




HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 4193/2008

Jitendra Kumar Jain

----Petitioner

Versus

1. State of Rajasthan through Secretary to Govt. Department of Local Bodies, Secretariat, Jaipur
2. Commissioner (Headquarter), Municipal Council Kota
3. Director, Pension Jyoti Nagar, Jaipur

----Respondent

For Petitioner(s) : Mr. Ashwani Chobisa
 For Respondent(s) : Mr. B.K.Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

19/08/2023

REPORTABLE

1. Instant petition has been filed by the petitioner with the following prayer:-

“It is, therefore, humbly prayed that this writ petition may kindly be allowed and the Hon'ble court may be pleased to call for the entire record of the case and:-

(i) by issuance of a writ of mandamus or any other appropriate writ order or direction the respondents be directed to release the entire pensionary benefits of the petitioner alongwith interest @ 12% per annum.

(ii) by issuance of a writ of certiorari or any other appropriate writ order or direction the order dated 11.9.2007 issued by the Commissioner Nagar Nigam mentioning that the pension cannot be released till the disposal of the audit objection, be set aside.

(iii) by issuance of an appropriate writ or direction the order dated 11.9.2007 issued by the Commissioner,



Nagar Nigam charging excess rent from the petitioner, be set aside.

(iv) any other appropriate order or direction which the Hon'ble Court may deem fit and proper in the facts and circumstances of case, may also kindly be passed in favour of the Petitioner.

(v) Cost of the writ petition may kindly be awarded in favour of the petitioner."

2. Learned counsel for the petitioner submits that petitioner got voluntary retirement from the post of Revenue Inspector by order dated 26.09.2006. Counsel submits that in spite of passing of a considerable time, till date retiral dues have not been released to the petitioner. Counsel submits that an objection was taken by the Audit Inspection Team in the year 2003 that irregular pay scale was given to the petitioner. Counsel submits that even the respondents submitted reply to the said objection on 05.03.2004 stating therein that no irregular pay scale was paid to the petitioner and a request was made to delete the said audit para. Counsel submits that in spite of above, till date the retiral dues have not been released to the petitioner. Hence, under these circumstances, interference of this Court is warranted.

3. Per contra, learned counsel for the respondents opposed the arguments raised by learned counsel for the petitioner and submitted that because of the aforesaid audit objection, the retiral dues were not paid to the petitioner. Counsel submitted that petitioner over stayed in the residential premises and he has not paid due rent for which a notice was given to him in the year 2007 but in spite of above, he has failed to deposit the due rent and arrears and this was also one of the reasons that the retiral dues



has not been paid to the petitioner. Counsel submits that under these circumstances, interference of this Court is not warranted.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. Admittedly, the petitioner was given compassionate appointment and after completing the qualifying services, he submitted an application seeking voluntary retirement and the application filed by the petitioner was allowed and he was granted voluntary retirement vide order dated 26.09.2006.

6. Perusal of the record indicates that prior to retirement of the petitioner an audit was conducted in the office of the respondents wherein certain objections were taken by the audit team that irregular pay scale was given to the petitioner. The record further indicates that reply to the said objection was given by the respondents justifying their action for payment of the aforesaid pay scale and vide letter dated 05.03.2004 a request was made to the audit Officer to delete the said audit objection. Perusal of the record further indicates that respondents vide letter dated 11.09.2007 directed the petitioner to deposit the due rent of Rs. 24,795/-. It appears that petitioner has not deposited the said amount and the respondents have withheld the entire retiral dues of the petitioner. So far as, the objection taken by the audit regarding irregularity in payment of pay scale to the petitioner is concerned the respondents are of the view that the said objection raised by the audit is not tenable and a detailed reply has been submitted by the respondents to the concerned officer, hence under these circumstances, the respondents were not having any authority to withhold the retiral dues of the petitioner. Now the



next question which remains for consideration before this Court is whether the respondents can deny the entire retiral dues to the petitioner only on the pretext that some due rent was not paid by the petitioner in spite of receiving notice. The respondents could have recovered the due rent amount from the retiral dues of the petitioner but in any case they were not having any authority to retain and withhold the whole retiral dues and such action of the respondents is quite unjustified.

7. In view of the above, the instant petition stands disposed of directing the respondent to release all retiral dues to the petitioner with interest @ 9% per annum within a period of three months from the date of receipt of a certified copy of this order.

8. It goes without saying that respondents may deduct the due rent amount from the retiral dues at the time of making the final payment after following the due process of law.

9. All application(s) (pending, if any) also stands disposed of.

10. Before parting with this order, this Court is showing anguish on the state of affairs of the officials of the various departments of the State. They are taking these matters in such a casual way and are not bothering to pay the post retiral dues to the employees for years together and because of that the Courts are flooded with thousands of cases pertaining to post retiral dues.

11. This Court has an occasion to feel the pain and torture suffered by the retired employee and his legal representative after his death for getting the post retiral dues in the case of **Dayachand Arya Vs. State of Rajasthan**: S.B. Civil Writ Petition No. 12010/2020 and the said petition was decided with the following observations and directions:-



“It is quite surprising and shocking on the part of the State-respondents that in spite of retirement of the deceased-petitioner in the year 2018, the retiral dues have not been released by the respondents even after passing of more than five years. The officials of the State-respondents compelled the deceased petitioner to approach this court in the year 2020 but losing his battle fighting against the mighty State Government-respondents, the deceased-petitioner had lost his life. But the respondents kept their ears closed like a deaf. Thereafter, the legal representatives were taken on record.

It is worthy to note here that neither any criminal case nor any departmental inquiry was pending against the petitioner, hence there was no reason available with the State-respondents to withhold the retiral dues of the petitioner. Such arbitrary act of the State-respondents is high-handed and is liable to be deprecated by this Court. This is not a case of the respondents that there was any lapse on the part of the petitioner to complete any requisite formality. When the entire service record of the petitioner was available in the offices of the respondents, then there was no reason to withhold the retiral dues of the petitioner for more than five years.

It is an accepted position that pension and gratuity are not bounty. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. The Constitutional Bench of Hon’ble Apex Court in the case of **Deokinandan Prasad V. State of Bihar** reported in **(1971) 2 SCC 330** authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone’s discretion. The right to receive pension flows to the officer not because any order of the authority is required but by virtue of statutory Rules. This view was reaffirmed by the Hon’ble Supreme Court in the case of **State of Punjab V. Iqbal Singh** reported in **(1976) 2 SCC 1** and it has been held that “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.”

Chapter – VI of the Rajasthan Civil Services (Pension) Rules, 1996 (for short ‘the Rules of 1996’) deals with the provisions of determination and authorization of the amounts of pension and gratuity. Rule 78 of the Rules of 1996 deals with the provisions of preparation of list of





the government servants due for retirement. Rule 80 deals with preparation of pension papers and Rules 81 and 82 deal with stages and completion of pension papers. Likewise Rules 83, 84 and 85 deal with the procedure to deal with the pension papers by the Pension Department and release of pension and in case any delay occurs, the pensioner is entitled to get interest @ 9% per annum on delayed payment of pension and gratuity under Rule 89 of the Rules of 1996.

Looking to the consistent view of Hon'ble Supreme Court and the Rules of 1996, it is clear like a noon day that the retiral dues of an employee like the petitioner cannot be allowed to withhold because the documents were not received by any department from the other department. The respondents cannot be allowed to take shelter that the delay was caused by any authority in not sending the required file and paper of the petitioner, such action on the part of the respondent/authority is unfounded and virtually arbitrary, illegal and contrary to law."

12. Further, Chapter - VI of the Rajasthan Civil Services (Pension) Rules, 1996 (for short 'the Rules of 1996') deals with the provisions of determination and authorization of the amount of pension and gratuity. Rule 78 of the Rules of 1996 deals with the provisions of preparation of list of the government servants due for retirement. Rule 80 deals with preparation of pension papers and Rules 81 and 82 deal with stages and completion of pension papers. For ready reference Rule 78 of the Rules of 1996 is reproduced as under:

"78. Preparation of list of Government servants due for retirement

(1) Every Head of Department shall have a list prepared every six months, that is, on the 1st January, and the 1st July each year of all Government servants who are due to retire within the next 24 to 30 months of that date.

(2) A copy of every such list shall be supplied to the Director, Pension Department, Rajasthan, not later than 31st January or the 31st July, as the case may be, of that year.

(3) In the case of a Government servant retiring for reasons other than by way of superannuation, the Head





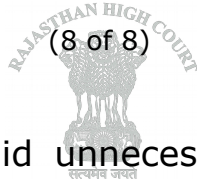
of Office shall promptly inform the Director, Pension Department, Rajasthan, as soon as the fact of such retirement becomes known to him.

(4) A copy of the intimation sent by the Head of Office to the Director, Pension Department, Rajasthan, under sub rule (3) shall also be endorsed to the Director Estates, Jaipur and concerned Executive Engineer, Public Works Department if the Government servant concerned is an allottee of Government accommodation."

13. Perusal of Chapter VI of the Rules of 1996 clearly indicates that provisions contained under each and every Rules are mandatory and the authorities are supposed to follow the provisions and procedure in its letter and spirit.

14. Looking to the lethargic and unwarranted attitude of the erring officials of all the Departments of the respondent State, this Court deems it just and proper to issue a general mandamus to all the Departments of the State to strictly comply with all the mandatory provisions contained under Chapter VI of the Rules of 1996 within the stipulated time and not to cause unnecessary delays and should make payment of pension and all retiral dues promptly. This mandamus must be strictly complied with, failing which the erring officer of the parent department as well as the pension department would be held responsible for violation of this order and they would be held accountable to payment of cost from their own pocket for causing unnecessary delay in payment of rightful post retiral claim of the retiring persons.

15. Let a copy of this order be sent to the Chief Secretary of the State and Director of Department of Pension. The Chief Secretary is directed to circulate the copy of this order to all heads of the Departments for compliance of the general mandamus



hereinabove issued to avoid unnecessary litigation and to save their department and erring officers to pay and bear the cost of such litigation.

16. The Chief Secretary is expected to do the needful exercise for effective implementation of this order within a period of two months and submit the compliance report to this Court on or before 16.10.2023.

17. List this matter on 16.10.2023 to check compliance of this order.

(ANOOP KUMAR DHAND),J

Ashu/43/pcg