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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1745 of 2018**

Gendram Sahu, S/o Late Ramprasad Sahu, aged about 64 years, Occupation Retired Head Clerk, R/o Near Panchdev Mandir, Mayapur Ward Ambikapur, P.S. Kotwali, District Surguja C.G., Permanent Resident of Village Gidhwa, P.O. Nagda, P.S. Nandghat, Tahsil Navagarh, District Bemetara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Education Department, Mahanadi Bhawan Mantralaya, New Raipur, District Raipur (C.G.)
2. Director, Lok Shikshan Sanchalnalaya, Indrawati Bhawan, Naya Raipur (C.G.)
3. District Education Officer, Ambikapur, Surguja, District Surguja (C.G.)
4. Office of Accountant General New Vidhan Sabha Road, Post Office Mandar Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner :Mr. Suresh Kumar Verma, Adv.

For Respondents No. 1 to 3/State:Mr. Arun Sao, Dy. Adv. General.

For Respondent No. 4 :Mr. Rajkumar Gupta, Sanding Counsel for the Central Govt.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/03/2018**

(1) The petitioner stood retired from the services as Head Clerk on 30.06.2016. He was granted provisional pension to the extent of

Rs.22,000/- per month by the Pension Sanctioning Authority. Thereafter, he was convicted by the jurisdictional Court under Sections 7 & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (henceforth "PC Act") and sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs.10,000/- under Section 7 of the PC Act, and to undergo rigorous imprisonment for four years and to pay fine of Rs.10,000/- under Section 13(1)(d) read with Section 13(2) of the PC Act, with default stipulations. Immediately, thereafter, his pension was withheld by respondent No. 3 – District Education Officer, Ambikapur leading to filing of the instant writ petition.

(2) Learned counsel for the petitioner would submit that no order under Section 8 (1) (b) of Chhattisgarh Civil Services (Pension) Rules, 1976 (henceforth "Pension Rules, 1976") has been passed against the petitioner without giving him due opportunity of hearing and, therefore, withholding of full pension is unsustainable and bad in law, which is liable to be set aside.

(3) Learned counsel for the State would submit that the petitioner has been convicted of a serious crime i.e. under Sections 7 & 13(1) (d) read with Section 13(2) of the PC Act and sentenced for the aforesaid offences as mentioned above and, therefore, his pension has rightly been withheld by the Pension Sanctioning Authority, which does not call for any interference under Article 226 of the Constitution of India.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) At this stage, it would be appropriate to notice Rule 8(1)(b) of the Pension Rules, 1976, which states as under:-

“8. Pension subject to future good conduct.-(1)(a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct :

Provided that, no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the pensioner, to make an appointment to the post held by him immediately before his retirement from service:

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) Where a pensioner is convicted of a serious crime by a Court of law, action under clause (b) of sub-rule (1), shall be taken in the light of the judgment of the Court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is *prima-facie* guilty of grave misconduct, it shall before passing an order under sub-rule (1)-

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days, as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(6) The question whether while withholding the pension or part thereof, an opportunity of hearing is required to be afforded to the petitioner or not.

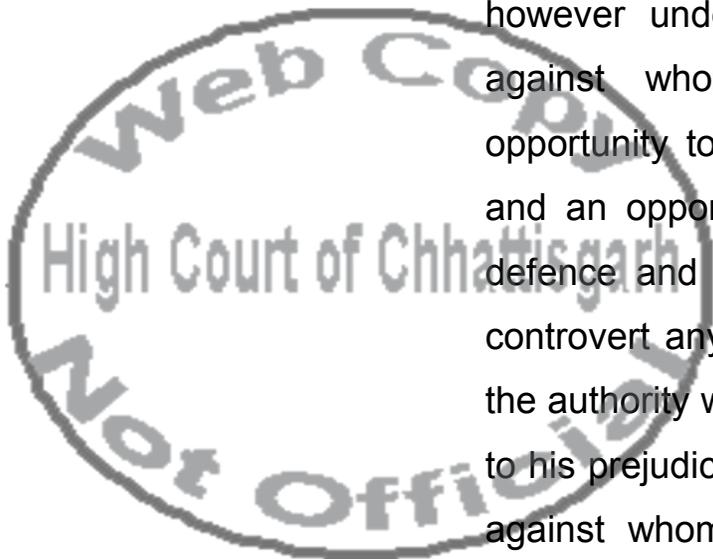
(7) In the matter of State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta & other connected matter¹, their Lordships of the Supreme Court have held as under:-

“20. The question for our consideration now is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies. See: Province of Bombay v. Kusaldas S. Advani, 1950 SCR 621 at p. 725 = (AIR 1950 SC 222) and Board of Higher School & Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta, 1962 Supp (3) SCR 36 (AIR 1962 SC 1110). With the proliferation of administrative decisions in the welfare State it is now further recognized by Courts both in England and in this country, (especially after the decision of House of Lords in 1964 AC 40) that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interests and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See State of Orissa v. Dr. (Miss) Binapani Dei, (1967) 2 SCR 625 = (AIR 1967 SC 1269) and In re H.K. (An Infant), (1967 2

¹ AIR 1973 SC 834

QBD 617. In the former case it was observed at page 628 as follows:

“An order by the State to be prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the persons against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended



to be performed if need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

These observations were made with reference to an authority which could be described as characteristically administrative. At page 630 it was observed:

“It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.”

(8) Subsequently, in the matter of State of **Punjab and another Vs. Iqbal Singh**², their Lordships of the Supreme Court have held that order imposing cut in pension against the convicted government civil servant cannot be passed without giving him proper opportunity of hearing.

2 AIR 1976 SC 667

(9) Recently Full Bench of the Madhya Pradesh High Court in the matter of **Ram Sewak Mishra Vs. The State of Madhya Pradesh and another**³ has framed following question as under: -

“(I) Whether a show cause notice/opportunity of hearing is required to be given to the Retired Government who is convicted of a serious crime by the Court of law ?

Their Lordships have answered the aforesaid question in paragraphs 14, 15 and 16 of the judgment, which state as under:-

“14. In view of the Judgments mentioned above, we find that though the applicability of principles of natural justice can be excluded by necessary implication but the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences relating to infraction of property, personal rights and material deprivations for the party affected. The rule of *audi alteram partem* is the rule of the law without which law would be lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision

³ Writ Petition No.1353/2011, decided on 18th day of July, 2017

conferring the power, the nature of the power, the purpose for which it is conferred and the effect of exercise of that power. The procedural pre-condition of fair hearing, however, minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play “must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands”. The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications.

15. The judgment of Full Bench in the case of **Laxmi Narayan Hayaran Vs. State of M.P. And another**⁴ deals with a situation of termination of an employee on account of conviction in a criminal trial. The said judgment of dispensing with the opportunity of hearing to a pensioner cannot be extended to a case of stoppage of pension. Relationship between employer and employee before the superannuation is governed by the Rules of services. If the rules do not

4 2004 (4) MPLJ 555

permit any opportunity of hearing, the same can be excluded. It may be required in case of serving officer as it is not in public interest to allow a tainted person in public employment. It has been so ordered relying upon the Constitutional Bench judgment in the case of **Union of India Vs. Tulsiram Patel**⁵. But after retirement, the pensioner is entitled to pension in view of his past service under the State. An employee earns his pension. Pension is not a bounty, but a benefit earned by him by serving State for many years. The deprivation of such pension affects civil rights of the pensioner, the means of survival. Though sub-rule (2) of Rule 8 of the Pension Rules is silent about opportunity of hearing, but neither the dispensing with an opportunity of hearing is urgent nor is any other purpose expected to be achieved by denying the benefit of opportunity of hearing.

If an opportunity of hearing is granted, an employee can point out the mitigating family circumstance, the role in the criminal trial which led to his conviction or other circumstances as to why the pension should not be stopped and that too for life. Therefore, in case of a pensioner, the rule of natural justice would warrant an opportunity of hearing, at least of serving a show cause and elucidating the reply of the pensioner and thereafter, pass an order as may be considered appropriate by the authority so as to enable the appellate authority or the judicial courts to test the legality of the same while exercising the powers of the judicial review.

16. Thus, the first question of law is answered that

5 (1985) 3 SCC 398

a show cause notice is required to be given to the retired government servant convicted by the criminal Court. As a consequence thereof, we find that the order passed by this Court in the case of **Dau Ram Maheshwar Vs. State of M.P. and another**⁶ is correctly decided.”

(10) Not only this, in the matter of **Rameshwar Yadav Vs. Union of India & another**⁷, their Lordships of the Supreme Court while dealing with the question of withholding pension have held that the competent authority shall apply its mind to the question as to whether the pension should be suspended or not. Relevant paragraphs of the report state as under:-

“4. These provisions require the competent authority to apply its mind to the question as to whether the pension should be suspended in whole or in part. While determining this question the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed and other allied matters. The officer has also to consider the hardship on the dependants of the person, if the payment of pension is suspended. In the instant case, the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of the entire amount of pension for the period of imprisonment of the petitioner.

5. That apart, the amount of pension granted to the

⁶ 2017 (1) MPLJ 640

⁷ 1989 Supp (2) SCC 565

petitioner was Rs.108 which is a paltry amount and which in all likelihood may not be sufficient to sustain the petitioner's family members. The competent authority did not address himself to any one of these aspects. No reasons are recorded as to why the entire pension was necessary to be suspended. The impugned order is therefore unsustainable in law.”

(11) Following the principles of law laid down by the Supreme Court in the aforesaid cases (supra) and the Full Bench of the Madhya Pradesh High Court in the matter of **Ram Sewak Mishra** (supra) in the facts and circumstances of the case, it is quite vivid that though the petitioner was granted provisional pension by the order of Pension Sanctioning Authority but his pension has been withheld in full without passing any order and without giving any opportunity of hearing to the petitioner as per Rule 8 (1)(b) of the Pension Rules, 1976, therefore, the impugned order is liable to be set aside. The matter is remitted back to the Pension Sanctioning Authority i.e. respondent No. 3- District Education Officer to consider and decide the petitioner's pension case, after issuing him show cause notice and after affording due opportunity of hearing, and pass reasoned and speaking order in terms of Rule 8(1)(b) of the Pension Rules, 1976 after applying its mind and principles of law laid down by the Supreme Court in **Rameshwar Yadav** (Supra) & the Full Bench of the Madhya Pradesh High Court **Ram Sewak Mishra** (supra) expeditiously preferably within a period of 45 days from the date of receipt of certified copy of this order.

(12) The writ petition is allowed to the extent indicated hereinabove.

No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 1745 of 2018

Petitioner : Gendram Sahu

Versus

Respondents : State of Chhattisgarh & others.

Head Note

English

(1) Government servant's pension on his conviction for criminal charge cannot be withheld without giving a reasonable opportunity of show cause.

HINDI

(1) कारण बताने का उचित अवसर प्रदान किए बिना दण्डिक आरोप में सरकारी कर्मचारी की दोषसिद्धि पर पेन्शन रोकी नहीं जा सकती ।

