PUNJAB AND HARYANA HIGH COURT

Bhagwant Singh

Vs

Union of India

(Shamsher Bahadur, J.)

24.01.1962

ORDER

Shamsher Bahadur, J.

1. The facts, on which the decision of this petition under Article 226 of the Constitution of India must turn, are not in dispute and may be briefly set out. The petitioner, Bhagwant Singh, while serving as a civilian clerk with the rank of Subedar in Army Ordnance Corps, developed diabetes which necessitated his repatriation from Singapore to India in February 1946. He was sent to a board of medical specialists and declared unfit for service on 17 September 1946, on account of "diabetes mellitus." In the view of the medical board the disability had aggravated by war service and the degree of disablement was assessed at 50 per cent " incapable of improvement." He was granted provisional pension described as a "pending enquiry award" at Rs. 88-8-0 with effect from 8 November 1946. Subsequently, the pension was made a permanent disability pension also with effect from 8 November 1946, but the amount was reduced to Rs. 82-8-0. The petitioner was given some other employment till 1853 in the Delhi Ordnance Depot. By letter dated 23 March 1955, the petitioner was informed that the pension granted to him stood cancelled and it was explained subsequently that the board had reassessed disablement at 20 per cent which disentitled him to any pension. Morever it was stated that the disability was not aggravated by war service.

2. The present petition was filed by Bhagwant Singh on 1 November 1958, on the ground that his right to hold pension had been interfered with without just cause and in contravention of the principales of natural justice. The petitioner would certainly be entitled to seek the aid of this Court provided he is able to show that the right, which has been denied to him, is relatable to propraty under Article 31 of the Constatution of India. Thelearned Councle for the petitioner has placed reliance on an English decision of the Court of Apple in Ex parte Huggins v. In re Huggin 1882 21 Ch. D. 85. In that case the bankrupt, H.J. huggins had been Chief justice of the Colony of 875 pre annum. It was held that the pension of a retired Judge of a Crown colony, granted by the Secretary of State for the Colonies, and voted annually by the legislature of the colony, is in

case of the bank raptly of the judge, "property" which vests in the trustee in the bankruptcy. The word "property" has not been defined anywhere and it still remains to be determined whether the pension granted to the petitioner in the per-sent instance partakes the nature of a fundamental right under Article 31 for whose protection a writ under Article 226 could be entertained. The petitioner had been in service since 1939 and became entitled, according to the first medical board, to the disability pension which on subsequent examination by another board came to have been assessed wrongly. Mr. Jindra Lal on behalf of the respondent has contended that there is no statutory right to receive a pension and the question whether it constitutes property or no, becomes an irrelevant matter. My attention has been invited to annexure R. 1, which reproduces a copy of the Army Instruction No. 388/60 wherewith Rule 374 of the Pension Regulations for the Army in India was revised. Under this revised instruction, which is of the year 1950, a disability pension could be modified if on the result of a further medical examination of the individual the disability is reduced or has disappeared or has become capable of improvement. This instruction was to take effect from 28 July 1948.

3. It is contended by the petitioner that the pension granted for life to the petitioner in April 1948 could not be subsequently revised seven under the amended Army Instruction which took effect from 28 July 1943. Though no particular reference has been made to disability pension in the Army Instruction, it seems to me that the grant of Rs. 82-8-0 per month for life was given in accordance with rules and must be regarded as something to which the petitioner had a right. That a subsequent Instruction was made to make the pension modifiable in certain contingencies shows that the grant of pension had been recognized as a right which could be tinkered with only under specified conditions. The revised Army instruction does not apply to the case in point and it is difficult to avoid the conclusion that the petitioner was in enjoyment of the pension as a matter of right, a right which according to the instructions as stood before 28 July 1948 could not even be modified.

4. If I am right so far, it follows that the petitioner became entitled to a pension for life under the order of the appropriate Authorities on the recommendation of the medical board duly constituted. if any revision was permissible it could have been in accordance with the rules and certainly no order could have been. made unilaterally without the petitioner being afforded an opportunity to show cause against it. Under Article 226 of the Constitution the power of this Court extends to the granting of relief which has the effect of enforcing the right of an individual conferred on him by Part III of the Constitution. Now under Article 31(1) of Part III of the Constitution it is solemnly stated that "no person shall be deprived of his property save by authority of law." Once it is assumed that the petitioner had a right of property to be protected, there could be no escape from the conclusion that he has been deprived of it in the most arbitrary manner.

5. A plea taken up on behalf of the respondent that the petition ought to be dismissed on ground of delay cannot be sustained on account of the recent decision of the Supreme Court in

Basheshar Nath v. Commissioner of income-tax, Delhi and Rajasthan . It was held by their lordships that no citizen can give up or waive a breach of the fundamental right and, therefore no amount of delay can defeat the purpose of a writ under Article 226. The provisions of Article 31 are in the nature of a command and as observed by Chief Justice S.R. Das at pp. 158-159 of the report act or conduct, relieve the State of the solemn obligation imposed on it by the Constitution. Whatever breach of other fundamental right a person or a citizen may or may not waive, he cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this constitutional mandate directed to the State.

6. It is the case of the respondent-Union that the disability pension was granted under a mistake which was merely rectified by the second medical board. Now it is admitted in Para. 4 of the affidavit of the respondent-Union that the first medical board had found that (1) the petitioner was suffering from "diabetes mellitus" which made him unfit to serve; and (2) this disability was aggravated by war services and the degree of disablement was assessed at 50 per cent.

7. How can it be said that these findings of the board were the outcome of some misunderstanding or that the disability was only 20 per cent not attributable to or aggravated by service factors? The decision taken by the authorities is bit by the famous pronouncement of Lord Atkin in *Eshugbavi Eleko v. Officer Administering the Government of Nigeria*[1] that the executive can only act in pursuance of the powers given to it by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice. And it is the tradition of British justice chat Judges should not shrink from deciding such issues in the face of the executive. These observations apply with full force to the state of affairs which have been discussed in this case. The petitioner's right of life pension has not merely been curtailed but abolished altogether by the flat of the executive Government for which there is no prima facie justification and of which the petitioner was not even given a notice of. The action of the executive cannot be defended on the vague formula of " administrative grounds " as observed by Basi Reddi, J., in Kakku Venkataramaiah v. State of Andhra Pradesh .

8. Mr. Jindra Lal has very strongly contended that the pension given to the petitioner was a matter of grace and bounty not founded on any legal right. No reference has been made in support of this proposition to any law or statutory rules and considering that the petitioner had enjoyed this pension for a span of many years feel bound to hold that there has been a very serious interference with and grave violation of a right which must in the context be regarded as property right. In this view of the matter the petition must succeed and the order of conciliation of pension set aside. The petitioner would get the costs of these proceedings.
Cases Referred.

1 A.I.R. 1981 P.O. 248 at 251