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ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.11.2024

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 2003852 of 1991

Dr. C.B. Agarwal ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Gaurav Mehrotra, Anurag Srivastava, Rani Singh

Counsel for the Respondents:
C.S.C.

A. Civil Law — Service Law- Constitution of India,1950 – Articles 14, 226, 300-A & 311 – Service Law – Pension – Disciplinary proceedings- Inquiry report – non-supply of report to delinquent before passing punishment order – Violation of principles of natural justice. (Para 18)

HELD:
On careful consideration of the aforesaid judgment, it is evident that even after the amendment in Article 311 of the Constitution of India, the supply of enquiry report is necessary. It is admitted case of the parties that the petitioner has not been supplied with the enquiry report by the Administrative Tribunal while concluding the enquiry. As such, the ratio of the judgment relied upon is fully applicable to the facts and circumstances of the case of the petitioner. (Para 18)

B. Interim orders – Restoration of writ petition – Revival of interim orders- Interim orders granted prior to dismissal of writ petition are automatically revived upon restoration of the petition unless explicitly vacated- Interim protection granted on 16.07.1991 remained operative upon restoration of the writ petition. (Paras 23 and 26)
HELD:
It is submitted that it is well settled that restoration of a petition automatically revives its ancillary orders/ interlocutory orders passed before its dismissal. In aforesaid regard, reliance has been placed on a judgment rendered in the case of Vareed Jacob Vs Sosamma Geevarghese & ors.[(2004) 6 SCC 378]. (Para 23)

Thus, in the peculiar set of facts wherein in respect of the impugned punishment order, already interim protection was granted and the same continues while the petitioner has already left for his heavenly abode on 17.1.2018, the impugned punishment order dated 20.12.1990 and consequential order dated 12.4.1991 are liable to be aside on the aforesaid ground as well. (Para 26)

C. Pension – Withholding of pension – Whether pension can be withheld or stopped by administrative orders without due process of law- pension is a constitutional right under Article 300-A- Right to property- Executive orders without statutory backing or breach of due process violate constitutional protections-petition allowed. (Paras 28 and 31)
HELD:
In the instant matter, as has already been enumerated in the discussion of Issue No.1, the procedure prescribed by law, more particularly in constitutional provisions enshrined in Articles 14 and 311, have not been followed inasmuch as the punishment order has been passed without serving a copy of the enquiry report in disciplinary proceedings upon the petitioner, such an action cannot be sustained as the same infringes Right to Property of petitioner as envisaged under Article 300-A of the Constitution of India, which also includes Right to receive pension of petitioner. As for stopping the pension, due procedure established by law was required to be mandatorily followed and the same could not have been done in utter defiance of mandate contained in Article 14 read with Article 311 of Constitution of India. (Para 28)

In a recent judgment dated 23.8.2023, passed in Writ-A No.3180 of 2023 (Prof. Ranjana Sharma & anr.Vs St. of U.P. & others), this Court while allowing the writ petition, has followed the dictum of Hon'ble Supreme Court in St. of Jharkhand (Supra) and Dr. Hiralal (Supra) while reiterating *inter alia* that right to receive pension is included in Right to property under Article 300-A of the Constitution of India. (Para 31)

Petition allowed. (E-14)

List of Cases cited:

1. U.O.I. & ors.Vs Mohd. Ramzan Khan [(1991) 1 Supreme Court Cases 588]

2. Vareed Jacob Vs Sosamma Geevarghese & ors.[(2004) 6 SCC 378].

3. Jitendra Singh @ Guddan Vs St. of U.P. & others; judgment and order dated 24.8.2009, passed in Writ-C No.545 of 2009

4. St. of Jharkhand & ors.Vs Jitendra Kumar Srivastava [2013 (12) SCC 210]

5. Dr. Hiralal Vs St. of Bihar & others, 2020 (4) SCC 46

6. Prof. Ranjana Sharma & anr.Vs St. of U.P. & others, judgment dated 23.8.2023, passed in Writ-A No.3180 of 2023

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Gaurav Mehrotra alongwith Mrs. Rani Singh and Mrs. Alina, learned counsel for the petitioner and Sri Rajiv Kumar Singh, learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner has challenged the orders dated 20.12.1990, 12.4.1991 and 7.5.1991 (Annexures-11, 12 and 10 respectively). It has been prayed to issue writ of mandamus restraining the respondents from giving effect to the impugned orders referred above and not to stop the pension of the petitioner and not to make any recoveries from the petitioner by adopting coercive means or otherwise in pursuance of the impugned orders.

3. At the time of filing of the writ petition, vide order dated 16.7.1991, following interim order was granted :-

"Put up this petition after two weeks to enable the Standing Counsel to obtain instructions. In the meantime, the opposite parties shall pay and continue to pay pension to the petitioner as hereto fore the recovery proceedings shall remain stayed."

4. At the very outset, it is essential to advert to the brief factual background to provide context to the manner in which the present proceedings have arisen.

5. The petitioner was appointed in the Provincial Medical Services, Cadre-I on 22.9.1959. In the year 1974, he was promoted to the post of Consultant (equivalent to the Chief Medical Officer). He was posted at Sitapur between the period 29.6.1978 to 5.2.1980. Thereafter, he was transferred to Kanpur vide order dated 6.2.1980 to join as Joint Director, Employees State Insurance Scheme, Kanpur and he remained there up to 27.2.1980.

6. The petitioner received a demotion order dated 26.2.1980, alleging the charge of illegal purchases of medicine during his tenure at Sitapur. He challenged the said order by filing Writ Petition No.521 of 1980 (C.B. Agarwal Vs. State of U.P.) before this Court, which was allowed vide judgment and order dated 2.9.1982 and the demotion order was quashed.

7. Thereafter, the petitioner was subjected to preventive detention under the National Security Act, which was

challenged vide Writ Petition No.3480 of 1981 before this Court and the detention order was quashed by this Court vide judgment and order dated 4.9.1981. He was served with charge sheet in disciplinary proceeding by the Administrative Tribunal levelling seven charges on him on 28.4.1982. He was then served with second charge sheet in disciplinary proceeding levelling eight charges on 31.5.1982.

8. The disciplinary proceedings were stayed by the Administrative Tribunal till the decision of the Special Judge, Lucknow as both the criminal proceeding and disciplinary proceeding was based on same set of facts vide order dated 21.5.1983. The petitioner was superannuated from service on 31.1.1985.

9. The petitioner was served notice to show cause as to why stay of disciplinary proceedings be not vacated and stipulating that proceeding would proceed ex-parte in event of non turning up of the petitioner on 29.2.1988. The Administrative Tribunal apprised the petitioner that disciplinary enquiry was fixed for 28.4.1989 vide letter dated 27.3.1989. The petitioner in response to the aforesaid letter, filed his reply dated 25.4.1989. He filed reply to the letter dated 2.6.1989, requesting the Tribunal to consider his objection and submissions made vide letter dated 25.4.1989. He then sent letter to Administrative Tribunal on 23.9.1989, requesting to communicate the decision of the Tribunal on his applications dated 25.4.1989 and 22.6.1989.

10. The respondent No.1 i.e. the State of U.P. issued an order dated 20.12.1990, whereby full pension of the petitioner was stopped as also alleged loss caused to the government was sought to be recovered. Consequential order dated 12.4.1991 was issued by respondent No.2 i.e. Director General, Directorate of Medical, Health Services and Family Welfare. Both the aforesaid orders were served upon the petitioner by means of letter dated 7.5.1991 of C.M.O., Sitapur.

11. Feeling aggrieved by the orders dated 20.12.990, 12.4.1991 and letter dated 7.5.1991, the petitioner preferred the instant writ petition, wherein interim order was granted on 16.7.1991 in favour of the petitioner at admission stage providing that pension shall be continued to be paid and recovery proceeding shall remain stayed.

12. Thereafter, the present writ petition was dismissed as having been rendered infructuous due to efflux of time on the statement of learned Standing Counsel. The erstwhile counsel for the petitioner had been elevated to the Bench, hence, the petitioner was not represented on the aforesaid date. On 17.1.2018, the petitioner left for his heavenly abode. On 10.9.2018, substitution application was filed by legal heirs of the petitioner on account of death of the petitioner alongwith delay condonation application.

13. Recall and restoration application was allowed and the instant writ petition was restored to its original number vide order dated 19.5.2023. It is submitted that with the revival of the present writ petition, the interim order passed on 16.7.1991 also got revived and the same still continues.

14. There are three issues which are likely to be decided by this Court on which basis the impugned orders have been challenged, the issues are as under :-

Issue No.1- Whether at all a punishment order passed without providing

copy of the enquiry report in disciplinary proceedings to the delinquent employee can sustain in the eyes of law ?

Issue No.2- Whether in the instant matter in the peculiar set of facts, where an interim protection was granted by this Court at admission stage providing that pension to the petitioner shall be continued to be paid and the recovery proceeding shall remain stayed which continues to be in operation ?

Issue No.3- Whether pension of the petitioner could have been stopped by respondents by issuing impugned order, without meticulously following the procedure prescribed by law as also by the constitutional provisions more particularly Articles 14 and 311 of Constitution of India ?

15. In regard to the first issue, submission of learned counsel for the petitioner is that it is well settled that in disciplinary proceeding, serving a copy of the enquiry report is a condition precedent for inflicting punishment on the delinquent employee and a punishment order issued without serving an enquiry report is untenable and is liable to be set aside by this Court.

In this regard the petitioner has made specific averment in paragraphs-27 and 32 of the writ petition that the petitioner was not provided with enquiry report. It was directly supplied to the disciplinary authority who has not issued second show cause notice alongwith enquiry report to file representation raising objection to the report.

16. The reply of paragraphs-27 and 32 of the writ petition has been given in paragraphs-28 and 32 of the counter affidavit, wherein there is no specific denial in regard to the supply of the enquiry report nor there is any averment in regard to the supply of enquiry report to the petitioner, therefore, the petitioner has made out a case for the grant of relief in exercise of power under Article 226 of the Constitution of India.

17. In support of the submission advanced, learned counsel for the petitioner placed reliance upon a judgment in the case of **Union of India & others Vs. Mohd. Ramzan Khan [(1991) 1 Supreme Court Cases 588].** Relevant paragraphs-2, 3, 7, 11, 13, 14, 15, 17 and 18 are being quoted below :-

"2. The short point that falls for determination in this bunch of appeals is as to whether with the alteration of the provisions of Article 311(2) under the Forty-second Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the delinquent has lost his right to be entitled to a copy of the report of enquiry in the disciplinary proceedings.

3. Sub-article (2) of Article 311 in the original Constitution read thus:

"311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him;"

The effect of this provision came to be considered by a Constitution Bench of this Court in Khem Chand v. Union of India [1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167] . The learned Chief Justice traced the history of the growth of the service jurisprudence relating to security of the civil service in the country beginning from the Government of India

Act of 1915 followed by Section 240 of the Government of India Act of 1935. This Court on that occasion also noticed the judgments of the Privy Council in the cases of R. Venkata Rao v. Secretary of State for India [64 IA 55 : AIR 1937 PC 31] , High Commissioner for India v. I.M. Lall [75 IA 225 : AIR 1948 PC 121] and the judgment of the Federal Court in Secretary of State for India v. I.M. Lall [1945 FCR 103 : AIR 1945 FC 47] and summed up the meaning of 'reasonable opportunity' thus: (SCR pp. 1096-97)

"The reasonable opportunity envisaged by the provision under consideration includes—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposed to inflict one of the three punishments and communicates the same to the government servant."

7. Then came the Forty-second Amendment of the Constitution under which the sub-article (2) was substantially altered. As amended in 1976 the sub-article now reads:

"311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed, after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:"

In terms, the omission of the words 'and where it is proposed, after such inquiry, to impose on him any other penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry' as also the proviso clearly omit the second part of the inquiry as envisaged in Goel case [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] and the concept of 'reasonable opportunity' is satisfied by the delinquent being informed of the charges and of being heard in respect thereof.

11. The question which has now to be answered is whether the Forty-second Amendment has brought about any change in the position in the matter of supply of a copy of the report and the effect of non-supply thereof on the punishment imposed.

13. Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There

is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case [(1969) 2 SCC 128 : (1970) 1 SCR 251] , the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out: [Administrative Law, 6th edn., p. 10]

"The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing…. They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."

14. This Court in Mazharul Islam Hashmi v. State of U.P. [(1979) 4 SCC 537 : 1980 SCC (L&S) 54] pointed out:

"Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."

15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such

an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

17. There have been several decisions in different High Courts which, following the Forty-second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

18. On careful consideration of the aforesaid judgment, it is evident that even after the amendment in Article 311 of the Constitution of India, the supply of enquiry report is necessary. It is admitted case of the parties that the petitioner has not been supplied with the enquiry report by the Administrative Tribunal while concluding the enquiry. As such, the ratio of the judgment relied upon is fully applicable to the facts and circumstances of the case of the petitioner.

19. In regard to the second issue, as a matter of fact, as has already been enumerated, two punishments were inflicted upon the petitioner by means of the orders dated 20.12.1990, 12.4.1991, however, on account of grant of interim order at the admission stage itself on 16.7.1991 by this Court, the petitioner was continuously paid pension and no recovery has been made from him.

20. The aforesaid interim order was never vacated by this Court, however, on the statement made by the learned Standing Counsel, the instant writ petition was dismissed as having been rendered infructuous by efflux of time vide order dated 5.9.2013. The aforesaid order was passed in absence of counsel for the petitioner as the then counsel had been elevated to the Bench and no name was shown in the order dated 5.9.2013. Subsequently, on having come to know of the aforesaid order dated 5.9.2013, three applications were filed by the petitioner on 24.9.2019 and another substitution application was filed on 10.9.2018.

21. The aforesaid four applications were considered by a Division Bench of this Court and were allowed vide order dated 19.5.2023. Vide order dated

19.5.2023, passed by a Division Bench of this Court, the order dated 5.9.2013, dismissing the writ petition being infructuous, was set aside and the application for recall was allowed as also the instant writ petition was restored to its original number.

22. In the instant matter, since even while dismissing the writ petition vide order dated 5.9.2013 for want of prosecution, this Court had not explicitly vacated the interim order dated 16.7.1991. Further in light of the fact that on 19.5.2023, the aforesaid order has been set aside and the writ petition has been restored to its original number, the interim order dated 16.7.1991 continues to be in operation.

23. It is submitted that it is well settled that restoration of a petition automatically revives its ancillary orders/ interlocutory orders passed before its dismissal. In aforesaid regard, reliance has been placed on a judgment rendered in the case of **Vareed Jacob Vs. Sosamma Geevarghese and others [(2004) 6 SCC 378].** Relevant paragraphs-17, 18, 20 and 21 are being quoted as under :-

"17. In the case of Shivaraya v. Sharnappa [AIR 1968 Mys 283 : (1967) 1 Mys LJ 414] it has been held that the question whether the restoration of the suit revives ancillary orders passed before the dismissal of the suit depends upon the terms in which the order of dismissal is passed and the terms in which the suit is restored. If the court dismisses the suit for default, without any reference to the ancillary orders passed earlier, then the interim orders shall revive as and when the suit is restored. However, if the court dismisses the suit specifically vacating the ancillary orders, then restoration will not revive such ancillary orders. This was a case under Order 39.

18. In the case of Saranatha Ayyangar v. Muthiah Moopanar [AIR 1934 Mad 49 : ILR 57 Mad 308] it has been held that on restoration of the suit dismissed for default all interlocutory matters shall stand restored, unless the order of restoration says to the contrary. That as a matter of general rule on restoration of the suit dismissed for default, all interlocutory orders shall stand revived unless during the interregnum between the dismissal of the suit and restoration, there is any alienation in favour of a third party.

20. In the case of Nandipati Rami Reddi v. Nandipati Padma Reddy [AIR 1978 AP 30 : (1977) 2 APLJ 64] it has been held by the Division Bench of the Andhra Pradesh High Court that when the suit is restored, all interlocutory orders and their operation during the period between dismissal of the suit for default and restoration shall stand revived. That once the dismissal is set aside, the plaintiff must be restored to the position in which he was situated, when the court dismissed the suit for default. Therefore, it follows that interlocutory orders which have been passed before the dismissal would stand revived along with the suit when the dismissal is set aside and the suit is restored unless the court expressly or by implication excludes the operation of interlocutory orders passed during the period between dismissal of the suit and the restoration.

21. In the case of Nancy John Lyndon v. Prabhati Lal Chowdhury [(1987) 4 SCC 78] it has been held that in view of Order 21 Rule 57 CPC it is clear that with the dismissal of the title execution suit for default, the attachment levied earlier ceased. However, it has been further held

that when the dismissal was set aside and the suit was restored, the effect of restoring the suit was to restore the position prevalent till the dismissal of the suit or before dismissal of the title execution suit. We repeat that this judgment was under Order 21 Rule 57 whose scheme is similar to Order 38 Rule 11 and Rule 11-A CPC and therefore, we cannot put all interlocutory orders on the same basis."

24. In a recent judgment of the Hon'ble Supreme Court in the case of **Jai Balaji Industries Vs. D.K. Mohanty & another,** the Court has reiterated the law laid down in the case of **Vareed Jacob** (Supra).

25. In a judgment and order dated 24.8.2009, passed in Writ-C No.545 of 2009 **(Jitendra Singh @ Guddan Vs. State of U.P. & others),** this Court, keeping in view the principles laid down in the case of **Vareed Jacob** (Supra), held that restoration of a petition automatically restores the interim order if not vacated vide a specific order. Relevant extract of the aforesaid judgment passed by this Court is being quoted as under :-

"It is submitted by Sri Pradeep Chauhan that despite the fact that the order dated 15.5.2009 dismissing the writ petition in default has been recalled on 16.7.2009, the respondents are not treating the interim order dated 15.1.2009 to have revived.

In the circumstances, Sri Chauhan prays that necessary clarification be made by the Court. He has placed reliance on para 17 of the decision of the Supreme Court in Vareed Jacob Vs. Sosamma Geevarghese and others, (2004) 6 SCC 378.

Civil Misc. Application No. 201688 of 2009 has also been filed on behalf of the petitioner for restoration of the interim order. We have considered the submissions made by the learned counsel for the petitioner.

In Vareed Jacob case (supra) their Lordships of the Supreme Court have laid down (paragraph 17 of the said SCC) that the question whether the restoration of the suit revives ancillary orders passed before the dismissal of the suit depends upon the terms in which the order of dismissal is passed and the terms in which the suit is restored. If the Court dismisses the suit for default, without any reference to the ancillary orders passed earlier, then the interim orders shall revive as and when the suit is restored. However, if the Court dismisses the suit specifically vacating the ancillary orders, then restoration will not revive such ancillary orders.

Keeping in view the principles laid down in the above decision, let us consider the present case.

In the present case, by the order dated 15.5.2009, the writ petition was dismissed in default. However, no specific order was passed vacating the interim order dated 15.1.2009. Consequently, when by the order dated 16.7.2009, the order dated 15.5.2009 dismissing the writ petition in default was recalled by the Court, not only the writ petition stood restored but the interim order dated 15.1.2009 also stood revived. Therefore, the interim order dated 15.1.2009 is continuing in the writ petition.

In view of the above, no further order is required to be passed on the aforesaid Civil Misc. Application No. 201688 of 2009 filed on behalf of the petitioner for the restoration of the interim order. The said application stands disposed of."

26. Thus, in the peculiar set of facts wherein in respect of the impugned

punishment order, already interim protection was granted and the same continues while the petitioner has already left for his heavenly abode on 17.1.2018, the impugned punishment order dated 20.12.1990 and consequential order dated 12.4.1991 are liable to be aside on the aforesaid ground as well.

27. In regard to the third issue that whether pension of the petitioner could have been stopped by respondents by issuing impugned order, without meticulously following the procedure prescribed by law as also by the constitution provisions more particularly Articles 14 and 311 of the Constitution of India, submission of learned counsel for the petitioner is that it can never be done. It is no more *res-integra* that right to receive pension is included in constitutional right of Right to Property as envisaged under Article 300-A thereof.

28. In the instant matter, as has already been enumerated in the discussion of Issue No.1, the procedure prescribed by law, more particularly in constitutional provisions enshrined in Articles 14 and 311, have not been followed inasmuch as the punishment order has been passed without serving a copy of the enquiry report in disciplinary proceedings upon the petitioner, such an action cannot be sustained as the same infringes Right to Property of petitioner as envisaged under Article 300-A of the Constitution of India, which also includes Right to receive pension of petitioner. As for stopping the pension, due procedure established by law was required to be mandatorily followed and the same could not have been done in utter defiance of mandate contained in Article 14 read with Article 311 of Constitution of India.

29. In the aforesaid issue, law has been laid down in catena of judgments holding that benefit of gratuity and pension is a property of an employee. Reliance has been placed in the case of **State of Jharkhand & others Vs. Jitendra Kumar Srivastava [2013 (12) SCC 210].** Relevant paragraphs-14, 15 and 16 are being quoted below :-

"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 [(1971) 2 SCC 330 : 1971 Supp SCR 634] , as is apparent from the following discussion: (SCC pp. 342-43, paras 27-33)

"27. The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be

property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [AIR 1962 Punj 503] . It was held that such a right constitutes 'property' and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR (1965) 2 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is 'property' within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as 'property' cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [AIR 1967 Punj 279 : ILR (1967) 1 Punj 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant

Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of M.P. v. Ranojirao Shinde [AIR 1968 SC 1053 : (1968) 3 SCR 489] had to consider the question whether a 'cash grant' is 'property' within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing 'it is obvious that a right to sum of money is property'.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A.Persons not to be deprived of property save by authority of

law.—*No person shall be deprived of his property save by authority of law."*

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. 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 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."

30. The Hon'ble Supreme Court of India in a matter reported in **2020 (4) SCC 46 in re: Dr. Hiralal Vs. State of Bihar & others**, while reiterating the law laid down in **State of Jharkhand (Supra)**, has held that pension is property within the meaning of Article 300-A of the Constitution of India. For ready reference relevant paragraph of the said judgment is being reproduced below :-

"24. The right to receive pension has been held to be a right to property protected under Article 300-A of the Constitution even after the repeal of Article 31 (1) by the Constitution (forty-Fourth Amendment) Act, 1978 w.e.f. 20-6-1979, as held in State of W.B. v. Haresh C. Banerjee [State of W.B. v. Haresh C. Banerjee, (2006) 7 SCC 651 : 2006 SCC (L&S) 1719]."

31. In a recent judgment dated 23.8.2023, passed in Writ-A No.3180 of 2023 **(Prof. Ranjana Sharma & another Vs. State of U.P. & others),** this Court while allowing the writ petition, has followed the dictum of Hon'ble Supreme Court in **State of Jharkhand** (Supra) and **Dr. Hiralal** (Supra) while reiterating *inter-alia* that right to receive pension is included in Right to property under Article 300-A of the Constitution of India.

32. The impugned punishment order dated 20.12.2019 issued by respondent No.1, whereby the full pension of the petitioner was stopped and the consequential order dated 12.4.1991 issued by respondent No.2 and order dated 20.12.1990 issued by the State Government are in gross violation of right to receive pension which is included in right to property as envisaged in Article 300-A of the Constitution of India as well as in violation of principles of natural justice and the copy of the enquiry report has not been supplied to the petitioner by the Administrative Tribunal nor by the disciplinary authority in the matter.

33. In view of the above, the submission of learned Standing Counsel as well as statement made in the counter affidavit cannot make the impugned order good, therefore, submission advanced by learned Standing Counsel is hereby rejected being no merit.

34. For all the reasons and discussions recorded above, the impugned orders dated 20.12.1990, 12.4.1991 and 7.5.1991 do not sustain and are hereby quashed. The writ petition succeeds and is **allowed.**

(2024) 11 ILRA 478
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.11.2024

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Appeal No. 4508 of 2024

Sher Singh & Ors. ...Appellants
Versus
State of U.P. ...Respondent