Coordination Division of IGNOU sought vigilance clearance in respect of the petitioner’s service. The Vigilance Cell, by its report dated 11.10.2023, stated that an FIR had been registered under Section 13(1)(d) of the Prevention of Corruption Act, 1988, read with Section 120-B, 420 of the Indian Penal Code, 1860, pursuant to a decision of the Supreme Court¹, and that “*the matter is under investigation by CBI*”. This was based on a communication from the Central Bureau of Investigation [“CBI”] dated 18.08.2023.

4. IGNOU has also placed on record a subsequent communication of the CBI dated 19.06.2024, which again referred to four FIRs registered in this regard, and confirmed that they were still under investigation as on that date.

5. After the petitioner’s retirement, IGNOU has released provisional pension to him, but has not yet released regular pension, gratuity or leave encashment.

6. I have heard Mr. Abhik Chimni, learned counsel for the petitioner, and Mr. Aly Mirza, learned counsel for IGNOU.

7. The grounds on which pension and gratuity may be withheld, and the circumstances under which provisional pension may be granted, are contained in Rule 8 of the Central Civil Services (Pension) Rules, 2021

¹ *Orissa Lift Irrigation Corpn. Ltd. v. Rabi Sankar Patro* [(2018) 1 SCC 468] [hereinafter, “*Orrisa Lift Irrigation*”]



[“2021 Rules”]. The following clauses are relevant for the present case:

“8. *Power to withhold or withdraw pension.* -

(1) **The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :**

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of minimum pension under rule 44.

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(3) **In the case of 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 instituted under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are continued under sub-rule (2), a provisional pension as provided in sub-rule (4) shall be sanctioned.**

(4) (a) *In respect of a Government servant referred to in sub-rule (3), the Accounts Officer shall authorise the provisional pension equal to the maximum pension 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 immediately preceding the date on which he was placed under suspension.*

(b) *The provisional pension shall be authorised by the Accounts Officer during the period commencing from the date following the date of retirement up to 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.**

(d) **The provisions of this sub-rule shall not be applicable where allegations of misconduct are under investigation against a**



Government servant or where departmental or judicial proceedings are contemplated against a Government servant but have not actually been instituted or deemed to have been instituted in accordance with sub-rule (9) till the date of retirement of the Government servant. The pension and gratuity in such cases shall be authorised to be paid to the Government servant on his retirement in accordance with rule 63:

Provided that any departmental proceedings instituted after retirement of the Government servant shall be subject to the provisions of sub-rule (2).

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Explanation.- For the purpose of this rule,-

(1)(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) **judicial proceedings shall be deemed to be instituted –**

(i) **in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made; and**

(ii) in the case of civil proceedings, on the date the suit is filed in the court.

(2) The expression “misconduct” means any act done or omitted to be done by the pensioner, during the period of service, including service rendered upon re-employment after retirement, and which was in violation of any provisions of the Central Civil Services (Conduct) Rules, 1964 for which action under Central Civil Services (Classification Control and Appeal) Rules, 1965 could be taken during the period of service.

(3) action under sub-rule (1) may be taken, if the pensioner is found guilty of,-

(i) any corrupt practices during service;

(ii) any misconduct whether in relation to the performance of official duty or otherwise; and

(iii) any misconduct whether resulting in pecuniary loss to the Government or otherwise only.

(4) the expression “civil proceedings” would mean such proceedings



*in respect of a civil suit filed by the Government only.*²

8. Rule 8(1) makes it clear that the power to withhold or withdraw pension or gratuity can be exercised only when the pensioner is found guilty of grave misconduct or negligence during service, in departmental or judicial proceedings. Rule 8(3) concerning grant of provisional pension also applies only if departmental or judicial proceedings are instituted. The statutory scheme, therefore, is that if judicial proceedings are instituted in terms of Explanation 1(b), the employer can grant provisional pension instead of regular pension, and can pass a final order withholding or withdrawing pension or gratuity, only after a final finding of guilt for grave misconduct or negligence during service.

9. Mr. Mirza submits that gratuity, in the present case, was also payable under the 2021 Rules, but has been withheld in exercise of powers under Rule 8(4)(c), extracted above.

10. In the present case, the sole ground urged by IGNOU for withholding the petitioner's superannuation benefits, is that four FIRs were registered by CBI in the year 2018, emanating out of the aforesaid judgment in *Orissa Lift Irrigation*. It is sufficient to note for the present purposes, that these FIRs were against unnamed officers of DEC, and the petitioner is not named in any them. It is also admitted that no departmental proceedings were ever instituted against the petitioner in any proceedings. As regards judicial proceedings, there is clearly no finding of guilt against the petitioner in any proceedings, as to attract Rule 8(1).

11. The question to be considered, therefore, is whether Rules 8(3) and

² Emphasis supplied.



8(4)(c) have been rightly invoked.

12. Explanation 1(b)(i) provides that criminal proceedings are considered to have been instituted only on the date when a complaint is filed, or a police report is submitted, on which the Magistrate takes cognizance. The reference is evidently to the final report submitted by the police under Section 173 the Code of Criminal Procedure, 1973³ [“CrPC”], or to the complaint under Section 200 CrPC⁴, on which alone the Magistrate could have taken cognizance. That stage had admittedly not arisen on the date of the petitioner’s superannuation, and indeed had not arisen for at least eighteen months thereafter, when the CBI still informed IGNOU that the cases were “*under investigation.*” Since judicial proceedings had not been “*instituted*” at the time of retirement, the order sanctioning provisional pension was *ultra vires* Rule 8(3). Consequently, withholding of gratuity under Rule 8(4)(c) also does not arise.

13. In fact, Rule 8(4)(d) makes it clear beyond the pale of doubt, that the question of provisional pension or withholding of gratuity, would not arise only on account of ongoing investigation, or contemplation of judicial proceedings, if they have not been instituted or deemed to have been instituted, and that pension and gratuity would be paid in such circumstances.

14. As regards leave encashment, the applicable provision is Rule 39(3) of the Central Civil Services (Leave) Rules, 1972 [“Leave Rules, 1972”], which provides:

³ Equivalent to Section 193 of the Bharatiya Nagrik Suraksha Sanhita, 2023.

⁴ Equivalent to Section 223 of the Bharatiya Nagrik Suraksha Sanhita, 2023.



“39 (3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.

(DOPT Notification No. 14028/6/81 -Estt. (L), dated 17.10.1983)”

15. In the present case, no process for withholding leave encashment under Rule 39(3) of Leave Rules, 1972 appears to have been initiated against the petitioner.

16. In the above circumstances, the writ petition is allowed, and IGNOU is directed to release the regular pension (after adjustment of the original pension paid), leave encashment, and gratuity to the petitioner within eight weeks from today.

17. It is clarified that, in the event of a change in circumstances, IGNOU may take such steps as are available to it in law.

PRATEEK JALAN, J

AUGUST 22, 2025

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