

GAHC020003182021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH

Case No. : WP(C) 131/2021

1:SHRI SASHITSUNGBA AO
RETIRED ABSI,
POLICE DEPARTMENT GOVT. OF NAGALAND,
ADDRESS CHUMUKEDIMA,
DIMAPUR, NAGALAND

VERSUS

1:THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, KOHIMA

2:THE HOME COMMISSIONER TO THE GOVERNMENT OF NAGALAND
DEPARTMENT OF HOME

NAGALAND
KOHIMA

3:THE DIRECTOR GENERAL OF POLICE
NAGALAND
KOHIMA

4:THE SUPERINTENDENT OF POLICE
KIPHIRE
NAGALAND

5:THE PRINCIPAL ACCOUNTANT GENERAL
NAGALAND
KOHIMA

Advocate for the Petitioner : S. TEMJEN

**BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO**

Date : 29-10-2021

JUDGMENT & ORDER (CAV)

This is a petition praying for issuance of appropriate writ or order or direction directing the respondents to release the provisional gratuity and the provisional commutation of the petitioner who was release from service as ABSI w.e.f. 30.09.2018 on completion of 35 years of service vide order No. DEF/APT/ESTT-9/18-19, dated 11.04.2018, issued by the Superintendent of Police, Kiphire.

2. Heard Mr. S. Temjen, learned counsel for the petitioner and also heard Mr. Moa Imchen, learned Addl. Sr. Government Advocate appearing for the State respondents.

3. The facts and circumstances leading to the filing of this writ petition as submitted by the learned counsel for the petitioner are briefly stated as follows;

That while serving as ABSI at Police Central Store, Chumukedima a criminal proceeding was initiated against the petitioner in connection with Diphuphar Police Station Case No. 40/2012 under section 25(1) (a) of Arms Act and was placed under suspension with immediate effect vide order No. PHQ(P-X) (DE/3/2012) dated 25.04.2012. After being kept under suspension

for almost 4 years he was reinstated vide order No. PHQ(B-X) (DE/3/2012), dated 15.01.2016, issued by the Director General of Police with immediate effect. Accordingly, the petitioner was allowed to rejoin his service and he continued to work in the force till he superannuated on 11.04.2018 on completion of 35 years of continuous service. After his retirement his pensionary entitlements and other retirement benefits were not release. Therefore, he came before this Court by filing W.P.(C) No. 171/2020. The writ petition was taken up for hearing on 23.02.2021 and it was disposed on the same day with a direction to the respondents that the petitioner be given provisional pension in terms of Rule-69 of CCS (Pension) Rules. In pursuance of the direction of this Court, the petitioner's provisional pension was released but without paying him his gratuity and provisional commutation. Being aggrieved by the non-payment of the provisional gratuity and provisional commutation, the petitioner is back here again by filing the present writ petition.

4. The case of the petitioner as submitted by his learned counsel is in two fold and the first is that gratuity and commutation are entitlements earned by a Government servant in course of his or her service, therefore, release of the same cannot be denied or withheld due to pendency of a criminal proceeding against the Government servant.

Secondly, that as per Rule-64(4)(ii) of CCS (Pension) Rules, 1972, the provisional gratuity is a part of the provisional pension, therefore, when the provisional pension was released to the petitioner as per the rules the same should have also been

determined and release.

In support of his submission, the learned counsel for the petitioner referred to the judgment of the Hon'ble Supreme Court passed in the case of **State of Jharkhand & Others** -versus- **Jitendra Kumar Srivastava & Another**, reported in **(2013) 12 SCC 210**, paragraph- 1, 2, 8, 9, 10, 14 & 16. The contents of the paragraphs mentioned above are reproduced here below;

"1. Leave granted. Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings? The High Court has answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal.

2. For the sake of convenience we will gather the facts from Civil Appeal arising out of SLP(Civil) No. 1427 of 2009. Only facts which need to be noted, giving rise to the aforesaid questions of law, are the following: the respondent was working in the Department of Animal Husbandry and Fisheries. He joined the said Department in the Government of Bihar on 2.11.1966. On 16.4.1996, two cases were registered against him under various [Sections of the Indian Penal Code](#) as well as [Prevention of Corruption Act](#), alleging serious financial irregularities during the years 1990-1991,

1991-1992 when he was posted as Artificial Insemination Officer, Ranchi. On promulgation of the [Bihar Reorganisation Act, 2000](#), State of Jharkhand (Appellant herein) came into existence and the Respondent became the employee of the appellant State. Prosecution, in respect of the aforesaid two criminal cases against the respondent is pending. On 30th January, 2002, the appellant also ordered initiation of disciplinary action against him. While these proceedings were still pending, on attaining -the age of superannuation, the respondent retired from the post of Artificial Insemination Officer, Ranchi on 31.08.2002. The appellant sanctioned the release and payment of General Provident Fund on 25.5.2003. Thereafter, on 18.3.2004, the Appellant sanctioned 90 percent provisional pension to the respondent. Remaining 10 percent pension and salary of his suspension period (30.1.2002 to 30.8.2002) was withheld pending outcome of the criminal cases/ departmental inquiry against him. He was also not paid leave encashment and gratuity.

8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in *D.S. Nakara and Ors. Vs. Union of India*; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“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 [Deoki Nandan Prasad v. State of Bihar and Ors.](#)[1971] Su. S.C.R. 634 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 any one'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 and Anr. V. Iqbal Singh](#) (1976) IILLJ 377SC”.

It is thus 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 Government if the pensioner is found in departmental or judicial proceeding to have been guilty*

to grave misconduct, or to have caused pecuniary loss to Government misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement”.

14. *Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in [Deokinandan Prasad vs. State of Bihar](#); (1971) 2 SCC 330, as is apparent from the following discussion:*

“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 June 12, 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 August 5, 1966. 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 quantifying 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 petitioner 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 A.I.R. 1962 Punjab High Court in Bhagwant Singh V. Union of India. 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 I.L.R. 1965 Pun 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. The State of Punjab I.L.R. 1967 P & H 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 Madhya Pradesh v. Ranojirao Shinde and Anr.](#) MANU/SC/0030/1968 : [1968]3SCR489 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 Sub-[article \(5\)](#) of [Article 19](#). Therefore, it follows that the order dated June 12, 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](#) (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 a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law”.

16. The Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property”. [Article 300 A](#) of the Constitution of India reads as under:

“300A 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."

The learned counsel also referred to the judgment of the Hon'ble Supreme Court passed in the case of **Dr. Hira Lal -versus- State of Bihar & Others** in **Civil Appeal No. 1677-1678 of 2020**, para- 1, 3, 5, 13.1, 13.4 & 14. The contents of the said paragraphs are also reproduced here below;

"1. The short issue which arises for consideration is whether the State of Bihar was justified in withholding 10% pension and full gratuity of the Appellant under Circulars dated 22.08.1974 and 31.10.194, and Government Resolution dated 31.07.1980, on the ground of pending criminal proceedings?

3. On attaining the age of superannuation, the State Government vide Order dated 17.09.2008 sanctioned payment of 90% of the provisional pension of the Appellant, and withheld 10% of the pension, entire gratuity, leave encashment and GPF on account of pending criminal proceedings.

5. The Appellant inter alia contended that the Bihar Pension Rules, 1950 do not prohibit payment of full pension and gratuity to a retired Government servant against whom criminal proceedings were pending. Rule 43(b) of the Bihar Pension Rules is not applicable, until the delinquent employee is found to be guilty of grave misconduct in a departmental or judicial proceedings or to have caused

pecuniary loss to the Government by misconduct or negligence. Consequently, Rule 43(b) would not be applicable during the pendency of criminal proceedings. Reliance was placed on the judgment of this Court in State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Ors.¹, wherein it has been that Rule 43(b) does not permit withholding of pension and gratuity when departmental or judicial proceedings are still pending. It was further contended the Government Resolution dated 31.07.1980, being an executive instruction had no force of law, and could not take away the right to receive pension, which is recognised as a constitutional right under Article 300A of the Constitution.

13.1 In our considered view, the Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were merely administrative instructions/executive orders. They were not issued in exercise of the power under Article 309 of the Constitution and cannot be said to have the force of law.

The Government Resolution dated 31.07.1980 came up for consideration before this Court in State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Ors.³. After considering Rule 43(b) of the Bihar Pension Rules and Government Resolution No. 3104 dated 31.07.1980, this Court held that the State had no authority or power to withhold the full amount of pension or gratuity of a Government servant during the pendency of judicial or departmental proceedings. This Court held that:

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

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 department 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.

.....

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.

14.A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A 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.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the Appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

[emphasis

It was held that pension is 'property' within the meaning of Article 300A of the Constitution, and executive instructions which do not have any statutory sanction cannot be termed as "law" within the meaning of Article 300A. It was further held that in the absence of statutory rules permitting withholding of pension or gratuity, the State could not do so by way of executive instructions. It was observed that "So far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different".

13.4 It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service. The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the Constitution by a Constitution bench of this Court in Deokinandan Prasad v. State of Bihar⁵, which ruled that:

" 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. Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR 1965 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 [ILR 1967 Punj & Har 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.

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 sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 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..."

[emphasis supplied]

14. In view of the above, we hold that the Respondent-State was unjustified in withholding 10% pension of the Appellant under administrative Circulars dated 22.08.1974 and

31.10.1974, and Government Resolution No. 3104 dated 31.07.1980 after the Appellant had superannuated on 31.03.2008.

We direct that 10% of the pension amount which had been withheld after superannuation on 31.03.2008 till 19.07.2012 is liable to be paid to the Appellant within a period of 12 weeks from the date of this Judgment.

After Rule 43(c) was inserted in the Bihar Pension Rules and brought into force on 19.07.2012, the State is empowered to legally withhold 10% of the pension amount of the Appellant, till the criminal proceedings in R.C. Case No. 48A/1996 are concluded. Consequently, the State will deduct 10% from the pension amount w.e.f. 19.07.2012 subject to the outcome of the criminal proceedings.”

5. Mr. Moa Imchen, learned Addl. Sr. Government Advocate appearing for the State respondents submitted that the provisional pension of the petitioner has been released as per the direction of this Court given in the W.P.(C) No. 171/2020 mentioned above by the learned counsel of the petitioner. However, the gratuity and commutation entitlements of the petitioner have not been released due to pendency of a criminal proceeding against him, therefore, till such time when the criminal proceeding is finally disposed the respondents cannot release the same.

6. On careful reading of the judgments reproduced herein above the settled principles of law relating to release or withholding of pension and pensionary benefits which are relevant in this case are as follows;

(i) That pension and pensionary benefit are benefits earned by a retired government servant in the course of his past service, therefore, they are his entitlements. He has legal right over them as he has over his property. Thus, pension is like a property within the meaning of Article 300 A of the Constitution. Therefore, a government servant cannot be deprived of the same except by an authority of law. Executive instruction or order which do not have any statutory sanction and hence cannot be termed as law within the meaning of Article 300A cannot therefore, deprive a retired government servant of his pension and pensionary benefits.

(ii) That pendency of a departmental proceeding or criminal proceeding cannot be a reason or basis for depriving a retired government servant of his pension and pensionary benefits unless the same is provided under the relevant pension rules.

7. There is no dispute on the fact that the pension rules which is applicable in the case of the petitioner is Central Civil Services Pension Rules, 1972. The relevant rule is Rule-69 of the same and it reads as follows;

"Rule 69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed

under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

1Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant."

It would be seen from the above rules particularly, 1(c) that no gratuity should be paid to the government servant against whom there is a departmental or judicial proceedings pending until the final order is passed on such proceeding or proceedings. However, to such general rules an exception has been made in the proviso of the same clause for certain categories of departmental proceedings but not for criminal proceedings. Therefore, as per the settled principles of law stated in the preceding paragraph, the petitioner who has judicial proceeding pending against him cannot ask for the release of his gratuity until the final order is passed in

the judicial proceeding pending against him.

As for the commutation there is no specific provision in the CCS Pension Rules which provides for withholding of the same in cases where departmental proceeding or judicial proceeding are pending. Commutation being a part of the pensionary benefits, it cannot be withheld in the absence of such provision in the Pension Rules which empowers the authorities to do so.

In view of the settled principles of law stated above, the prayer of the petitioner is partly allowed. As such, the respondents shall process for payment of his provisional commutation entitlement within a period of 3(three) months from the date of receipt of a copy of this order.

The writ petition is disposed.

Sd/-
JUDGE

Comparing Assistant