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they merely pleaded non-liability and made no returns. On the strength of Section 45-A the contribution was determined without hearing. In the circumstances of the case,—and the learned Attorney General has no objection—we think it right to direct the relevant Corporation authorities to give fresh hearing to the principal employers concerned.”

(8) For the reasons recorded aforesaid, F.A.O. Nos. 275 and 276 of 1988 succeed as indicated above and F.A.O. Nos. 500 and 501 of 1990 are dismissed, but there will be no order as to costs.

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J.S.T.

(FULL BENCH)

Before M. S. Liberhan, Jawahar Lal Gupta and V. K. Jhanji, JJ.

DR. ISHAR SINGH.—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 4970 of 1988

12th January, 1993.

(1) *Punjab Civil Services Rules, Vol. II—Rls. 2.2 (a) (b) (c), 9.9, 9.14 and 9.16—Pension and Gratuity Act, 1871—S. 11—Pensionary benefits—Person due to retire—Initiation of disciplinary proceedings one day before date of his retirement—Effect of on commutation during pendency—Held, State is bound to pay 100 per cent provisional pension—Mere anticipation of finding pensioner guilty of misconduct or finding he caused pecuniary loss to State cannot affect his right to pension though other retiral benefits can be withheld in order to protect State's interest.*

*Held*, that since the statutory rules provide for sanction of 100 per cent provisional pension. I fail to comprehend that the legislature would have intended to affect the pension in anticipation of finding the pensioner guilty of misconduct or his conviction in judicial proceedings or finding him having caused pecuniary loss to the State during the tenure of service. The State cannot escape its liability to pay pension solely in anticipation of the liability of the pensioner being fixed in disciplinary proceedings initiated. Allowing the State to pay reduced pension in anticipation of an adverse finding in a pending proceedings, as suggested by the

learned counsel for the respondents, in my considered view would be not only oppressive to the retiree but also amount to punishment before the trial. As regards protection of the State's interest, these have been sufficiently protected particularly when the State has been empowered to withhold all other retiral benefits like death-cum-retirement, gratuity, salary etc. payment on account of leave encashment to which an employee is entitled on the eve of retirement. The pension is granted and protected with a view to provide subsistence to the elder members of the society. Another significant factor which can be taken note of is that no recovery can be made from the pension except with the consent of the pensioner for any amount due to the Government from the pensioner. It is thus a deliberate and conscious provision enacted by the legislature in the rules. Petitioners cannot be deprived of their legitimate rights inferred by the statutory rules on excussals etc. Keeping in view the conceptual aspect of the pension and reading the rules whether in isolation or collectively, I cannot comprehend any basis or ground or circumstances provided statutorily or otherwise under which pension or any part thereof can be withheld on retirement. Further, I am of the view that granting a right to the State to withhold pension in anticipation of the action to be taken against the delinquent would result in obliterating the statutory provisions resulting in draconian rule of law and producing an unjust result. It would be rendering negatory what the statute has expressly provided. It would render the object of pension as farce. Very laudable social protection granted would be rendered as therapeutical service. Thus, the only functional construction which can be put on the rules is that the retiree would be entitled to 100 per cent provisional pension till the government finally sanctions the pension or imposes any cut in the pension. (Paras 63, 64, & 65)

*(2) Punjab Civil Services Rules, Vol. II—Delay in initiation of disciplinary proceedings—Limitation—Proceedings can be initiated at any time irrespective of time-lag between incident and superannuation of employee—Delay, causing prejudice to delinquent may result in quashing of proceedings—No discrimination in providing limitation for commencement of enquiry proceedings after retirement and not providing such limitation in cases where a person is in service—Delay has to be seen in the facts and circumstances of each case.*

*Held, that Government can initiate and continue with the departmental proceedings or an enquiry at any time. Mere lapse of time or the person having superannuated during the pendency of the enquiry would not by itself inevitably result in lapse of proceedings. At the same time, the enquiry proceedings cannot be permitted to continue indefinitely. Though there is no time limit provided in which the proceedings must be initiated before retirement and may continue after retirement, yet keeping in view the peculiar facts and circumstances of each case, the delay causing prejudice to the delinquent in his defence or trial may result in quashing the proceedings. I may observe that burden of proof of prejudice caused by delay would be on the person seeking the quashing of proceedings. Resultantly the conclusion warranted*

from the above discussion is :—(i) The Government can continue with the departmental enquiry proceedings initiated before retirement of a person irrespective of the time lag between the incident and superannuation of the employee, (ii) The enquiry proceedings cannot be quashed solely on the ground of long pendency alone, (iii) The Government can continue with the departmental enquiry initiated after long lapse of the alleged incident inspite of the fact that the delinquent has superannuated, (iv) There is no discrimination in providing limitation for commencement of the enquiry proceedings after the retirement and not providing such limitation in cases where the person is in service. The consequences of delay would be judged in the facts and circumstances of each case.

(Paras 76 & 77)

*Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may send for the record of the case and upon its perusal be pleased to :—*

- (i) *issue a writ, order or direction in the nature of certiorari and/or otherwise, setting aside the impugned show cause notice 'P/5' served upon the petitioner.*
- (ii) *issue a writ order or direction in the nature of prohibition and or otherwise, for bearing respondent No. 1 from proceeding with the matter, designed to impose a cut in the petitioner's pension.*
- (iii) *issue a writ, order or direction in the nature of mandamus, and/or otherwise, commanding the respondents to :—*
  - (i) *release full gratuity amount admissible to the petitioner and also permit commutation of pension in accordance with the Pension Rules ;*
  - (ii) *release the last month's pay and facility of medical reimbursement due to the petitioner ;*
- (iv) *issue a similar writ, order or direction for the payment of penal interest to the petitioner by way of compensation for the delayed release of his retiring dues;*
- (v) *grant any other relief that this Hon'ble Court may in the circumstances of the case from fit and proper*
- (vi) *dispense with the filing of originals/certified copies of documents 'P/1' to 'P/6' of which true copies have been annexed ; and*
- (vii) *award the costs of this writ petition in favour of the petitioner.*

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*(This case was referred by the Hon'ble Mr. Justice Jawahar Lal Gupta on 17th July, 1991, to a larger Bench for deciding an important question of law involved in this case. The Full Bench consisting Hon'ble Mr. Justice M. S. Liberhan, The Hon'ble Mr. Justice J. L. Gupta, and The Hon'ble Mr. Justice V. K. Jhanji decided the important question of law vide judgment dated 12th January, 1993 and directed that the case be listed before Single Bench for disposal).*

K. K. Jaggia, Advocate, for the petitioner.

G. K. Chatrath A.G., Punjab with S. S. Saron, DAG, (Punjab), for the Respondents.

### JUDGMENT

*M. S. Liberhan, J.*

The principal questions which fall for considerations from the reference order dated 17th July, 1991 can safely be itemised as under :

1. Whether withholding or postponing the payment of pension or gratuity amount due on account of commutation of pension is permissible in law ?
2. Whether the authorities could withhold or postpone the payment of retiral benefits ?
3. Whether the Government can initiate or continue with the departmental enquiry long after the date of alleged lapse inspite of the fact that the Officer had retired from service many years back ?
4. Should the enquiry proceedings be quashed on the ground of long pendency alone ?

(2) It is expedient to collate the facts and circumstances under which the case has come before the Full Bench. Though facts in the writ petitions being disposed of by this judgment are distinct but in order to answer the questions succinctly facts from civil writ petition No. 4970 of 1988 *Dr. Ishar Singh vs. State of Punjab and another* may be taken.

(3) Petitioner joined as Assistant Dental Surgeon in the year, 1949. He was promoted to various posts including that of head of the Department in 1975. Lastly he was promoted and posted as Principal, Dental College and Hospital, Amritsar. He retired from

service on superannuation on 31st August, 1982. The petitioner's son was admitted to the M.D.S. Course, in the specialisation of oral surgery in Guru Nanak Dev University on 26th August, 1977. On the eve of his retirement i.e., on 30th August, 1982 a day prior to his superannuation charges were levelled against the petitioner that while posted as Principal, Dental College and Hospital, Amritsar, (i) he fraudulently and dishonestly secured admission of his son in M.D.S. Course by attesting a copy of a forged certificate certifying his son having secured higher marks than in fact secured by him in his B.D.S. Examination; (ii) he in connivance with his subordinates caused disappearance of the original record with regard to the admission of his son.

(4) The petitioner was sanctioned 100 per cent provisional pension, though his gratuity was withheld. Petitioner's claim for commutation of pension was also denied.

(5) The petitioner challenged the order of granting provisional pension, refusal to allow commutation of pension and withholding of gratuity, albeit no proceedings for imposing a cut in the pension could have been initiated against the petitioner with regards to events that had happened more than 4 years ago. It was further claimed that denial of benefit of the rule of limitation for initiating proceedings for withdrawing or withholding of pension to the persons about to retire while benefit of such limitation was granted to those who have just retired amounts to artificial and arbitrary classification as there is no nexus for treating the persons who have recently retired as a Class by themselves and putting a bar against initiation of proceedings against them with respect to events that occurred 4 years before while persons on the verge of retirement can be proceeded against for such events with the object to be achieved by the rules.

(6) Payment of his last month's pay and the bills of medical reimbursement was sought. Further a prayer for quashing the notice for imposition of a cut of 10 per cent in pension *vide* order dated 18th January, 1988 was made.

(7) Petitioner in civil writ petition No. 12654 of 1990 retired on 30th November, 1989 on superannuation while a chargesheet was served on him on 29th November, 1989. Full pension was released to him provisionally but his other retiral benefits were withheld.

(8) Petitioner in CWP No. 2825 of 1986 was retired on 31st December, 1986 and a charge sheet was served on him on 29th January, 1986.

(9) In these petitions the issuance of charge sheet has been challenged, apart from the grounds of challenge stated above on the ground that the relationship of master and servant ceased on the retirement of the petitioner and hence no enquiry can proceed against him.

(10) In the other writ petition No. 6305 of 1986 the petitioner was suspended on 16th November, 1983 and reinstated on 12th April, 1984. Finally a charge sheet was issued to him on 1st July, 1984. During the pendency of the enquiry provisional pension initially at 75 per cent of the pension and thereafter 20 per cent more was released. Finally on 28th August, 1986 a cut of 10 per cent in the pension of the petitioner was imposed after returning a finding that the charges of (i) purchase of stocks already available (ii) purchase of stocks beyond the prescribed stock limit particularly of slow moving articles at high rates stood proved. Except for imposing a cut of 10 per cent in the pension, all other retiral benefits were released, after reviewing the conduct of the petitioner during the tenure of service. Petitioner claimed that pension can not be retained to recover Government dues.

(11) In civil writ petition No. 1173 of 1987 the petitioner retired on 30th November, 1986. A charge sheet was served on him on 25th November, 1986 with respect to irregular sanction of leave period when the petitioner went for foreign assignment. Some other demands were also made but they are irrelevant for the purpose of disposing of the writ on merit.

(12) Penultimate questions which survive for consideration are the same as referred to above in all the writ petitions, although the facts slightly differ. So far as the pension rules are concerned, these are substantially the same in the two States of Punjab and Haryana.

(13) Learned counsel for the petitioners articulated the questions as under :—

“Whether the Government has the right to withhold the pensionary benefits simply because some charge sheet has been served or no further action has been taken on the charge sheet already served/enquiry proceedings initiated ?

(13-A) It was urged that grant of pension is implied and it comes into operation from the date of person retires from service irrespective of pendency of any proceedings.

(14) Learned counsel for the petitioners argued that Government has no right to withhold or postpone the pensionary benefits. Once a person has retired his pension cannot be withheld on a finding of misconduct or negligence during the period of service including the service rendered by an employee during his re-employment. The finding of misconduct has to precede the order adversely affecting the pension in any manner. The enquiry proceedings cannot continue indefinitely. Delay is enough to quash the proceedings. The finding of misconduct has to precede the order adversely affecting proceedings after retirement should be read into the rules authorising to initiate proceedings before retirement. It has been vehemently argued that there is no right with the Government to withhold pension in anticipation of the exercise of its right to withhold or withdraw the pension. In the same strain the learned counsel argued that any amount due from the pensioner to the Government or any liability of the pensioner towards the Government would not adversely affect the retiree in his entitlement for pension. State could exercise its right to recover its dues or enforces the liability of the pensioner or recover the pecuniary loss caused by the pensioner to the State in accordance with law, without affecting the pension. It was urged that under the statutory rules there is nothing known as interim pension, full pension has to be paid. The withdrawal or withholding of the pension can be prospective and not retrospective. The word provisional in sanctioning the pension is of insignificant consequence.

(15) The learned counsel for the petitioner has laid his emphasis on the statutory provisions of Rule 2.2(b) of the Punjab Civil Service Rules Volume II relating to pension hereinafter referred to as the Rules.

(16) The learned counsel for the petitioner further argued that the enquiry proceedings cannot continue for an indefinite period. It was argued that the period of 4 years statutorily provided under the rules for initiating proceedings with respect to an incident after the retirement would *ipso facto* apply to the proceedings initiated before retirement. No proceedings can be initiated with respect to an incident that had occurred 4 years prior to the date of retirement.

(17) It was further contended that the mere lapse of a long period by itself vitiates the proceedings initiated against the delinquent. The delay by itself causes prejudice to the employee in conduct of proceedings against him. Consequently the delay by itself is a sufficient ground to quash the disciplinary proceedings or proceeding for imposing cut in the pension.

(18) Lastly, learned counsel for the petitioner argued that no reference could have been made to the Full Bench in view of the judgment *K. N. Dait v. State of Haryana and others* (1), which is a Division Bench judgment and is binding on a single bench. It was vehemently argued that the single bench cannot doubt Division Bench judgment and is rather bound to follow it.

(19) In order to support his submissions the learned counsel for the petitioner referred to a catena of authorities laying down basic principles regarding the concept of pension, it being a right to property etc. viz., *Union of India, and another vs. Wing Commander R. R. Hingorani (Retd.)* (1-A), *Vidya Sagar Sharma v. State of Himachal Pradesh and others* (2), *State of Punjab v. Kailash Nath* (3), *J. K. Dhir, Chief Engineer, Lining/Planning PWD (Irrigation Branch) Chandigarh vs. The State of Punjab and others* (4), *R. P. Nair vs. Kerala State Electricity Board* (5), *State of Punjab vs. K. R. Erry* (6), *D. N. Guati v. The State of Haryana and others* (7), and *M. Narasimhachar v. The State of Mysore* (8).

(20) The learned counsel for the respondents refuted the submissions made on behalf of the petitioners. It was argued that the State has retained the power to impose cut in pension both at the time of retirement i.e., before granting pension as well as after it has been granted i.e., after retirement. There is no limit provided for imposing cut in pension. The pension can be withheld or withdrawn in its entirety. It was vehemently contended that good conduct during service and after the service is a pre-requisite for granting pension or its continuity. Good conduct during the service is a pre-condition to earn pension for assessing pension and impliedly good conduct after granting of pension is a condition precedent for its continuance. Great emphasis was laid down on rule 2.2(a), (b), (c) to 2.8(1).

(21) The learned counsel for the State of Haryana adopted the arguments of the learned counsel for the State of Punjab. He

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(1) 1991(1) S.L.R. 223.

(1-A) 1987(1) S.L.R. 479.

(2) 1986(4) SLR 650.

(3) 1989(1) RSJ 448.

(4) 1987(4) SLR 72.

(5) 1979(1) SLR 384.

(6) 1978 SLR 836.

(7) 1984(3) SLR 764.

(8) AIR 1960 SC 247.



further argued that for withholding of pension no outer limit can be fixed. The petitioner is not entitled to full pension as a matter of right.

(2) Learned counsel for the respondents have relied on *State of Madhya Pradesh v. Bani Singh* (9), *State of Maharashtra v. Champalal, Punjabi Shah* (10), *Jitendra Jayantilal Joshi v. State of Gujrat and others* (11), and *B. D. Mathur vs. State of Punjab and others*, (12).

(23) It was argued on behalf of the respondents that mere delay by itself is not sufficient to quash departmental proceedings against the delinquent. The delay has to be seen in the facts and circumstances of each case. It is to be seen whether the delay has caused any prejudice to the delinquent or not. The learned counsel for the respondent relied upon *State of U.P. v. Brahm Datt Sharma* (13), *K. Jayaraman v. Supdt. of Police Erode and another* (14), *State of Andhra Pradesh vs. P. V. Pavithran* (15).

(24) Pension may be of various nature. To answer the proposition before us we are concerned presently with the pension which is in lieu of the service rendered.

(25) Conceptually relying on the judgments in *Deolki Nandan Prasad vs. State of Bihar and others* (16), and *State of Punjab and another vs. Iqbal Singh* (17), which were subsequently followed, it has become axiomatic that providing pension on retirement is one of the steps for implementation of the directive principles of our Constitution. The Constitution expects the State to provide adequate means of livelihood when the health and strength for strenuous work starts failing. It is one of the safeguards against exploitation of elderly people of the society. The concept of pension is in conformity and in consonance with the concept of social justice and is an

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(9) AIR 1990 S.C. 1308.

(10) AIR 1981 S.C. 1675.

(11) 1978(2) SLR 728.

(12) 1992(3) RSJ 162.

(13) (1987)2 S.C. cases 179.

(14) 1991(2) LLJ. 5.

(15) JT 1990(1) S.C. 43.

(16) (1971) Suppl. S.C.R. 634.

(17) 1976(3) S.C.R. 360.

essential feature in a welfare state. It is one of the steps by which State attempts to secure living with dignity at the fag end of life. In a welfare State it is normal expectation that the State would provide the mechanism to protect the individuals against forced working unsuitable to ones health.

(26) In the same strain the Hon'ble Supreme Court has observed that the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It creates a vested right subject to the statutory rules framed in exercise of powers conferred by proviso to Article 309 and clause (5) of Article 148 of the Constitution. It is an indefeasible right to property. Pension can not be termed as an ex-gratia payment instead it is a payment for the past service rendered. It is a part and parcel of the conditions of service. The right to get pension does not depend on the discretion or sweet will or pleasure of the Government, though it is subject to the statutory rules. The pension cannot be equated with a doll and quantum of pension is corelated to the average emoluments drawn and availability of the resources with the State. It was further observed that this right to property is granted with an object of setting up of political society with a goal to set up a welfare state in consonance with directive principles of the Constitution.

(27) I may venture to state that some of the principles other than the conceptual aspect of pension referred to in the earlier part of judgment which emerge from the reading of judgments of Hon'ble Supreme Court reported as *State of U.P. vs. Brahm Datt Sharma* (18), and *Union of India v. R. R. Hingorari* (19), and the judgments of various High Courts in *D. V. Kapoor v. Union of India* (20), *D. N. Gulati v. The State of Haryana and others* (21), *Vidya Sagar Sharma vs. State of Himachal Pradesh and others*, (22), *R. P. Nair v. Kerala State Electricity Board* (23), *S. R. Mehta v. Union of India* (24), *Bhattacharyya v. State of West Bengal* (25), and *J. K. Dhir, Chief Engineer Lining/Planning PWD (Irrigation Branch) Chandigarh v. The State of Punjab and others* (26).

(18) (1987)2 S.C. cases 179.

(19) 1987(1) S.L.R. 479.

(20) 1990(3) S.L.R. 5

(21) 1984(3) S.L.R. 764.

(22) 1986(4) S.L.R. 650.

(23) 1979(1) S.L.R. 384.

(24) 1980(1) S.L.R. 1.

(25) 1987(2) S.L.R. 512.

(26) 1987(4) S.L.R. 72.

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(28) The Government is empowered to withhold, withdraw or reduce pension for proved mis-conduct during the tenure of service. Proceedings may be initiated during service or after retirement. Proving grave misconduct or initiation of criminal judicial proceedings is quite essence for withholding or withdrawing pension. Statutory rules empower or authorize the State to withhold, withdraw partly or wholly pension on account of events provided for by the Statute. The rules expressly preserve the right of the State to withhold pension. The pension is admissible under the statutory rules. Retirement by itself does not wipe out the liability of the retiree for his delinquency or loss caused to the employer during the tenure of his service. Retiral benefits carry with them the liabilities of retiree.

(29) The incident of good conduct during service and after service i.e., future conduct is one of the implied conditions of pension.

(30) The pension can be affected for the reasons provided by statutory rules. The pensionary or retiral benefits could not be refused solely on the ground of initiation or intending initiation of disciplinary proceedings. The finding of misconduct envisaged by rules is a pre-condition for withholding or withdrawing pension. Pension can be affected but the reduction has to be commensurate with the co-relation to the gravity of the charge attributed. Pension can only be adversely affected after show cause notice is served and finding returned in accordance with the procedure laid down by the statutory rules as well as keeping in view the principles of natural justice. The pension cannot be withheld retrospectively though it can be done prospectively. Concept of grant of provisional pension is provided under two contingencies viz., (i) when grant of gratuity or pension is still under consideration of the authority before it finally sanctioned the pension. The Government was unable to finalise the pension and finally determine the admissible pension for some reasonable cause and (ii) where some disciplinary proceedings are pending on the date of superannuation and they are continued after retirement.

(31) Pension cannot be adversely affected nor a decision can be taken for withholding pension during the pendency of the disciplinary proceedings whether initiated before or after the retirement but it can be adversely affected after the conclusion of the enquiry.

(32) The action affecting the pension in contemplation of an act has to be provided statutorily, otherwise it cannot be resorted to solely on the ground that some enquiry is in contemplation, though

disciplinary proceedings initiated for mis-conduct before the retirement can continue for imposing a cut in pension. The continuance of the disciplinary proceedings is for a limited purpose i.e., to determine the pecuniary loss caused by the pensioner during the tenure of his service and to order its recovery. No disciplinary proceedings can continue after superannuation except for restricted and limited purpose of withdrawing or withholding pension. The retiree has not to wait for grant of pension. On retirement pension has to be granted and the Government has only to quantify the pension permissible. It may be taken note of that while interpreting pension rules, they should not be read in technical sense.

(33) While interpreting pension rules one has to keep in mind that justice is constant. Its object and purpose is to render each one his due. The prime consideration of pension is its social welfare nature. Attempts must be made not to negate what the pension rules intend to achieve. Though sympathy may be irrelevant in the interpretation of the rules yet the fact of an interpretation resulting in depriving a person of his pension, and thereby rendering the purpose of pension rules as nonest cannot be lost sight of. Since the pension rules provide for alleviating hardship to the retiree, rule of interpretation according to spirit and not to the letters should be adhered to as far as possible. Law is for deviating hardship and not to result in hardship. It would be misplaced to mention that it is a serious matter to deprive a person his source of livelihood when ones physical and mental faculties have grown weak because of age and he cannot withstand strenuous work to earn his bread.....

(34) The pension rules has to be read in its pith and substance. Attempt should be made to put functional construction on the rules, as available to the common sense, keeping in view that law is just, regardless of consequences. At the same time it should be kept in mind that absurd illogical or anomalous result must be avoided, particularly keeping in view the principle that what must not be done, directly should not be allowed to be done indirectly. The pension rules must be given a liberal construction and not a narrow pendentive one.

(35) Keeping in view the principles, the concept, objective and the intention of the pension rules culled out above from various precedents and further keeping in view the object and the intention behind the concept of grant of pension. I am of the view that as human motives are often mixed up, no language can be given mathematical and mechanical meaning and Courts must step in to give effect to the intention of the Legislature.

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(36) At this stage I may note the function of the notes as observed by the Apex Court in *Tara Singh versus State of Rajasthan and another*, (26-A) it was observed that notes are promulgated with rules in the exercise of powers under article 309. Function thereof is to provide procedure and to control discretion. The purpose of notes is where rules are silent, the notes will fill the gap, though notes do not confer new rights. Infact these are not only aids in applying the rules but also interpreting true import of rules as they are part of rules and for guidance to the authorities. They fill up the gaps where the rules are silent. Notes are to make explicit what is by implication therein the rules.

(37) At this stage it would be expedient to briefly and succinctly refer to the material provisions of the rules so that the substance of the scheme, procedural as well as substantive, may be taken note of.

(38) Rule 2.1 commands that the pension shall be held to have been granted subject to the condition imposed by statutory rules. The commanding rule 2.1 runs as under :—

‘Every pension shall be held to have been granted subject to the conditions contained in chapter VII of these rules’.

(39) It is categorically discernible from the plain reading of Rule 2.1 that the pension shall be deemed to have been granted, of course subject to the conditions provided by rules.

(40) The State has reserved its right to withhold or withdraw pension or any part of it by enacting rule 2.2(a) and 2.2(b) read with 2.2(c) of the rules. We are not materially concerned with rule 2.2(a). Since the main emphasis was laid on rule 2.2(b) and 2.2(c), hence they are pertinently noted as under :

**Rule 2.2(b)**

“The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty

of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement. Provided that—

- (1) Such departmental proceedings, 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,
- (2) 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 Government.
  - (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 in which an order of dismissal from service could be made in relation to the officer during his service.
- (3) No such judicial proceedings, 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 or an event which took place more than four years before such institution; and the Public Service Commission should be consulted before final orders are passed.

**Rule 2.2(c)**

- (1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceedings is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings,

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final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon. The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority.

- (2) Payment of provisional pension made under sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

(41) The rule making authority has provided elaborately time table as well as the procedural steps for granting pension for which reference may be made to Rule 9.1 to Rule 9.8.

(42) Rule 9.9 provides for exigencies where inspite of the time bound procedure provided and the earnest efforts on the part of the State, grant of pension may take time, the provision enables the State to grant a provisional pension for not beyond six months from the date of retirement.

Rule 9.9 runs as under :

“Provisional Pension—(1) The various stages of action laid down in rule 9.4 shall be strictly followed by the Head of Office. There may be an isolated case where, inspite of following the procedure laid down in rule 9.4, it may not be possible for the Head of Office to forward the pension papers referred to in rule 9.6 to the Accountant-General, Punjab, within the period prescribed in sub-rule (4) of that rule, or where the pension papers have been forwarded to the Accountant General, Punjab within the prescribed period but the Accountant General, Punjab has returned them to the Head of Office for eliciting further

information before issue of pension payment order and order for the payment of gratuity and if the Head of office in such a case is of opinion that the Government employee is likely to retire before his pension or gratuity or both, can be finally assessed and settled in accordance with the provisions of these rules, he shall without delay take steps to determine the qualifying years of service and the emoluments qualifying for pension after making the summary investigation carefully for this purpose, he shall—

- (i) rely upon such information as may be available in the official records; and
  - (ii) ask the retiring Government employee to file an affidavit on plain paper stating the total length of qualifying service including details of emoluments drawn during the last ten months of service but excluding the breaks and other non-qualifying period of service.
- (2) The Head of Office shall thereafter determine the qualifying years of service and the emoluments qualifying for pension in accordance with the information available in the official records and the information obtained from the retiring Government employee under sub-rule (1). He shall then determine the amount of pension and the amount of death-cum-retirement gratuity.
- (3) After the amount of pension and gratuity have been determined under sub-rule (2) the Head of Office shall take further as follows :—
- (a) He shall issue a sanction letter addressed to the employee endorsing a copy thereof to the Accountant General, Punjab authorising—
    - (i) hundred per cent of gratuity as under sub-rule (2) as provisional pension; and
    - (ii) hundred per cent of gratuity as determined under sub-rule (2) as provisional gratuity withholding ten per cent of gratuity or one thousand rupees, whichever is less.
  - (b) He shall indicate in the sanction letter the amount recoverable from the gratuity under sub-rule (1) of rule 9.8. After issue of the sanction letter he shall draw—



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- (i) the amount of provisional pension; and
- (ii) the amount of provisional gratuity after deducting therefrom the amount mentioned in sub-clause (ii) of clause (a) and the dues, if any, mentioned in rule 9.16 in the same manner as pay and allowances of the establishment are drawn by him.
- (4) The amount of provisional pension and gratuity payable under sub-rule (3), shall, if necessary, be revised on the completion of the detailed scrutiny of the records.
- (5) (a) The payment of provisional pension shall not be made beyond a period of six months from the date of retirement of the Government employee. If the amount of final pension and amount of final gratuity have been determined by the Head of Office in consultation with the Accountant General, Punjab before the expiry of the said period of six months, the Accountant General, Punjab, shall issue the pension payment order and order for the payment of gratuity accordingly after adjusting the outstanding Government dues, if any, and provisional payments already made.
- (b) If the final amount of pension and gratuity have not been determined by the Head of Office in consultation with the Accountant General, Punjab within the period of six months referred to in clause (a), the Accountant General, Punjab, shall treat the provisional pension and gratuity as final and shall issue pension payment order and order for the payment of gratuity accordingly immediately on expiry of the said period of six months.
- (c) The payment of the amount withheld from the gratuity shall be authorised after deducting therefrom the amount, if any, outstanding against the Government employee which may have come to the notice of the Head of Office after the authorisation of provisional gratuity.
- (6) (a) If the amount of provisional pension disbursed to a Government employee under sub-rule (3) on its final assessment under sub-rule (4), is found to be in excess of the final pension assessed by the Accountant General, Punjab, it shall be open to the Accountant General, Punjab to

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adjust the excess amount of pension in the gratuity withheld under sub-clause (ii) of clause of sub-rule (3) or recover the excess amount of pension in instalments by making short payments of pension payable in future.

- (b) If the amount of gratuity so disbursed proves to be larger than the amount finally assessed the retired Government employee shall not be required to refund the excess amount actually disbursed to him.
- (c) The Head of office shall ensure that chances of disbursing the amount of gratuity in excess of the amount finally assessed are minimised and officials responsible for the excess payment shall be accountable for the over-payment."

(43) Almost in the similar and *pari-materia* circumstances rule 9.14 provides for grant of provisional pension where departmental or judicial proceedings are pending against the retiree at the time of his retirement. Provisional pension can be fixed for the period commencing from the date of retirement till the final conclusion of proceedings. Reference to rule 9.14(2) would be helpful in interpreting rule 2.2(b) which is under consideration. Rule 9.14(2) runs as under :

"Payment of provisional pension made under sub-rule (1) shall be adjusted against the final retirement benefits sanctioned to such Government employee upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period".

(44) Revision of pension after authorisation i.e. once final pension is sanctioned, cannot be done except to correct clerical error or when State passes any order in exercise of its power under rule 2.2.

(45) There is, nor can be, only dispute that if any order to the disadvantage of the petitioner is to be passed, the same could be passed after observing principles of natural justice including the procedure prescribed by the rules.

(46) Rule 9.16 specifically provides that for recovering the Government dues recovery can be effected from death-cum-retirement gratuity. In case of excess payment of pension, it is incumbent on the Government to serve a notice requiring the pensioner

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to refund the excess payment made and if not refunded the Government is entitled to recover the same in instalments by making short payments.

(47) Almost *pari-material* are the procedural rules for grant of pension in Haryana as provided by Rule 9.1.

(48) Further Rule 9.5 provides that pension is to be granted subject to the verification of the service rendered by the Government employee.

(49) Keeping in view what has been stated in the earlier part of judgment I would endorse the view that the pension rules need and must receive liberal construction inspired by broad and general spirit as the rules are meant for securing social and economic protection of life. Since justice is the prime consideration to a retiree, it should be real justice keeping in view the ground realities. The rules should not be read in a way as it would render them into providing mere formality and therapeutic justice while interpreting rules providing for social security. The rules are to be read in a reasonable way according to the spirit. There may be some exaggeration for taking note of the rules of interpretation. There is no doubt that while interpreting the rules, the Court should lean in favour of retiree to grant the retiral benefits rather than to deprive him of his livelihood, particularly social security granted on the eve of ones duskin life. At the same time it cannot be ignored that one has to balance between securing social and economic freedom and justice and the right of the State to enforce good conduct among the government employees during service and even after retirement. The State cannot be left high and dry and unable to punish a delinquent solely on the ground that he has retired. The employees cannot be permitted to go scot free for his objectionable acts and conduct during his service or after retirement solely on the happening of the event of superannuation. I may add here that one of the objects of the rules in providing powers to the State to withhold pension is to enforce among the employees performance of duty faithfully, vigilantly, dutifully and loyally during the tenure of service and implied conditions of good conduct after the retirement.

(50) I may venture to state that in view of the blanket protection granted by section 11 of the Pension and Gratuity Act, hereinafter referred to as the Act, which protects the pension granted to

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a retiree under the Act from attachment, seizure or sequestration for recovery of money due on any account, no recovery can be made from the pension except provided by law. In sequel to the said object rule 2.1 issues a mandate in the form of command that the pension shall be held to have been granted.

(51) On comprehensive reading of Rules 2.2(a), 2.2(b) and 2.2(c), it emerges that the State preserves to it self the right to withhold or withdraw pension or any part of it on the happenings or circumstances imbibed in the statutory rules. Further on carefully and assiduously examining the arguments, it is quite clear that by providing rule 2.2 Government has preserved its right to adversely affect the pension after the person has retired and pension has been granted to him. It provides that the pension can only be withheld or withdrawn if the pensioner after his retirement is found to be guilty of grave misconduct or has been convicted of a serious crime. Summary procedure for affecting the pension adversely has been provided by this sub-rule. The legislature has designedly desired by enacting statutory provisions that ordinarily where part of pension is withheld or withdrawn, it should not exceed 1/3 of the pension originally sanctioned with a further limit that the pension cannot be reduced to less than Rs. 40 per month. Rules make it incumbent and impose a statutory duty on the authorities that while applying cut to pension, it should be kept in view, that the pensioner is left with an adequate pension for his maintenance.

(52) Note to the rules further makes it clear that in the eventuality of any amount found due to the Government from the employee, the same cannot be recovered from the pension except with the consent of the pensioner. It has been statutorily provided that the State may recover by adhering to other process of law. There is a complete bar against effecting recovery of any dues of

the Government from pension. The rules lucidly lay down that no recovery can be made from the pension either when pension is being sanctioned or it has been granted except with the consent of the pensioner.

(53) The thrust of the arguments of the counsel for the parties to answer the questions raised in these writ petitions, was on rule 2.2(b) which has been reproduced above. The remanence of the rule on its close analysis is that the Government retains the power of withholding the pension or withdrawal thereof wholly or any part of it whether permanently or for a specified period as also

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the right to effect the recovery from the retiral benefits other than the pension for making good any pecuniary loss caused to Government. From a plain reading of the rules, it would be reasonable to infer that powers can only be exercised if in a departmental or judicial proceedings the retiree is found guilty of grave misconduct, convicted for a serious crime or found to be negligent at any point of time during the period of his service including the service rendered on re-employment.

(54) Rules further empower the Government to continue the departmental enquiry proceedings if instituted before superannuation as if the officer was in service.

(55) Rules envisage two stages in the career of an employee viz. before retirement and after retirement and deal with these stages separately. In the first case if negligence or misconduct relating to the period prior to retirement comes to the notice of the department before retirement and the proceedings are initiated under the Punishment and Appeal Rules. In the second case after the superannuation of the employee the Government decides to proceed with respect to the acts or omissions committed during the tenure of service when the delinquency comes to its notice after superannuation.

(56) The rule protects the proceedings already initiated before the employee retires. However, in order to minimise the harassment and permit the pensioner to live in peace after retirement certain restrictions have been put by sub rule 2.2 (b) on the power to initiate departmental proceedings for the acts and omissions committed before retirement.

(57) I may venture to put plainly the conditions imposed by rule 2.2(b). The proceedings can only be instituted with the sanction of the Government. The event relating to which proceedings are proposed to be instituted should not be more than four years old on the date of institution of the proceedings. The authorities are required to proceed in the manner and follow the procedure provided for passing an order of dismissal from service. When judicial proceedings are required to be initiated, it is further enjoined that the Public Service Commission should be consulted. It may be pertinent to notice that the State has provided by statutory rules in the form of notes which would be deemed to be part of the rules (as observed in the earlier part of the judgment and as laid down by the Hon'ble Supreme Court) that ordinarily affected pension shall not exceed

1/3rd of the pension sanctioned. Further emphasis has been laid down that adequacy for maintenance of the retiree would be considered.

(58) Rule 2.2(c) postulates the right of the State with respect to affecting pension in a situation where the departmental proceedings initiated during service continue and the delinquent attains the age of superannuation before a finding is returned with respect to the charges attributed. It is enjoined by the rule that the State would grant provisional pension not exceeding the maximum pension which would have been admissible. It would be reasonable to inter the intent of the rule keeping in view the provision of Chapter 9 particularly Rules 9.9 and 9.14 which provide that 100 per cent provisional pension would be granted in either of the cases viz. When the State is unable to determine the pension for numerous reasons provided by the rules of when departmental proceedings or judicial proceedings are pending. The only exception to the restrictions on the powers conferred on the State was with respect to withholding of gratuity till the conclusion of the departmental proceedings. Rule 9.14 read with rule 9.9 envisages the grant of provisional pension where pensioner retires on superannuation and the pension and gratuity is not finally sanctioned. It directs the head of the office to issue a sanction letter after doing summary enquiry, with respect to the calculation of the pension in the manner provided and to sanction 100 per cent provisional pension to which the petitioner is entitled alongwith gratuity. It is further enjoined that after granting the provisional pension final pension shall be settled within six months thereafter and if the Government fails to do so, provisional pension shall be deemed to have been sanctioned as final pension. It has been statutorily provided in affirmative that no recovery can be made of any amount of any kind from the pension except with the consent of the pensioner. though it authorises the Government to withhold gratuity. It is specifically provided that any amount due from the employee could be recovered from the gratuity. The only exception carved out for recovery from pension is that if provisional pension granted is more than the pension, the petitioner is entitled to than the excess payment may be recovered in instalments from the pension keeping in view the adequacy of the balance pension for the maintenance of the retiree.

(59) Sub-rule 2.2(c) again emphasizes that a provisional pension granted shall be against the final retirement benefits sanctioned to the pensioner on finalisation of the proceedings. It debars the State from affecting recovery from pension except where final pension sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

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(60) In view of the observations made above, keeping in view equity and object of pension after balancing the rights of the State and the pensioner and having regard to all the circumstances the cardinal tenets emerges (1) Pension is a substantive right. It is a right to property. It is a condition of service. It is an ordinary incident of retirement (2) State legislature never intended to denude the pensioner of his right to it on his retirement except in accordance with rules. (3) It is a completely protected right of a retiree. (4) Though the Rules preserved the power of the State at the time of sanctioning the pension to withhold or withdraw, either partly or wholly for specified period or permanently it can be exercised only in the event of misconduct or for loss caused to State during service or in case of conviction in judicial proceedings.

(61) The same power can be exercised after retirement not only for the same reason but also if the pensioner has committed a grave misconduct or has been convicted of serious crime. Reading of rules warrants an inference that pension shall be deemed to have been guaranteed on retirement irrespective of the fact whether it is granted provisionally or finally.

(62) The grant of provisional pension has been provided only in limited situations i.e. when the departmental proceedings are pending or the State has been unable to determine the pension, though the State has provided a time table to complete the pension work commencing from 24 to 30 months before the date of retirement of the pensioner provided for by Chapter 9.

(63) Since the statutory rules provide for sanction of 100 per cent provisional pension, I fail to comprehend that the legislature would have intended to effect the pension in anticipation of finding the pensioner guilty of misconduct or his conviction in judicial proceedings or finding him having caused pecuniary loss to the State during the tenure of service. The State cannot escape its liability, liability to pay pension solely in anticipation of the initiated. Allowing the State to pay reduced pension in anticipation of an adverse finding in a pending proceedings as suggested, by the learned counsel for the respondents, in my considered view would be not only oppressive to the retiree but also amount to punishment before the trial. As regards protection of the State's interest, these have been sufficiently protected particularly when the State has been empowered to withhold all other retiral benefits like death-cum-retirement gratuity, salary etc. payment on account of leave encashment to which an employee is entitled on the eve of retirement. The pension is granted and protected with a view to provide

subsistence to the elder members of the society. Another significant factor which can be taken note of is that no recovery can be made from the pension except with the consent of the pensioner for any amount due to the Government from the pensioner. It is thus a deliberate and conscious provision enacted by the legislature in the rules. Petitioners cannot be deprived of their legitimate rights inferred by the statutory rules on excusals. etc.

(64) Keeping in view the conceptual aspect of the pension and reading the rules whether in isolation or collectively, I cannot comprehend any basis or ground or circumstances provided statutorily or otherwise under which pension or any part thereof can be withheld on retirement. Further, I am of the view that granting a right to the State, as argued by the learned counsel for the respondents, to withhold pension in anticipation of the action to be taken against the delinquent would result in obliterating the statutory provisions resulting in draconian rule of law and producing an unjust result. It would be rendering negatory what the statute has expressly provided. It would render the object of pension as farce. Very landable social protection granted would be rendered as therapeutic service.

(65) Thus, interpreting the rules in a reasonable way keeping in view the object of the scheme of pension viz. alleviating hardship to a retiree by making provision for his subsistence, the only functional construction which can be put on the rules is that the retiree would be entitled to 100 per cent provisional pension till the Government finally sanctions the pension or imposes any cut on the pension. In view of the observations made above it is beyond comprehension particularly when pension cannot be affected in any circumstances and provisional pension has been allowed only in three eventualities as re-produced above that the legislature even intended to confer on the Government the power of withholding pension. Further the deeming mandate provided by Rule 2.1 of pension having been granted have to be given logical effect. Even otherwise the State cannot be permitted to do indirectly what it is debarred from doing directly.

(66) In view of the observations made above I am of the considered view that though the State has preserved its right of withholding or withdrawing compensation or effecting it as a whole, partly permanently to temporarily, yet the State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension permissible under the law; of course gratuity can be withheld.



(67) Thus I am of the view that the pension or commutation of it can not be withheld, or postponed before a finding is returned that retiree is guilty of causing loss to the state during tenure of his service or during his re-employment. Mere pendency of enquiry or probability of the State exercising its power of withholding or withdrawing of pension by itself is not sufficient to withhold pension, though other retiral benefits like gratuity can be withheld in anticipation of some amount found to be due to the State or in anticipation of likelihood of imposing of a cut in pension or withholding or withdrawal of pension.

(68) For the reason recorded above the authorities could withhold or postpone payment or other retiral benefits except the pension.

(69) On assiduously examining the judgments cited at the Bar and referred to above, it emerges that (i) there is no period of limitation prescribed for initiating the disciplinary proceedings or proceeding to withhold, withdraw the pension on account of any reason. Still there must be a *bona fide* and reasonable explanation for delay, absence of which would entitle the Court to intervene and examine the case. (ii) If the delay is found to have caused prejudice to the employee, the Court would normally interfere in the matter (iii) Courts would be loath to prevent the trial of a person charged with grave charges merely on the ground of delay and would not exonerate him solely because of lapse of time between the date of offence and the charge sheet framed or served upon him. (iv) If the right of defence is found to have been denied due to delay, final order may be quashed. (v) It is for the delinquent officer to show how he has been prejudiced or deprived of a fair trial because of the delay. He is expected to clearly demonstrate the prejudice before an enquiry or trial can be quashed on the ground of delay. Otherwise quashing the proceedings solely on the ground of delay would be negation of justice and opposed to public policy. Delay in itself cannot result in surmising and presumptiveness and human frailties. (vi) Various factors for delay are to be kept in mind apart from the fact that nexus between delay and prejudice has to be made out. (vii) Though speedy trial is a part of the right to a fair trial to which delinquent is entitled, still factors like whether delay was sinister, whether prejudice to defence on account of the delay is made out have to be kept in mind and the delay would be fatal if a finding of being guilty would have to be returned solely because the delinquent is unable to effectively defend himself. on account of the delay. (viii) Reasonable time limit for just and reasonable exercise

of wide powers or just decision, after taking note of the fact that sword of democles cannot be allowed to be kept hanging in respect with the pensioner's stale claim which is implicit in the rules itself as well as the principle that the pensioner, at some point of time has to be allowed to rest in peace, has to be kept in mind. (ix) Reasonable time limit has to be fixed in the facts and circumstances of each case. Question like, was there a delay? If so how long? Was it inevitable having regard to the nature of the facts and circumstances of the case? Was the delay unreasonable? Whether it was wilful or on account of negligence and if so on the part of which party? Was it beyond control of the party? and likelihood of the prejudice caused to the defence are some of the factors which are to be kept in view while quashing the proceedings on the ground of delay alone.

(70) Delay by itself is no ground to quash the proceedings. Speedy trial is no doubt a part of the right to be treated reasonably, fairly and justly, but at the same time mere delay by itself does not entitle the delinquent Officer to escape his trial.

(71) There is no period provided for initiating proceedings before retirement. Though a period of four years from the date of incident for initiating proceedings after retirement has been statutorily provided for. Again the terminus quo for commencement of four years would vary according to the facts and circumstances of each case. Nothing substantial has been put forth to read into rules either implidely or expressly providing statutory period for initiating proceedings before retirement as provided for cases after the retirement.

(72) I may venture to conclude that the predominant purpose and object of the rules being granting social security and ensuring peaceful life after strenuous service rendered by the pensioner, there is no arbitrariness in providing limitation for initiating the proceedings for affecting recovery in the pension for the loss caused during service.

(73) The inference of discrimination by providing limitation for commencement of proceedings after retirement and not doing so for cases before retirement does not *inso facto* result in violation of Articles 14 and 16 of the Constitution of India. It was observed in *Balakrishna v. Shree D. M. Sansthan* (26-B) that the artificial provisions of limitation do not always satisfy the test of logic or

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equity. Providing limitation for initiating proceedings for adversely affecting the pension implicitly recognise the ground realities, while attempting to achieve the social object of providing economic security by providing pension. The limitation only debars the remedy. One cannot loose sight of the fact that with the meagre financial resources of pension, a retiree or pensioner may face an uphill task in defending himself, apart from the fact that making provision for pension is an attempt of the Legislature to provide an opportunity to the retiree to lead a peaceful life and the same has to be unhindered by uncertainty about his pension. I may observe that persons in service form a distinct class and can be treated differently than those who have retired. The one's who have retired would be a class in themselves. When legislature in its wisdom has expressly provided a period of limitation for initiating proceedings after retirement, we cannot read the same clause into the rules dealing with the cases which have been specifically left out. It is for legislatures to provide limitation barring a remedy to a right. Courts would refrain from providing specific period or stage beyond which initiation of disciplinary proceedings is to be barred.

(74) The right of the Government to initiate or continue with the departmental enquiry is the only deduction possible from the plain reading of rule 2.2(b). The Legislature has placed only one rider on its power for initiating the departmental proceedings i.e. a bar after the expiry of a period of four years from the date of incident when the enquiry is to be initiated after the person has retired. There is no obligation on the State Government to complete the enquiry within a time schedule. However, it is in the interest of justice as also all parties including the State, the delinquent and the society at large as well as in the public interest that an enquiry is completed expeditiously, though the decision would depend on the nature of charges, cooperation of the delinquent officer and other innumerable factors which cannot be demonstrated or enumerated. These have to be judged and seen in the facts and circumstances of each case.

(75) The Apex Court in *State of Andhra Pradesh v. P. V. Pavithran* (27), though in a case of criminal trial, considered the effect of inordinate delay for quashing the first information report, observed under :

“(i) There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period

makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on which tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, "the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation. While so, there are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed."

The Hon'ble Apex Court further observed :

"The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also, therefore depend on various factors involving whether such delay was unreasonably long or caused deliberately or intentinally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The Court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused. The assessment of the above factors necessarily vary from case to case. It would, therefore follow that no general and "wide proposition of law can be formulated that whenever there is inordinate delay on the part of the investigating agency, such delay, *ipso facto*, would provide ground for quashing the First Information Report or the proceedings arising therefrom."

(76) The above observation may not apply *mutatis mutandis* to the departmental proceedings, still they can be relied upon as rules

of good conscious and justice and may be adhered to in the departmental proceedings. Resultantly, I would conclude that Government can initiate and continue with the departmental proceedings or an enquiry at any time. Mere lapse of time or the person having superannuated during the pendency of the enquiry would not by itself inevitably result in lapse of proceedings. At the same time, the enquiry proceedings cannot be permitted to continue indefinitely. Though there is no time limit provided in which the proceedings must be initiated before retirement and may continue after retirement, yet keeping in view the peculiar facts and circumstances of each case, the delay causing prejudice to the delinquent in his defence or trial may result in quashing the proceedings. I may observe that burden of proof of prejudice caused by delay would be on the person seeking the quashing of proceedings.

(77) Resultantly, the conclusion warranted from the above discussion is:—(i) The Government can continue with the departmental enquiry proceedings initiated before retirement of a person irrespective of the time lag between the incident and superannuation of the employee, (ii) The enquiry proceedings cannot be quashed solely on the ground of long pendency alone, (iii) The Government can continue with the departmental enquiry initiated after long lapse of the alleged incident inspite of the fact that the delinquent has superannuated, (iv) There is no discrimination in providing limitation for commencement of the enquiry proceedings after the retirement and not providing such limitation in cases where the person is in service. The consequences of delay would be judged in the facts and circumstances of each case.

(78) Learned counsel for the petitioners lastly argued that learned Single Bench is bound by the judgment of the Division Bench of this Court and cannot doubt the same and refer the questions to the Full Bench. In support of his contention, he relied upon *Pritam Singh v. State of Punjab and others* (28). As the question has not been seriously debated before us and only a reference has been made to the precedent cited, I refrain from expressing my view in this case on the question posed.

(79) As a result of the above discussion, I would conclude as under :—

- (1) The Government has no right to withhold or postpone pension or the payment on account of commutation of

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pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisional!

- (ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.
- (iii) Pension cannot be adversely affected before a finding of guilt is returned.
- (iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.
- (v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.
- (vi) There is no effect of superannuation on the pendency of the enquiry proceedings.
- (vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.

The writ petition be listed before the Single Bench for disposal.

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**J.S.T.**