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STATE OF WEST BENGAL
v.
HARESH C. BANERJEE AND ORS.

AUGUST 30, 2006

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[Y.K. SABHARWAL, C.J., C.K. THAKKER AND
P.K. BALASUBRAMANYAN, J.J.]

Service Law:

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West Bengal Services (Death—cum—Retirement Benefit) Rules, 1971—Rule 10(1)—Pension—Withholding of—By State—Constitutional validity of—Held: The Rule being the authority of law under which the pension could be withheld, the same cannot be held ultra vires even at the time when pension was a property to which Article 19(1)(f) was applicable—Constitution of India, 1950—Articles 19(1)(f) (since repealed) and 309, proviso thereto.

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The question for consideration in the present appeal was whether Rule 10(1) of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 framed under proviso to Article 309 of the Constitution of India, providing for withholding of the pension would *ipso facto* be *ultra vires*, being violative of Article 19(1) (f) as it stood in 1971 when Rules were framed.

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Allowing the appeal, the Court

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HELD: 1. Rule 10(1) of West Bengal Services (Death-cum-Retirement Benefit Rules, 1971 is the authority of law under which the pension could be withheld on compliance of stipulations of the rule. Such a rule could not be held *ultra vires* even at a point of time when pension was a property to which Article 19(1)(f) of the Constitution of India was applicable. [624-E-F]

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Deokinandan Prasad v. The State of Bihar and Ors., [1971] 2 SCC 330, relied on.

2. Various State Rules or Regulations vest power for withholding or reduction of pension on compliance of principles of natural justice. The question of an order withholding or reducing pension being invalid and bad in law on a legally permissible ground is one thing but to hold the rule *ultra*

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vires is another. If the Government incurs pecuniary loss on account of misconduct or negligence of a Government servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings, he is found guilty of misconduct, negligence or any other such act or omission as a result of which Government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. State Government could not direct cut in pension of officers without giving a reasonable opportunity of hearing. State Government's power to reduce or withhold pension by taking proceedings against a Government servant, even after his retirement is expressly preserved by the rules. [624-A-E]

State of Uttar Pradesh v. Brahm Datt Sharma and Anr., [1987] 2 SCC 179; *State of Punjab v. K.R. Erry*, [1973] 1 SCC 120 and *State of Maharashtra v. M.H. Mazumdar*, [1988] 2 SCC 52, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2579 of 1998.

From Final Judgment and Order dated 6.5.1996 High Court of Calcutta in F.M.A.T. No. 1202/1998.

Tapas Ray, Tara Chandra Sharma and Neelam Sharma for the Appellant.

Amlan Kumar Ghosh (N/P) for the Respondent.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, CJ. The validity of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 [for short 'the Rules'] is in question in this appeal. The Rules have been framed in exercise of power under proviso to Article 309 of the Constitution of India. Rule 10(1) provides for withholding of pension and reads as under :

"10. *Right of the Governor to withhold pension in certain cases.* (1)

The Governor reserves to himself the right of withholding of withdrawing a pension or any part of it whether permanently or for a 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 a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-

A employment after retirement :

Provided that

- B (a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;
- C (b) such departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment.
- D (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 Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;
- E (c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose on an event which took place more than four years before such institution; and
- F (d) the Public Service Commission, West Bengal, shall be consulted before final orders are passed.

Explanation. - For the purpose of this article -

- G (a) a departmental proceeding shall be deemed to have been instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and
- H (b) a judicial proceeding shall be deemed to have been instituted -

- (i) in the case of criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and A
- (ii) in the case of a civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to a Civil Court." B

While granting leave to examine the *vires* of Rule 10(1), it was directed that even if the appeal succeeds, the benefit available to respondent No. 1 as per the judgment of the High Court will not be recalled.

The High Court by the impugned judgment has held Rule 10(1) to be *ultra vires* the provisions of Articles 19(1)(f) and 31(1) of the Constitution. It was held that the pension was a property and its payment does not depend upon the discretion of the Government. C

Pension is not a bounty payable on the sweet-will and the pleasure of the Government and to receive pension is a valuable right of a Government servant is a well-settled legal proposition. The question in the present case, however, is not about the deprivation of the said right by the Government by an executive order but is about the constitutional validity of Rule 10(1) providing for withholding of pension or part thereof in certain cases. D

Articles 19(1)(f) and 31(1) have been repealed by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979. The right to property is no longer a fundamental right. It is now a constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was a fundamental right at the time of framing of Rules in 1971. The question is whether a Rule framed under proviso to Article 309 of the Constitution providing for withholding of the pension would *ipso facto* be *ultra vires*, being violative of Article 19(1)(f) as it stood in 1971 when Rules were framed. E F

The High Court has, in the impugned judgment, made reference to a decision of this Court in *Deokinandan Prasad v. The State of Bihar and Ors.*, [1971] 2 SCC 330 for coming to the conclusion that the rule in question is *ultra vires*. In the said case, this Court held that the right to receive pension was wrongly withheld by an executive order. The Judgment in *Deokinandan Prasad's* case in fact lends support to the *vires* of the rule since it was held in that case that an employee can be deprived of the pension by an authority of law. That authority, in the present case, is contained in the rules [Rule H

A 10(1)], that were framed providing for withholding of the pension.

B Various State Rules or Regulations vest power for withholding or reduction of pension on compliance of principles of natural justice. The question of an order withholding or reducing pension being invalid and bad in law on a legally permissible ground is one thing but to hold the rule *ultra vires* is another. In *State of Uttar Pradesh v. Brahm Datt Sharma and Anr.*, [1987] 2 SCC 179, this Court observed that if the Government incurs pecuniary loss on account of misconduct or negligence of a Government servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings, he is found guilty of misconduct, negligence or any other such act or omission as a result of which Government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. In *State of Punjab v. K.R. Erry*, [1973] 1 SCC 120, it was held that the State Government could not direct cut in pension of officers without giving a reasonable opportunity of hearing. In *State of Maharashtra v. M.H. Mazumdar*, [1988] 2 SCC 52; it was observed that the State Government's power to reduce or withhold pension by taking proceedings against a Government servant, even after his retirement is expressly preserved by the rules.

E Rule 10(1) is the authority of law under which the pension could be withheld on compliance of stipulations of the rule. We are unable to appreciate how such a rule could be held *ultra vires* even at a point of time when pension was a property to which Article 19(1)(f) was applicable.

F In view of the above, we set aside the impugned judgment to the extent it declares Rule 10(1) *ultra vires*. The appeal is allowed accordingly.

K.K.T.

Appeal allowed.