

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR****Writ Petition No.13798/2013****M.L. Mittal**Versus**State of Madhya Pradesh & another**

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|--------------------------------|--|
| Date of Order                  | <b>02.12.2021</b>  |
| Bench Constituted              | Single Bench   |
| Order delivered by             | <b>Hon'ble Mr. Justice Sanjay Dwivedi</b>  |
| Whether approved for reporting | <b>Yes</b>   |
| Name of counsel for parties    | For petitioner: Mr. Ved Prakash Nema, Advocate.<br>For Respondents/State: Mr. Punit Shroti, Panel Lawyer.  |
| Law laid down                  | Mere pendency of an appeal against the acquittal order of an employee does not confer any right upon the respondent/employer to withhold the retiral dues of the employee. |
| Significant Para Nos.          | 8, 9, 10, 11 and 12  |

**(ORDER)****(02.12.2021)**

This petition is heard finally.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner is not challenging any specific order, but seeking a direction for issuance of writ of mandamus for the respondents to finalize his case of retiral dues and be paid to him expeditiously.

3. The crisp and short facts of the case are that the petitioner after attaining the age of superannuation stood retired from service on 30.11.2001, but on the date of retirement, since the petitioner was facing a criminal trial i.e. Special Case No.12/1997 in connection with Crime No.122/1996 for an offence under Section 13(1)(d) read with Section 13(2), Section 5(1)(d) read with Section 5(2) of the

Prevention of Corruption Act and Section 120-B of the Indian Penal Code registered against the petitioner, therefore, his retiral dues could not be finalized. However, the trial Court vide order dated 05.11.2004 (Annexure-P/7), acquitted the petitioner from the charge levelled against him. Thereafter, against the said order of acquittal, the State preferred an appeal before the High Court which got registered as Criminal Appeal No.842/2005 [The State of M.P. Vs. Madan Lal Mittal], which is yet to be finally adjudicated. After making unflagging requests, when the petitioner's retiral dues were not settled, then left with no option, he filed the instant petition.

4. Mr. Nema, learned counsel for the petitioner submits that presently the petitioner is getting only anticipatory pension, but his other retiral dues are withheld by respondents. He submits that the petitioner made various representations before the Authority for getting his retiral dues, but all went in vain. He further submits that mere pendency of an appeal that too against the petitioner's acquittal order, does not confer any right on the respondents to withhold his retiral dues and as such, the action on the part of the respondents/Authority is completely arbitrary and illegal.

5. *Per contra*, Mr. Shroti, learned Panel Lawyer appearing for the respondents/State while relying upon the reply filed on behalf of the respondents/State, has submitted that since the appeal against the petitioner's acquittal order is *sub judice* before the Court, therefore, his retiral dues are not finalized.

6. I have heard the arguments advanced by learned counsel for the parties and perused the record.

7. Indisputably, the petitioner was acquitted from the charge levelled against him and during pendency of trial and even after its conclusion, the respondents/Authority did not initiate any departmental proceeding against him. The

petitioner since retired on attaining the age of superannuation, there is no provision under the rules to withhold his post retiral benefits due to pendency of criminal appeal, therefore, in the circumstance, the petitioner is entitled to get his post retiral dues.

8. The reply filed on behalf of the respondents merely depicts a simple stand that since against the petitioner's acquittal order a criminal appeal is *sub judice* before the Court, therefore, he is not entitled to get his post retiral dues. Learned Panel Lawyer during the course of arguments failed to show any rule as to under which provision, the respondents are empowered to withhold the pension or gratuity amount of the employee even in absence of any finding against him either in the departmental or judicial proceedings. At this juncture, it is apposite to see the provisions of Rule 45A of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (in short the 'Rules, 1976'), which provide as to under which circumstances, a Government Servant can be debarred from receiving the gratuity. Rule 45A of the Rules, 1976 reads as under:-

**“[45A. Debarring a person from receiving gratuity.- (1)** If a person, who in the event of death of a Government servant while in service is eligible to receive gratuity in terms of Rule 45 is charged with the offence of murdering the Government servant or for abetting in the Commission of such an offence, his claim to receive his share of gratuity shall remain suspended till the conclusion of tire criminal proceedings instituted against him.

(2) If on the conclusion of the criminal proceedings referred to in sub-rule (1), the person concerned:-

- (a) is convicted for the murder or abetting in the murder of the Government servant, he shall be debarred from receiving his share of gratuity which shall be payable to other eligible members of the family, if any;
- (b) **is acquitted of the charge of murder or abetting in the murder of the Government servant, his share of gratuity shall be payable to him.**

(3) The provisions of sub-rule (1) and sub-rule (2) shall also apply to the undisbursed gratuity referred to in sub-rule (2) of Rule 45].”

Further, Rule 9 of the Rules, 1976 provides the power of the Governor to withhold or withdraw pension. Rule 9 of the Rules, 1976 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 [xxx], 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 proceeding, 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 it 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.”

Perusal of aforesaid provisions makes it amply clear that since the petitioner was acquitted in the criminal trial, therefore, he is entitled to get his post retiral dues.

9. Furthermore, the Division Bench of this Court in the case reported in **2002 (4) MPLJ 401 [Ram Ratan Tiwari Vs. State of M.P. and others]** has held that suspension of Government Servant during pendency of investigation, inquiry or trial of criminal offence against him cannot be continued during appeal after acquittal of Government Servant. The Division Bench in the aforesaid case has also observed that keeping an employee under suspension may cause immense hardship to him merely on the ground that an appeal preferred

against the order of acquittal of that employee is pending for final adjudication. Further, the Division Bench of this Court in a case reported in **ILR [2008] MP 2213 [M.P. State Civil Supplied Corporation Ltd. Vs. Vinod Kumar Save]** has solicited the same principle as has been laid down in the case of **Ram Ratan Tiwari** (supra) and approved the direction of writ Court whereby the employer was directed to pay all retiral dues to the employee after his acquittal from the criminal case tried against him that too during pendency of appeal preferred against his acquittal by the employer.

10. Likewise, the Supreme Court in a case reported in **(2013) 12 SCC 210 [State of Jharkhand & Ors. Vs. Jitendra Kumar Shrivastava & Anr.]** has very specifically observed that in absence of any provision in the Pension Rules, the State Government cannot withhold a part of pension and/or gratuity even during pendency of departmental/criminal proceedings. However, in the said case, the Supreme Court has dealt with the provisions of Bihar Pension Rules, but the analogy as has been applied by the Supreme Court in the aforesaid case has direct impact in the present case. In the aforesaid case, the Supreme Court has also discussed the rights of an employee to receive pension and also observed that pension includes gratuity. The observations made by the Supreme Court in the case of **Jitendra Kumar Shrivastava** (supra) are as under:-

“7. The aforesaid arguments of the learned Senior Counsel based on the judgment in *Sant Ram Sharma v. State of Rajasthan*, AIR 1967 SC 1910 would not cut any ice insofar as present case is concerned, because of the reason that case has no applicability in the given case. *Sant Ram* judgment governs the field of administrative law wherein the Constitution Bench laid down the principle that the rules framed by the authority in exercise of powers contained in an enactment, would also have statutory force. Though the administration can issue administrative instructions for the smooth administrative function, such administrative instructions cannot supplant the rules. However, these administrative instructions can supplement the statutory rules by taking

care of those situations where the statutory rules are silent. This ratio of that judgment is narrated in the following manner: (AIR p. 1914, para 7)

“7. ... It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point the Government can fill up the gaps and supplement the rules and issue instructions and inconsistent with the rules already framed.”

There cannot be any quarrel on this exposition of law which is well grounded in a series of judgments pronounced post Sant Ram Sharma case as well. However, the question which is posed in the present case is altogether different.

8. 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. Conceptually it is so lucidly described in *D.S. Nakara v. Union of India* [(1983) 1 SCC 305] by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20)

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the



Constitution Bench in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330] wherein this Court 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. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh* [(1976) 2 SCC 1].

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.

9. Having explained the legal position, let us first discuss the rules relating to release of pension.

10. The present case is admittedly governed by the Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under:

"43. (b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to the Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:"

11. From the reading of the aforesaid Rule 43(b), following position emerges:

(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave

encashment is not provided under this Rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

12. There is also a proviso to Rule 43(b), which provides that:

“(a) such departmental proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment;

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

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

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made—

(b) judicial proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

It is apparent that the proviso speaks about the institution of proceedings. For initiating proceedings, Rule 43(b) puts some conditions i.e. departmental proceeding as indicated in Rule 43(b), if not instituted while the government servant was on duty, then it shall not be instituted except:

(a) With the sanction of the Government,

(b) It shall be in respect of an event which took place not more than four years before the institution of the proceedings.

(c) Such proceedings shall be conducted by the enquiry officer in accordance with the proceedings by which dismissal of the services can be made.

Thus, insofar as the proviso is concerned that deals with condition for initiation of proceedings and the period of limitation within which such proceedings can be initiated.

13. A reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. **only** when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no

provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

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], 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]. 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] 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] 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.”

As per the aforesaid enunciation of law, it is clear that in absence of any specific provision empowering the employer to withhold the pension of an employee, the same cannot be withheld.

11. That apart, the Allahabad High Court in **WRIT-A No.-66930/2013 [Rajeev Sharma Vs. State of U.P. & 3 Ors.]** had an occasion to deal with the issue as involved in the present case and while elaborately discussing and considering the various judgments of the Supreme Court as also of the High Courts, it has been held by the Allahabad High Court that after acquittal, there is nothing against the employee and moreso, the respondents can initiate disciplinary proceeding even after acquittal of that employee, but if that is not done, then it is not open for the respondents to withhold the retiral dues merely on the ground that the criminal appeal is sub judice before the superior Court. The Allahabad High Court in the aforesaid case has observed as under:-

“Supreme Court in *State of Jharkhand and others vs. Jitendra Kumar Srivastava and another [2014 (1) AWC 159 (SC)]* considered as to whether in absence of any provisions in the pension rules, State Government can withhold a part of pension or gratuity during the pendency of the departmental or disciplinary proceedings. Paragraph 11 is as follows:-

"11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending."

Division Bench of this Court in *State of U.P. and others vs. Jai Prakash [(2014) 1 ADJ 207]* relying upon Supreme Court judgment held that pension would include gratuity and the gratuity cannot be withheld merely due to pendency of criminal case unless there is a specific provision under the Rules. The Court was dealing with the provisions of Civil Service Regulations, 1920, which provided for withholding of gratuity Paragraphs 8, 9 and 10 are as follows:-

"8. The learned Single Judge, in the present case, has proceeded on the basis that neither in regulation 351 nor in regulation 351-A is a withholding of gratuity contemplated during the pendency of a judicial proceeding. The learned Single Judge, with respect, has overlooked the provisions of regulation 351-AA and a specific bar which is contained in regulation 919-A(3). In view of the specific prohibition which is contained in regulation 919-A(3), no death-cum-retirement gratuity would be admissible ***until the conclusion of a departmental or judicial proceeding. The expression 'judicial proceeding' would necessarily include the pendency of a criminal case.***

9. In a judgement of a Division Bench of this Court in *Shri Pal Vaish vs. U.P. Power Corporation Limited and another, 2009 (9) ADJ 45 (DB)*, it has been held that clause 3 of regulation 919-A is a provision which specifically deals with the payment of gratuity during pendency of departmental or judicial proceedings and in view thereof, the payment of gratuity has to be deferred until the conclusion of such a proceeding. The Division Bench also held that the payment of gratuity cannot be made in view of the bar contained in regulation 919-A during the pendency of a criminal case.

10. In a recent judgement of the Supreme Court in *State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr 2, the Supreme Court dealt with the provisions of Rule 43(b) of the Pension Rules of the State of Bihar as applicable to the State of Jharkhand. Regulation 43(b) was pari*

*materia* to regulation 351-A of the Civil Service Regulations in the State of U.P. In that context, the Supreme Court held that Rule 43(b) made it clear that it was permissible for the Government to withhold pension only when a finding is recorded in a departmental inquiry or judicial proceeding in regard to the commission of misconduct while in service and rule 43(b) contains no provision for withholding gratuity when departmental or judicial proceedings are still pending. However, the Supreme Court clarified that though there was no provision for withholding pension or gratuity in the given situation, had there been any such provision in the rules, the position would have been different. ***In the present case, there is a specific provision contained in regulation 351-AA read with regulation 919-A(3).***"

A Division Bench of this Court in writ petition no.19693 of 2012 (***Amrit Lal versus Chief Election Officer and Others***) decided on 1.8.2014 observed as follows:

*Firstly the pendency of the Criminal Appeal filed by the State cannot be said to be a valid ground for non payment of gratuity amount and in any case after dismissal of the appeal on 17.5.2012, there can be further no justification for not paying the gratuity amount.*

The Supreme Court in **Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board [LAWS (SC)-2014-6-14]** was considering the case as to whether disciplinary proceedings after retirement of an employee could be continued in absence of any rule to that effect. In paragraph 6 held as follows:-

"6 .....

*Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."*

In Corporation of the ***City of Nagpur versus Ramchandra (1981) 2 SCC 714***, it is observed that it may not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, where the accused has been acquitted honourably and completely exonerated of the charges. At the same time, it is pointed out that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered. The same principle is reiterated in ***Commr. of Police versus Narender Singh (2006) 4 SCC 265***.



In *Commr. of Police, New Delhi and another versus Mehar Singh (2013) 7 SCC 685*, Supreme Court observed that "while the standard of proof in a criminal case is that of proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur versus Union of India AIR 1964 SC 787* this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

*"This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."*

Enquiry commences with the issue of charge-sheet as held in the case of *Union of India vs. K.V. Jankiraman (AIR 1991 SC 2010)*, *Union of India vs. Anil Kumar Sarkar, 2013 (4) SCC 161* and *State of Andhra Pradesh vs. C.H. Gandhi, 2013 (5) SCC 111*; Framing of the charge-sheet is the first step taken for holding enquiry into the allegations on the decision taken to initiate disciplinary proceedings. Service of charge-sheet on the Government servant follows decision to initiate disciplinary proceedings and it does not precede and coincide with that decision (*vide Delhi Development Authority vs. H.C. Khurana 1993 (3) SCC 196*). Once the enquiry was not initiated or contemplated or pending before the retirement, the same cannot be continued after retirement, unless there is a rule to that effect. The learned counsel for the respondents has failed to show any rule or circular as to whether disciplinary proceedings could be initiated after retirement and under what circumstances, the retiral dues be withheld after acquittal.

The Supreme Court in *Mathura Prasad v. Union of India and others, (2007) 1 SCC (L&S) 292*, held that when an employee is sought to be deprived of his livelihood for alleged misconduct, the procedure laid down under the rules are required to be strictly complied with:

*"When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his*

*livelihood, the procedure laid down under the sub-rules are required to be strictly followed: It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in the manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact, for sufficient reasons may attract the principles of judicial review."*

In a recent judgement rendered by Hon'ble Supreme Court in ***D.D Tewari (D) Thr.Lrs. versus Uttar Haryana Bijli Vitran Nigam Ltd. & Others in Civil Appeal No.7113 of 2014*** decided on 1<sup>st</sup> August 2014. The Supreme Court made the following observation in paragraph 4 & 6:

*4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgement referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.*

*6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed.*

Applying the law on the facts of the case in hand, petitioner was falsely implicated in a criminal case for taking bribe of Rs.500 on 22.7.1991, was enlarged on bail on the same day, thereafter placed under suspension on 27.8.1991 and on 16.11.1992, the petitioner was reinstated in service but no departmental proceedings was ever initiated against the petitioner. The petitioner was acquitted in the criminal case on 14.3.2005, even after acquittal no departmental proceedings was initiated.

On 30.4.2009, the petitioner retired. Thus mere pendency of Criminal Appeal would not entitle the respondents to withhold the post retiral benefits as the petitioner was acquitted and no proceedings was initiated by the respondents, further petitioner through out the trial continued in service until retirement.

Civil Service Regulation is applicable upon the employees of the power corporation, regulation 351 AA and regulation 919 A(3), prohibits payment of death-cum-retirement gratuity until the conclusion of **departmental or judicial proceeding**. Division Bench in **Jai Prakash (Supra)** has held "judicial proceedings" would necessarily include pendency of criminal case. The question to be answered is as to whether pendency of criminal appeal, against acquittal, will include "pending judicial proceeding" In **Amrit Lal (Supra)**, Division Bench observed pendency of criminal appeal against acquittal is not a ground for withholding the retiral dues. After acquittal there is nothing against the employee, more so, in the facts of the case, the respondents did not choose to initiate any disciplinary proceedings after acquittal nor did they examine the judgement of the trial court to find out, as to whether petitioner was acquitted 'honourably', once failing to exercise their powers under the rule to initiate any proceedings, it is not open for the respondents to withhold retiral dues, merely on pendency of criminal appeal.

The impugned order dated 22.11.2012 passed by Chief Engineer (Jal Vidyut), respondent no. 3 and order dated 6.6.2013 passed by Executive Engineer, Electricity Distribution Division, Pilibheet, respondent no. 4 is quashed.

The respondents are directed to release arrears of salary for the suspension period, retiral dues and terminal benefits of the petitioner within three months from the date of service of this order before the competent authority. Interest @ 9% is awarded on delayed payment of pension and gratuity from the date of entitlement to the date of actual payment, failing which same shall carry interest @ 18% per annum from the date the amount falls due."

12. Looking to the consistent view of the Supreme Court; the Division Bench of this Court and also of the Allahabad High Court, it is clear like a noon day that the retiral dues of an employee cannot be withheld merely because an appeal preferred by the employer against acquittal order of the employee is pending adjudication. Moreso, since despite having option to initiate disciplinary proceeding against the

petitioner, the respondents did not do so, therefore, they cannot take shelter of pendency of appeal for not finalizing the petitioner's retiral dues and as such, the action on the part of the respondents/Authority is unfounded and virtually arbitrary, illegal and contrary to law.

**13.** Keeping in view the discussion made hereinabove, this petition is allowed directing the respondents to finalize the petitioner's retiral dues and make payment within a period of 60 days from today, failing which, the petitioner shall be entitled to receive interest @ 8% per annum on the amount of arrears of retiral dues till its actual payment made to him.

**14.** *Ex consequentia*, the petition filed by the petitioner stands **allowed and disposed of**.

**(SANJAY DWIVEDI)**  
**J U D G E**