

Right to pension can't be take away pending proceedings: SC

Observing that gratuity and pension are hard earned benefits of an employee and right to receive pension is in the nature of "property", the Supreme Court has held that this right cannot be taken away from a government employee pending departmental or criminal proceedings.

"It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. It is thus hard earned benefit which accrues to an employee and is in the nature of "property".

"This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India," a bench of justices K S Radhakrishnan and A K Sikri said.

The court passed the judgement while dismissing the appeal of Jharkhand government against the state's high court order directing it to release the withheld dues of its retired employee Jitendra Kumar Srivastava, who had criminal cases pending against him.

"We are of the opinion that the right of the petitioner (Srivastava) to receive pension is property under Article 31(1) (of the Constitution) and by a mere executive order the State had no power to withhold the same.

"...the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of Constitution, and as such the writ petition under Article 32 is maintainable," the bench said.

It also said "a person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

The state government had moved the apex court challenging the October 31, 2007 order of a division bench of the high court which had held that under the Bihar Pension Rules, the government does not have power to withhold gratuity and pension during the pendency of departmental or criminal proceeding and or withhold leave encashment at any stage either prior to or after conclusion of the proceeding.

The order of the high court had come on a writ petition filed by the petitioner, who had retired from the post of Artificial Insemination Officer, Ranchi in 2002, seeking release of part of his pension and other dues.

He had joined the Department of Animal Husbandry and Fisheries in Bihar government in 1966. In 1996 two cases were registered against him under various sections of Indian Penal Code and also

Prevention of Corruption Act for alleged financial irregularities during the years 1990 and 1991 when he was posted as Artificial Insemination Officer, Ranchi.

After formation of state of Jharkhand, he became the employee of that state while his prosecution in two criminal cases remained pending.

After his retirement in 2002, the government sanctioned 90 percent provisional pension while remaining 10 percent pension and salary of his suspension period was withheld pending outcome of the criminal cases/departmental inquiry against him. He was also not paid leave encashment and gratuity.

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