



2025:CGHC:15440

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4181 of 2021

Rajkumar Gonekar (dead) through LRs

1 - Smt. Krishna Devi Gonekar W/o Late Rajkumar Gonekar, Aged about 60 years

2 - Manish Kumar Gonekar S/o Late Rajkumar Gonekar, Aged about 39 years

3 - Anish Kumar Gonekar S/o Late Rajkumar Gonekar, Aged about 37 years

All R/o Subhash Colony, Koladhana, Bararipura Road, Chhindwara (MP).

... Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Agriculture And Bio Technology, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2 - Commissioner O/o Commissioner Of Agriculture, Vikas Bhawan, Atal Nagar , Nawa Raipur Chhattisgarh., District : Raipur, Chhattisgarh

... Respondents

(Cause title is taken from Case Information System)

For Petitioner : Mr. N. Naha Roy, Advocate

For Respondents/ State : Mr. Kanwaljeet Singh Saini, Panel Lawyer

(HON'BLE SHRI JUSTICE BIBHU DATTA GURU)

Order on Board

02/04/2025

1. Challenge in this petition is to the order dated 15/02/2021 (Annexure P/1) by which the permission has been granted to recover an amount of Rs.9.23 lakhs from the pension of the original petitioner namely; Rajkumar Gonekar (since deceased) by exercising power under Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short, "the Rules of 1976").
2. Learned counsel appearing for the original petitioner would submit that initially the petitioner appointed on the post of Assistant Director on 29/03/1990. Thereafter the petitioner was promoted to the post of Deputy Director in the year 2000, however on the ground of certain corrections in the gradation list, he was demoted to the post of Assistant Director. Subsequently pursuant to the orders of the Court, the petitioner rendered his services on the post of Deputy Director and he retired from service on 31/01/2018 on attaining the age of superannuation.
3. According to the petitioner, during the service, a notice was issued to the petitioner alleging therein with regard to misappropriation, to which the petitioner submitted his reply and stated that he has not committed any misappropriation and he has acted in accordance with law however without appreciating the sad fact, after retirement of the petitioner on 13/12/2018 a show cause notice was issued to the petitioner and asked him to submit his

response. Pursuant to the same, the petitioner submitted his response on 25/01/2019 and denied the allegations levelled against him. However, without appreciating the said facts in its true perspective, the order impugned has been passed granting permission to recover an amount of Rs.9.23 lakhs from the pension of the petitioner. He further submits that the impugned order has been passed in an illegal and arbitrary manner and that too without following the due process of law, hence, the same deserves to be quashed.

4. On the other hand, learned counsel appearing for the state would submit that the order has been passed after following the due process of law and in the case at hand, much before retirement of the petitioner, in the year 2016-17 notices have been issued with regard to misappropriation of the public exchequer and after receipt of the reply of the petitioner, the action has been taken. Thus, it cannot be said that the action has been taken after retirement of the petitioner. He would submit that in order to recover the amount, the matter has been forwarded before the state government and sought permission to recover the aforesaid amount from the petitioner wherein, the state government by exercising the power under Rule 9 of the Rules of 1976 granted the permission for recovery of the amount of Rs.9.23 lakhs from the pension of the petitioner. Thus, the order impugned is just and proper warranting no interference of this Court.

5. I have heard learned counsel for the parties and perused the documents
6. At the first instance, it is noteworthy to mention here that during the pendency of this petition, the original petitioner died on 20/06/2024 and hence, his legal heirs have been impleaded.
7. For the sake of convenience, it would appropriate to quote Rule 9 of the Rules of 1976, which reads as under :-

“9. Right of governor to withhold or withdraw pension.-(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period. and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State 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 minimum pension as determined by the Government from time to time]:

(2) (a) The departmental proceedings [x x x], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they

were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

[(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings:-

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period: or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government).

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(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:

Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than (the minimum pension as determined by the Government from time to time]:

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as if for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted:

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(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 plaint is presented in the court.”

8. The question whether while withholding the pension or part thereof, an opportunity of hearing is required to be afforded to the petitioner or not.
9. In the matter of ***State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta & other connected matter'***, their Lordships of the Supreme Court have held as under:-

"20. The question for our consideration now is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice *audi alteram partem* applies. See: Province of Bombay v. Kusaldas S. Advani, 1950 SCR 621 at p. 725 = (AIR 1950 SC 222) and Board of Higher School & Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta, 1962 Supp (3) SCR 36 (AIR 1962 SC 1110). With the proliferation of administrative decisions in the welfare State it is now further recognized by Courts both in England and in this country, (especially after the

decision of House of Lords in 1964 AC 40) that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interests and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See *State of Orissa v. Dr. (Miss) Binapani Dei*, (1967) 2 SCR 625 = (AIR 1967 SC 1269) and *In re H.K. (An Infant)*, (1967 2 QBD 617. In the former case it was observed at page 628 as follows:

"An order by the State to be prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the persons against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that

every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed if need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

10. These observations were made with reference to an authority which could be described as characteristically administrative. At page 630 it was observed:

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

11. Not only this, in the matter of ***Rameshwar Yadav Vs. Union of India & another***, their Lordships of the Supreme Court while dealing with the question of withholding pension have held that the competent authority shall apply its mind to the question as to whether the pension should be suspended or not. Relevant paragraphs of the report state as under:-

"4. These provisions require the competent authority to apply its mind to the question as to whether the pension should be suspended in whole or in part. While determining this question the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed and other allied matters. The officer has also to consider the hardship on the dependants of the person, if the payment of pension is suspended. In the instant case, the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of the entire amount of pension for the period of imprisonment of the petitioner.

5. That apart, the amount of pension granted to the petitioner was Rs.108 which is a paltry amount and which in all likelihood may not be sufficient to sustain the petitioner's family members. The competent authority did not address himself to any one of these aspects. No reasons are recorded as to why the entire pension was necessary to be suspended. The impugned order is therefore unsustainable in law."

12. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. 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.
13. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant State

Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

14. Bare perusal of Rule 9 of the Rules of 1976, it is manifest that the recovery from pension of the whole or part of any pecuniary loss caused to the Government can be ordered if, in any departmental or judicial proceeding the employee concerned found guilty. However, in the case at hand, except the show cause notice and the reply of the petitioner, nothing is there to establish the fact that the petitioner found guilty in any judicial or disciplinary proceeding. Thus, the recovery order by exercising power under Rule 9 is not at all sustainable in the eyes of law.
15. In view of the foregoing reasons and in light of the aforesaid judgments rendered by the Hon'ble Supreme Court, the impugned order dated 15/02/2021 Annexure P/1 is quashed and it is directed that whatever the amount has been deducted from the pension of the petitioner, pursuant to the impugned order, the same be refunded to the petitioners, who are the legal heirs of the original petitioners, within a period of 45 days from the date of receipt of a copy of this order.
16. Resultantly, the writ petition is **allowed**. There shall be no order as to costs.

Sd/-

(BIBHU DATTA GURU)
JUDGE