

(1978) 06 BOM CK 0043

**Bombay High Court****Case No:** Special Civil Application No. 3742 of 1976

Shri G.L. Methwani

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** June 30, 1978**Citation:** (1978) 80 BOMLR 713**Hon'ble Judges:** Sawant, J; Naik, J**Bench:** Division Bench**Final Decision:** Allowed

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**Judgement**

Naik, J.

This petition raises the short question about the validity of the order of the President dated February 18, 1971, retrospectively withholding one-fourth of the pension which was already granted to the petitioner. The petitioner who was serving as a Superintendent of the Central Excise, retired from service on June 14, 1961. His pension was fixed at Rs. 190-25. On March 20, 1963, a departmental proceeding was instituted against him on the charge of his being guilty of grave misconduct, inasmuch as, although he had in fact purchased powerlooms after his retirement, he had purported to make it appear that the powerlooms were purchased in October 1960 by manipulating antedated receipts dated October 30, 1960, in a bid to take advantage of the liberalised rules, concerning the powerlooms, which were announced in November 1960. The enquiry officer held the petitioner guilty of that grave misconduct and the President having accepted the said finding by his order dated November 11, 1965 withheld one-fourth of the pension of the petitioner i.e. in the sum of Rs. 47-55 per month with effect from the date of the said order viz. November 11, 1965.

2. The petitioner challenged that order by filing a writ petition being Special Civil Application No. 399 of 1966. When the matter was called on for hearing, in view of certain averments, in the return of the respondents filed in that petition, wherein a reference was made to the notes of the Special Police Establishment, and the fact

that the said notes were not even shown to the petitioner at the time of the departmental inquiry, it was held by this Court, that the said inquiry, was vitiated and the order being set aside the matter was remanded for fresh inquiry by another officer. Accordingly, another officer being appointed, he also held like his predecessor that the charge was brought home to the petitioner. This finding of the enquiry officer was accepted by the President and thereafter the President after consultation with the Union Public Service Commission, passed an order under Article 351A of the Civil Service Regulations and Liberalised Pension Rules (hereinafter referred to as the Pension Rules), withholding one-fourth of the pension which was admissible and sanctioned in favour of the petitioner. It was provided that the said order dated February 18, 1971 would take effect from the date of the earlier order i.e. from November 11, 1965.

3. The correctness of the said order is challenged by the petitioner by filing the present writ petition. While granting the rule, the rule was restricted to the retrospective effect of the order dated February 18, 1971 and the matter was directed to be expedited.

4. The short question therefore which we are called upon to consider is as to whether the President had the power to withhold a part of the pension of the petitioner retrospectively from November 11, 1965 when in fact the punishment in the departmental inquiry itself was inflicted by order dated February 18, 1971.

5. While it is contended by Mr. Rochiramani learned advocate for the petitioner that the President has no power to withhold the pension retrospectively, Mr. Paranjpe, learned Counsel for the respondents urged that the President has power under Article 351A of the Pension Rules to withhold the pension retrospectively. He also submitted that after all it was by an earlier order dated November 11, 1965 that the President had withheld the pension and in the earlier Special Civil Application in which that order was set aside and the matter was remanded, there was a direction to continue the same inquiry and since that inquiry was continued and a final order was passed on February 18, 1971, there was nothing wrong in directing that the order of withholding the pension should take effect from November 11, 1965 as was directed by the earlier order of that date.

6. In our opinion there is no force in the submission of Mr. Paranjpe. Article 351A of the Pension Rules on which reliance is placed in so far as it is material may be set out here for ready reference. It is to this effect:

The President further 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 in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

There is a proviso and also an explanation to this Article, but it is not necessary to refer to them. The Article it would appear is in two parts. Firstly it reserves to the President the right of withholding or withdrawing pension or any part of it, whether permanently or for a specified period. Secondly, the Article reserves to the President the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government. This is not a case covered by the second part inasmuch as no question of recovery of any pecuniary loss caused to the Government is involved in the misconduct attributed to the petitioner and has been held to be proved. The case therefore could be covered only by the first part of the Article viz. that the President has reserved to himself the right of withholding or withdrawing pension or any part of it, whether permanently or for a specified period. Now, when we turn to the impugned order dated February 18, 1971, the order does not purport to say that the President was withdrawing the pension or any part of it. The order in terms both in paragraphs 4 and 5 speaks about the President being satisfied that there were good and sufficient reasons justifying action for withholding a part of the pension admissible and sanctioned and says that the President hereby withholds one-fourth of the pension admissible and sanctioned to the petitioner. Therefore we are only concerned with the question as to whether the President can under the powers reserved for him under Article 351A of the Pension Rules while exercising right of withholding any part of the pension could do so retrospectively i.e. from a date prior to his passing the final order accepting the enquiry officer's finding about the petitioner being found guilty of grave misconduct coupled with the order of punishment of withholding the pension which was already granted to the petitioner.

7. The normal rules in respect of Government servants are that it is only when they are in service that departmental proceedings could be commenced against them and they could be punished and the penalties to be inflicted in the departmental proceedings could be either minor or major. As appears from Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, minor penalties may include (i) censure; (ii) withholding of his promotion; (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders and (iv) withholding of increments of pay. Major penalties might include (i) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay; (ii) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion; (iii) compulsory retirement; (iv) removal from service, and (v) dismissal from service. The said Rules as appear from Clause (h) of Rule 2 would apply to only Government servants who are in service of the Government. It is needless to say therefore that so far as the said Rules of 1965 are concerned, it is only against a Government servant in actual

service that the departmental proceedings could be commenced and if he is found guilty of the charges levelled against him, then either of the penalties provided for in Rule 11 could be imposed. It would further appear that in all these cases, the penalties to be imposed would be from the date of the order and would not have any retrospective effect.

8. In respect of retired Government servants, their services are governed by the Pension Rules. Normally under Article 470 of the said Pension Rules, the full pension admissible is not to be given as a matter of course, or unless the service rendered has been really approved. Sub-clause (b) of this Article provides that if the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a proviso to this sub-clause which reads as under:

Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

As the wording of this Article clearly shows, this Article comes into play while sanctioning the pension itself and therefore in a given case, because of any adverse finding in a departmental inquiry the sanctioning authority before finalising the pension could order a reduction in the amount of pension. Once pension is sanctioned, Article 348A provides that every pension shall be held to have been granted subject to the conditions contained in chap. XXI. Article 351 provides that future good conduct shall be an implied condition of every grant of pension. It further provides that 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. This Article further provides that before passing such an order an opportunity should be given to the concerned pensioner and he is also given a right of appeal if the order is passed by any authority other than the President, to the President. Therefore it would appear that even in respect of Government servants who have retired and are in receipt of pension, under Article 351 for proved grave misconduct or have been convicted of a serious crime, the sanctioning authority has power by order in writing to withhold or withdraw a pension or any part thereof whether permanently or for a specified period. Article 351A of the said Pension Rules which has been quoted earlier reserves to the President the right to withhold or withdraw pension and the right of ordering recovery from a pension of the whole or part of any pecuniary loss caused to Government. Although therefore by its very nature, there could be no provision in the Central Civil Services (Classification, Control And Appeal) Rules, 1965 for taking departmental action against persons who have retired, the Civil Service Regulations And Liberalised Pension Rules to which attention is drawn make provisions for taking action even against retired persons who are in receipt of pension. But for these Rules, in the normal course

since no departmental inquiry could have been commenced, no question of inflicting any penalty could have arisen at all. Since it is the Pension Rules which reserves to the President the power of withholding or withdrawing pension, or the power to recover from a pension of the whole or part of any pecuniary loss caused to Government, these provisions must be strictly construed. As is pointed out, the first principle is that the punishment which is inflicted should in the normal course take effect from the date of the order inflicting the penalty or punishment and it could not be inflicted retrospectively unless the statute specifically provides for it. We are not here concerned with the question as to whether the President could withdraw pension or any part of it retrospectively or could pass an order directing the recovery from a pension, of the whole or part of any pecuniary loss caused to Government. Having regard to the wording of the impugned order of the President dated February 18, 1971, which has chosen to use the expression withholding of one-fourth of the pension, we would restrict our observations and findings to the question as to whether such withholding could be interpreted to mean that withholding pension could take effect retrospectively prior to the date of the passing of the order inflicting such penalty of withholding such pension. We have no doubt in our mind that when the Legislature used the expression withholding pension or part of it, the Legislature clearly intended that such order should be prospective from the date thereof and not retrospective. Even the dictionary meaning of the word "withhold" would indicate that it could be only prospective and not retrospective e.g. in the Concise Oxford Dictionary, "withhold" stands for "refrain from putting in action, refuse to grant." In the Oxford English Dictionary, the expression "withhold" is given the meaning "to keep from doing something; to keep in check or under restraint; to hold back; restrain." It would thus appear that even according to the dictionary meaning, withholding would mean to hold back and restrain which could be done only from the date of the order and not retrospectively. Having realised the force of our interpretation of the expression "withholding" to mean that it could be done prospectively and not retrospectively, Mr. Paranjpe submitted that when the President passed the impugned order by observing that it should take effect from November 11, 1965, even though he used the expression "withholding" what in fact he intended was that in respect of pension to be paid from the date of the impugned order i.e. February 18, 1971, one-fourth pension should be withheld and that in respect of the earlier period i.e. from November 11, 1965, since when, the order is directed to take effect upto the date of the order, one-fourth of the pension should be withdrawn. Needless to say that this gallant effort cannot stand the test of scrutiny. The President full well knew that Article 351A of the Pension Rules does contain the expression "withholding or withdrawing." Even then the President refused to direct that one-fourth of the pension should be withdrawn. To read the President's order in the manner submitted by Mr. Paranjpe is to re-write the order and practically to recast the same which could hardly be done while interpreting the order. We would like to make it clear that we are not at all expressing any opinion on the question as to whether the

expression "withdrawing" occurring in Article 351A of the Pension Rules necessarily implies the right to pass an order to take effect retrospectively from the date of the order. We would restrict our decision to the fact that since the expression "withhold" has been used in the impugned order, that expression both in the context in which it is used and according to the dictionary meaning, could be only prospective withholding. We have no doubt in our mind that that part of the impugned order which directs that it should take effect from November 11, 1965 is beyond the scope of Article 351A of the Pension Rules and therefore must be struck down as invalid.

9. In the result, the limited rule which was granted is made absolute by directing the respondents not to enforce the impugned order to the extent that it directs that it should take effect from November 11, 1965. We further direct that the amount of the pension which has been withheld from November 11, 1965 upto the date of the final order dated February 18, 1971 should be paid to the petitioner forthwith. The respondents should also pay the costs to the petitioner.