

**HIGH COURT OF CALCUTTA****Bench : The Hon'ble Justice Aniruddha Roy****Date of Decision: 13<sup>th</sup> May 2024**

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

WPA 3618 of 2016

With

I.A. No. CAN 1 of 2017

(Old No. CAN 4702 of 2017)

**Sri Kunal Chandra Sen ...Petitioner****VERSUS****State of West Bengal & Ors. ...Respondents**

**Legislation:** Sections 26 and 29 of The West Bengal Municipal Corporation Act, 2006 Clause 19(5) of The West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981

**Subject:** Resolution of pension and gratuity disbursement issues for a retired school headmaster following allegations of financial misconduct which were subsequently disproved through multiple enquiries.

**Headnotes:**

Administrative Law – Pension and Gratuity Withheld – Resolution directed by the High Court to release funds along with interest following unjust withholding by municipal authorities despite clearances from multiple enquiry reports – Kunal Chandra Sen, a school headmaster accused of misappropriation but later cleared, struggled to receive pension and gratuity after retirement – Several enquiry reports from 2015 to 2017 confirmed no evidence against petitioner, leading to court's order for immediate release of funds and accrued interest [Paras 26-35].

Employment Law – Misuse of Investigative Power by Municipality – Municipal corporation improperly constituted a Fact Finding Committee without legal basis under The West Bengal Municipal Corporation Act, 2006, after state investigations cleared petitioner of all charges, thereby acting beyond jurisdiction and violating petitioner’s rights [Paras 27-29].

Pension Rights – Final Entitlement and Interest Compensation – High Court recognized pension and gratuity as statutory rights upon successful employment completion, criticized wrongful withholding by authorities, and directed compensation for the delay [Paras 30-34].

Future Contingency Based on Criminal Proceedings – If future criminal proceedings by CBI prove guilt, recovery measures may be initiated – Ensures fairness while addressing prolonged judicial delay and procedural errors by authorities [Para 35].

Decision: The High Court directed the immediate release of withheld pension and gratuity payments totaling Rs. 28,67,213 along with interest at 8% per annum from the date of retirement to the date of deposit, providing relief to the petitioner and establishing precedent on handling cases of administrative overreach and rights of retired employees [Para 33-34]. The court allowed the writ petition, recognizing the statutory right to pension and addressing the misuse of administrative powers in conducting unauthorized enquiries [Para 36].

Referred Cases: None.

Representing Advocates:

For the Petitioner: Mr. Soumya Majumdar, Adv., Mr. Bikash Shaw, Adv., Mr. Sumanta Biswas, Adv., Mr. Sk. Saad Nafisul Islam, Adv.

For the State: Mr. Bhaskar Prasad Vaisya, Adv., Mr. Avishek Prasad, Adv.

For the Respondent Nos. 5 to 9: Mr. Piush Chaturvedi, Adv., Mr. Suman Basu, Adv.

For the CBI: Ms. Chandreyi Alam, Adv.

**ANIRUDDHA ROY, J.:**

**Facts:**

1. The writ petitioner on **December 20, 2004** was appointed as the **Headmaster of Chandernagore Banga Vidyalaya** (for short, the said school) on a temporary basis. On February 01, 2005 the petitioner was appointed as the permanent Headmaster and the appointment was approved on March 04, 2005 by the Additional District Inspector of Schools, Secondary Education, Chandernagore. On February 11, 2015 the respondent no.3 forwarded the pension papers of the petitioner to the Assistant Director, Pension, Provident Fund and Group Insurance, Department of Finance for approval at **page 75** to the paper-book, Volume-I. On May 16, 2005 Ms. Mahalanabish & Associates has submitted an audited account at the instance of the petitioner. On **July 09, 2015** a complaint was made by the one Ashok Kumar Sah, a local MLA to the Secretary of the School Education Department against the petitioner alleging misappropriation of fund at **pages 359 to 360** to the paper-book, Volume-3. On **July 31, 2015** the petitioner retired. The Assistant Director, Pension, Provident Fund and Group Insurance returned the papers pertaining to the grant of pension to the petitioner to the respondent no.3 with reference to the said complaint dated July 09, 2015. On August 12, 2015 Chandernagore Municipality (for short, the Municipal Corporation) released the Provident Fund to the petitioner at **page 81**, paper-book, Volume-1. On **October 06, 2015** the petitioner by its letter requested the Assistant Director to supply a copy of the said complaint dated **July 09, 2015** at **page 78** to the paper-book.
2. On **October 15, 2015** an **enquiry report** was submitted by the Assistant Inspector of School, Secondary Education, discharging the

petitioner from all the allegations levelled against him in the said complaint and recommendation was made for grant of pension to the petitioner with immediate effect, at **page 82** to the paper-book, Volume-1. On **December 09, 2015** the Assistant Inspector of School (Secondary Education) submitted an **enquiry report** to the District Inspector of Schools, Hooghly wherefrom it appeared that the allegations made against the petitioner on alleged financial misappropriation failed at **page 83** to the paper-book, Volume-1. On December 22, 2015 a fact finding committee was constituted by the Municipal Corporation for the purpose of holding a fresh enquiry against the petitioner at **page 86 to 100** to the paper-book, Volume-1. On **January 14, 2016** the Director, pension, Provident Fund and Group Insurance issued the necessary **Pension Payment Order** in favour of the petitioner at **page 101** to the paper-book, Volume-1. On January 19, 2016 the petitioner submitted an application before the Teacher-in-Charge of the School, respondent no.9, for issuance of No Liability Certificate in favour of the petitioner at **page 103** to the paper-book, Volume-1. The respondent no.9 forwarded the said application of the petitioner before the Education Officer and Member Secretary, Education Committee of the Municipal Corporation and requested to release the pension in favour of the petitioner, since no allegation of misappropriation of fund could be established against the petitioner at **page 102** to the paper-book, Volume-1. On February 01, 2016 the petitioner submitted an application before the Commissioner of the Municipal Corporation, respondent no.6, requesting to issue the **No Liability Certificate** in his favour at **page 105** to the paper-book.

3. Since pension and gratuity was not issued in favour of the petitioner despite the allegations not being established against him, the petitioner filed the instant writ petition. After the writ petition was filed on **April 28, 2017** the Director, Pension, Provident Fund and Group Insurance filed a **fact finding report** when it was specifically held that the allegations could not be established against the petitioner, **page 107 to 110** to the paper-book, Volume-1.
4. By an order of a coordinate bench dated **September 18, 2017** the provisional pension was directed to be issued in favour of the petitioner. In terms of the said direction the petitioner has been receiving the provisional pension at **pages 13 and 14** to the paper-book, Volume-7. By orders dated **November 24, 2017 and December 01, 2017** a coordinate bench referred the matter to carry out a detail preliminary enquiry before the **Central**

**Bureau of Investigation (CBI) at pages 16 to 23**, to the paper-book, Volume-1.

5. Being aggrieved by the said direction of the coordinate bench CBI had preferred an appeal and the same is still pending before the Hon'ble Division Bench. During pendency of this writ petition this Court has passed several orders from time to time. By an order dated February 19, 2024 this Court directed the Jurisdictional Treasury Officer Chandernagore to deposit a sum of **Rs.2,86,7213/-** with the Learned Registrar General of this Court. The said amount was calculated by the respondent no.3 in this report dated February 16, 2024 being the amount payable to the petitioner according to respondent no.3 as his employment benefit for both pension and gratuity. The report of the department shows that the sum after being deposited with the Learned Registrar General has been further invested with Canara Bank, Hare Street Branch, in a short term interest bearing fixed deposit. The said deposit was made with the Learned Registrar General on **February 23, 2024**.
6. The Assistant Director, Directorate of Pension, Provident Fund and Group Insurance has filed its report in the form of affidavit on January 05, 2024. The respondent no.5 to 9 have filed its report in the form of affidavit affirmed on September 15, 2023. The respondent no.3 has filed its report in the form of affidavit on February 16, 2024. The petitioner has filed its exception in the form of affidavit taking exception to the report of the respondent no.6 affirmed on November 23, 2023. The CBI has also filed its report in the form of affidavit affirmed on April 16, 2024.

**Submission:**

7. Mr. Bikash Shaw Learned Advocate lead by Mr. Soumya Majumdar Learned Counsel for the petitioner, at the outset, submits that there was no disciplinary proceeding ever initiated by the school, being the employer, against the petitioner. Referring to the complaint dated July 09, 2015 learned counsel for the petitioner submits that the nature of complaint on the face of it had demonstrated that save and except some bold allegations, there was nothing mentioned. No particulars of the alleged misappropriation of fund was mentioned in the complaint. The complaint was lodged by the then local MLA who was an office bearer of the Municipal Corporation. The learned counsel then refers to a second follow up complaint dated June 22, 2015 at **page 362** to the paper-book Volume-3, lodged before the Commissioner of the Municipal Corporation. Learned counsel for the petitioner then refers to a communication dated August 05, 2015 issued by the Assistant Secretary

School Education Department, Public Grievance Cell whereunder a copy of the complaint was forwarded to him. After receiving the said complaint by a communication dated **October 13, 2015** at **page 361** to the paper-book Volume-3 the Joint Secretary of the Municipal affairs department requested the Director of Local Bodies West Bengal to send a report on the basis of the said complaint.

8. In terms of the said request, an enquiry was held by the Assistant Inspector of School, Hooghly and a detail report dated **October 15, 2015** at **page 82** to the paper-book Volume-1 was prepared which went in favour of the petitioner with the following observations:

*“Sri Kunal Chandra Sen is one of a highly qualified, energetic, innovative and creative Headmaster in the Hooghly district. He joined this school as a Headmaster as on 01/02/15 and till his retirement, he was fully dedicated for all-round development of the school. He always tries to maintain the cultural heritage of this heritage school which was founded in the year 1881. The school reached to the peak form in the ground of academic, administrative, Infrastructural with his talented magic touch. He has able to modify the school as a model school in the Hooghly. His versatile genius are imitable to the other school. He was a ideal Headmaster and work lover. All official records and Govt. grant properly utilized for the great interest of pupils and the Institution. Unfortunately, his undisputed pension file returned back from the DPPG owing to a imaginative complain by a powerful complainer, which is shameful to humanism and also violated the Human Rights. His life time achievement has gone is in vein. He can not able to get his penssionary benefits within the schedule time. This is just like a violation of Govt. rules and also disobeyed the Hon'ble Supreme Court's order.*

*The powerful complainer misused his power and may be belong to any personal or vested interest. He has no little bit of contribution for this Institution. His baseless complains should be rejected.*

*Hope, the pensioner Sri Kunal Chandra Sen, Ex H.M. of the Institution would get his pension as an earliest possible”.*

9. Learned counsel for the petitioner then refers to the second enquiry report dated **December 09, 2015** at **page 83** to the paper-book Volume-1, issued under the seal and signature of the Jurisdictional Assistant Inspector of

School and submits that, all the observations made therein were in favour of the petitioner and the allegations could not be established at all.

10. Referring to the resolution of the Education Committee of the Municipal

Corporation dated December 22, 2015, at **page 86** to the paper-book Volume3, learned counsel for the petitioner submits that the education committee proposed to constitute a Fact Finding Committee for conducting a detail enquiry in respect of the allegations made in the said complaint against the petitioner. The complainant being an office bearer of the education committee was also present. Learned counsel submits that the proposal for formation of the said Fact Finding Committee in the meeting of the education committee of the municipal corporation was without any sanction of law and there was no further scope for conducting any fact finding enquiry after the state authorities had already conducted the enquiry and the findings went in favour of the petitioner. He further submits that, The West Bengal Municipal Corporation Act, 2006 does not provide for any such enquiry proceeding in absence of the disciplinary proceeding against the petitioner. The education committee while proposing to constitute a Fact Finding Committee in its meeting dated December 22, 2015 acted wholly without and/or in excess of jurisdiction.

11. Learned counsel for the petitioner then refers to the order of the coordinate bench dated January 13, 2017 whereunder the respondent no.4 was directed to examine the matter after hearing the parties and to file a report before the Court, at **page 4** to the paper-book Volume-1.

12. Pursuant to and in terms of the said direction the respondent no.4 filed its report, at **page 107** paper-book Volume-1, which also went in favour of the petitioner with the following finding:

*“The Pension Sanctioning Authority concerned categorically excluded petitioner from the allegations made against him and no such adequate corroboration evidences have been placed before undersigned.*

*Moreover, **From the report of Commissioner, Chandernagore Municipal Corporation nothing is clear. His is evasive on the point of involvement of Shri Kunal Chandra Sen and the report does not bring any specific fact(s) so as to allegation made against petitioner could be established beyond reasonable doubts.***

*The facts are submitted as above”.*

13. Mr. Soumya Majumdar learned counsel for the petitioner then refers to the letter to the school dated **January 19, 2016**, at **page 102** to the paper-book Volume-1, whereunder the Education Officer and Member Secretary of the Education Committee of the Municipal Corporation was informed that the allegation of the financial indiscipline and misappropriation lodged by the complainant in its complaint dated July 09, 2015 appeared to be probed and the Jurisdictional D.I. resubmitted the pension file with reasons to sanction pension and gratuity in favour of the petitioner, retired from the institution.
14. Mr. Majumdar referring to the pension payment order read with the said letter of the school dated January 19, 2016 submits that, once the pension payment order has been issued, the admissibility of pension and gratuity in favour of the petitioner stands crystallized, the employer or the State authority then cannot contend anything to the contrary. The petitioner is eligible to receive his pension and gratuity, moreso when the allegations levelled against him by the complainant has not been established at all.
15. In the light of the above, learned counsel for the petitioner submits that the instant writ petition should be allowed and the petitioner claims interest on the admitted dues on account of pension and gratuity payable to him since his retirement, as the pension and gratuity of the petitioner were withheld illegally and without any authority of law.
16. Mr. Piush Chaturvedi learned counsel appearing for the respondent nos. 5 to 9 (for short, Chandernagore Municipality), at the outset submits that, there was no disciplinary proceeding initiated by the school authority or the municipal authority against the petitioner. He submits that, there is a serious allegation against the petitioner who being the Headmaster of the school had misappropriated substantial amount of fund from the corpus of the school.
17. Referring to **Section 26** of **The West Bengal Municipal Corporation Act, 2006** (for short, the Municipal Act), he submits that there is an **Education Committee** of the Chandernagore Municipality for ensuring general control and supervision of the said school maintained by the Chandernagore Municipality. The said Education Committee has a statutory obligation to ensure the proper administration of the school for imparting education to the society at large. Referring to **Section 29** of the Municipal Act, he submits that, the board of councillors has the authority and power to constitute a **Special Committee** for the discharge of any specific function or for making enquiry and report in any specific matter and such committee shall have



such powers, and shall perform such functions or discharge such duties, as may be provided by resolution in this behalf. The Constitution of the Special Committee is also provided thereunder.

18. Mr. Chaturvedi learned counsel appearing for the Municipal Corporation then drew attention of this Court to the said resolution of the Education Committee dated **December 22, 2015** at **page 86** to the paper-book, Volume-1. He then drew attention of this Court to the communication dated **October 13, 2015** at **page 361** to the paper-book, Volume-3, and submits that the Joint Secretary, Municipal Affairs Department under said communication directed the Director of local bodies, West Bengal, by enclosing the said complaint of the local MLA to send the report on the matter at the earliest. A copy of the said communication was also marked to the Mayor, Chandernagore Municipal Corporation. He submits that, in terms of the said communication dated October 13, 2015 the Education Committee of the Municipal Corporation through its resolution dated December 22, 2015 by exercising its power under Section 26 read with Section 29 of the Municipal Act constituted a **Fact Finding Committee** to investigate into the allegations against the petitioner in terms of the said complaint. He submits that, the said Fact Finding Committee was vested with the power under Section 29 of the Municipal Act.

19. Learned counsel of the Municipal Corporation then submits that during pendency of the said **Fact Finding Procedure** under Section 29 of the Municipal Corporation Act this writ petition was filed. After hearing the parties the coordinate bench by its orders dated November 14, 2017 and December 01, 2017 referred the matter before CBI to carryout a detailed preliminary enquiry. He submits the said orders for reference before the CBI are still governing the field and are in existence. Though the CBI preferred an appeal there from but the same was not perused. Since the matter was referred to CBI, the Municipal Corporation did not proceed any further through the said Fact Finding Committee to probe into the allegations against the petitioner under Section 29 of the Municipal Corporation Act.

20. Mr. Chaturvedi then drew attention of this Court to **Clause 19(5)** of **The West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981** (for short, DCRB Scheme). He submits that, once the matter referred to the CBI, considering the nature of allegation, the Chandernagore Municipality contemplates a detail investigation by way of a criminal trial on the issue. The moment CBI shall proceed to probe into the enquiry, it is contemplated

that a proper criminal proceeding shall be instituted by CBI which shall be followed by a complete criminal trial. Mr. Chaturvedi submits that **Clause 19(5) of the DCRB Scheme** provides that final pension, gratuity etc. shall not be sanctioned to an employee against whom a judicial proceeding has been instituted/continued. He submits that, contemplation of initiation of judicial proceeding amounts to institution of a criminal proceeding and the same will automatically create a bar to sanction final pension and gratuity in favour of the petitioner in terms of Clause 19(5) of

the DCRB Scheme. Hence, learned counsel for the Chandernagore Municipality submits that, no payment can be released in favour of the petitioner so long the issue referring the disputes before the CBI by a coordinate bench reaches its finality.

21. Mr. Chaturvedi further submits since the moment Education Committee of the Municipal Corporation had adopted the said resolution dated **December 12, 2015** and formed the Fact Finding Committee to probe in detail into the allegations against the petitioner in exercise of its power under Section 26 and

29 of the Municipal Act, all the previous enquiry reports being the one dated October 15, 2015 caused by the Assistant Inspector of School Hooghly and the enquiry report prepared by the respondent no.4 lost their force and had been superseded. Moreover, he submits the issue having been referred before the CBI by the coordinate bench, no direction can be made to release the pension and gratuity in favour of the petitioner.

22. In the light of the above, Mr. Chaturvedi submits that this writ petition is devoid of any merit and should be dismissed.

23. Per contra Mr. Mr. Soumya Majumdar learned counsel appearing for the petitioner, in reply, to referring to the provisions laid down under **Clause 19(1) to (5) of the DCRB Scheme** submits that there is no criminal proceeding or departmental enquiry has been initiated or continued against petitioner. Therefore, the final pension and gratuity of the petitioner cannot be withheld and the withholding of the same till today is an illegal withholding without any authority of law. He submits that for such illegal withholding pension and gratuity, the petitioner should be compensated with interest in an appropriate manner.

24. Referring to the provisions under Clause 19 of the DCRB Scheme, learned counsel for the petitioner further submits the moment the jurisdictional authority has issued the pension payment order, unless the same is withdrawn or cancelled by the appropriate authority under statute, no step

can be taken contrary thereto and the authority is obliged under the law to pay pension and gratuity to the employee in terms of the said pension payment order dated January 14, 2016, as in the instant case.

25. Ms. Chandreyi Alam learned counsel placing reliance upon paragraphs 4 and 5 from the report submits that, the appeal, **MAT 815 of 2018** preferred by CBI is pending before the Hon'ble Appellate Court and the same is being pursued. The stand of CBI would appear from paragraphs 4 and 5 of its report filed in the form of affidavit affirmed on **April 16, 2024** are quoted below:

*“4. That, one of the main grounds mentioned<sup>4</sup> in the Appeal is that the Learned Judge failed to appreciate that the events connected with the present Writ Petition does not make any case which involves any National or International ramifications, as a result, an Appeal being MAT No.815 of 2018 along with CAN No.996 of 2019 and No.9965 of 2019 being applications for stay of operation of the Order and a condonation of delay in filing the Appeal respectively were filed and are still pending before this Hon'ble Court.*

*5. That, another main ground mentioned in the Appeal is that if by frequent Order of enquiry and / or investigation of case which does not involve any National or International ramification and / or the confidence in inquiry or doing complete justice and enforcing fundamental rights, the Central Bureau of Investigation would be flooded with large number of cases, as a result the CBI may not be in a position to properly investigate the serious cases and may loose its credibility of performance with its satisfactory enquiry and / or investigation”.*

**Decision:**

26. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, admittedly no disciplinary proceeding had been initiated by the school against the petitioner on the basis of the allegations in the complaint dated July 09, 2015. No criminal proceeding is pending against the petitioner. The **Enquiry Report** dated **October 15, 2015** submitted by the Assistant Inspector of School Secondary Education counter signed by the Jurisdictional D.I., at **page-82** to the paper-book, Volume-1, discharged the petitioner from all the allegations under the

complaint and recommendation was made for granting pension to the petitioner with an immediate effect. The second **Enquiry Report** dated **December 9, 2015** submitted by Assistant Inspector of School, Secondary Education at **page-83** to the paper-book, Volume-1 also discharged the petitioner from all the allegations. The report of the enquiry dated **April 28, 2017** at **page 107** to the paper-book, Volume-1 prepared and submitted by the respondent no.4 in terms of the direction of the coordinate bench had also discharged the petitioner from all the allegations under the complaint. None of these reports were challenged by the school or the Municipal Corporation. The school by its letter dated **January 19, 2016** at **page 102** to the paper-book, Volume-1 informed the Education Committee of the Municipality that the allegation of financial indiscipline and misappropriation lodged by the complainant appeared to be probed into and the Jurisdictional D.I. resubmitted the pension papers with reasons for sanction of pension and gratuity in favour of the petitioner. **Pension Payment Order** was issued in favour of the petitioner on **January 14, 2016** at **page101** to the paper-book, Volume-1. The Pension Payment Order was also not challenged by the school or the Municipality.

**2015 Section 26** of the Municipal Act provides for the constitution and function of the Education Committee. Such provision neither contemplates nor provides for constitution of any **Special Committee** nor to proceed for any enquiry against any alleged delinquent teacher but an Education Committee is constituted for ensuring general control and supervision of primary and secondary schools maintained by the corporation under any law in force before coming into force of the said act. **Section 29** of the Municipal Act provides for constitution of a **Special Committee** by the **Board of Councillors** for discharge of any specific function, or for making enquiry and report on any specific matter and such committee shall have such powers and shall perform such functions or discharge such duties, as may be provided by resolution in this behalf. The resolution of the Education Committee dated **December 22**, suggested and/or constituted a Fact Finding Committee to probe into the allegations against the petitioner on the basis of the said complaint, such an act at the instance of the Education Committee is not provided under the provision of Section 26 of the Municipal Act.

27. Inasmuch as, the Fact Finding Committee sought to be constituted by the Education Committee under its resolution dated December 22, 2015 cannot be construed or considered to be the Special Committee within the meaning

of Section 29 of the Municipal Act as the Board of Councillors did not constitute the said Fact Finding Committee. Therefore, at no stretch of imagination it could have argued that the said Fact Finding Committee constituted by the Education Committee under its resolution dated December 22, 2015 would be considered and construed as a Special Committee within the meaning of Section 29 of the Municipal Act.

28. The law is well settled when a specific provision has been made under the statute, such provision has to be applied strictly in accordance with the statute or not at all. Any other mode of application of such provision de hors the statute is expressly forbidden in law. Therefore, submission made on behalf of the said Chandernagore Municipality with regard to the validity of the Constitution of the Fact Finding Committee by the Education Committee is not at all tenable in law and accordingly stands rejected. The said Fact Finding Committee cannot probe into the enquiry relating to issues raised against the petitioner under the said complaint. The constitution of the Fact Finding Committee or the proposal therefor made therefor made by the Education Committee is wholly without and/or in excess of jurisdiction and bad in law.
29. The DCRB Scheme, 1981 under Clause 19(5) specifically provides for final pension, gratuity, etc. shall not be sanctioned to an employee against whom departmental/judicial proceedings have been instituted /continued. In case of misconduct of the pensioner the pension sanctioning authority has the power to withhold pension or reduce the pension. In the fact of the instant case, neither any departmental proceeding nor any legal proceeding has been initiated against the petitioner far to speak of any continuance thereof. No misconduct has not been proved against the petitioner. On the contrary the Pension Payment Order has been issued in favour of the petitioner by the Pension Sanctioning authority. The moment the Pension Payment Order is issued the same crystallizes the right of the petitioner to receive pension and gratuity.
30. Right to receive pension and gratuity are statutory rights arising out of successful completion of employment of an employee after retirement. The petitioner has retired on **July 31, 2015**, immediately the right of the petitioner has accrued to receive pension in terms of the Pension Order and the consequential gratuity. When the pension and gratuity are admittedly payable to a retired employee strictly in accordance with law, the same becomes a property of the retired employee which cannot be withheld or

taken away unless law provides for it and without any established procedure of law.

31. The orders passed by the coordinate bench directing CBI to hold preliminary enquiry is under appeal since 2018. The contention of CBI before the Hon'ble Division Bench has already been quoted above from its report. The appeal is pending for about **six years**. Service of the petitioner was approved as **Headmaster** on March 4, 2005 and since then till retirement, for about ten years the petitioner **rendered** from his service. The petitioner retired in 2015 and filed this writ petition in 2016. For about nine years since retirement the petitioner has not received his pension and gratuity. In contemplation of initiation of a criminal proceeding against the petitioner by CBI, this Court is of the firm view that, the **Clause 19(5)** of the DCRB Scheme, 1981 shall not apply and the employment benefit of the petitioner cannot be withheld any further. The provisions laid down under **Clause 19(5)** of the DCRB Scheme, 1981 has no manner of application in the facts and circumstances of the instant case. The withholding of the Pension and Gratuity of the petitioner by the school authority and/or Chandernagore Municipality is totally illegal, wrongful, arbitrary and not tenable in law.
32. In view of the foregoing discussions and reasons, the total sum of **Rs. 28, 67,213/-** lying deposited with the Learned Registrar General of this Court with all accrued interest thereupon on the fixed deposit is directed forthwith to be released in favour of the petitioner by the Learned Registrar General of this Court upon receiving an affidavit from the petitioner with disclosure of his identity documents and upon being satisfied therewith. While receiving the said amount the Learned Advocate on record shall accompany the petitioner at the Office of the Learned Registrar General of this Court for identification of the petitioner.
33. As the pension and gratuity were withheld wrongfully, illegally, arbitrarily and without any authority of law, the petitioner shall have to be compensated with interest. The **respondent no.3** shall calculate and process the payment of interest **@ 8% per annum** since the date of retirement of the petitioner, i.e., **July 31, 2015** on the said sum of **Rs.28,67,213/-** till the date of deposit, i.e. **February 23, 2024** with the Learned Registrar General of this Court, and shall transmit and send all the necessary records, calculation and instruction to the **Jurisdictional Treasury Officer** positively within a period of **two weeks** from the date of communication of this order. The **Jurisdictional Treasury Officer** then shall release the amount of interest and pay the petitioner by crediting his bank

account to be furnished by the petitioner positively within a period of two weeks from the date of receiving the necessary calculation and instructions from the respondent no.3.

34. It is further made clear that, since the appeal preferred by CBI is pending, if ultimately CBI proceeds to probe into the issue and initiates any criminal proceeding and the petitioner is finally found to be guilty under the criminal trial, then the respondent no.3 shall be at liberty to take steps in accordance with law to recover the amount from the petitioner.
35. With the above observations and directions the writ petition **WPA 3618 of 2016 stands allowed** without any order as to costs.
36. Consequently, the application **CAN 1 of 2017 (Old No. CAN 4702 of 2017)** stands **disposed of**.

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