

## State Of West Bengal vs Haresh C. Banerjee & Ors on 30 August, 2006

**Equivalent citations: 2006 AIR SCW 5076, (2006) 48 ALLINDCAS 558 (SC), (2006) 5 SERVLR 621, (2006) 111 FACLR 318, (2006) 3 LABLJ 806, 2006 (7) SCC 651, MANU/SC/3664/2006, (2006) 8 SCALE 693, (2006) 4 KER LT 44, (2006) 4 PAT LJR 142, (2006) 3 SIM LC 304, (2007) 2 SERVLJ 74, (2006) 3 CURLR 429, (2006) 6 SUPREME 727, (2007) 2 LAB LN 117, (2006) 4 SCT 182, 2006 ALL CJ 3 2013, (2007) 1 CAL HN 176**

**Bench: C.K. Thakker, P.K. Balasubramanyan**

CASE NO.:

Appeal (civil) 2579 of 1998

PETITIONER:

State of West Bengal

RESPONDENT:

Haresh C. Banerjee & Ors.

DATE OF JUDGMENT: 30/08/2006

BENCH:

Y.K. Sabharwal, C.K. Thakker & P.K. Balasubramanyan

JUDGMENT:

**J U D G M E N T** Y.K. Sabharwal, CJI.

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 or 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-employment after retirement :

Provided that

(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;

(b) such departmental proceedings, if not instituted while the officer 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 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;

(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

(d) the Public Service Commission, West Bengal, shall be consulted before final orders are passed.

Explanation. For the purpose of this article

(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

(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

(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."

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.

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. 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.

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