



IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

WRIT PETITION (PIL) No. 128 OF 2020

#

Smt. Dinavahi Lakshmi Kameswari
w/o Sri K. Sarva Bhouma Rao
Retired District and Sessions Judge
R/o Flat No.504, Nikhil's Indraprastha
Beside Arena Drive, Kunchanapalli Road
Amaravati-522 501

..... Petitioner

Vs.

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1. The State of Andhra Pradesh,
Rep. by its Chief Secretary,
Secretariat, Velagapudi
2. The State of Andhra Pradesh
Represented by its Principal Secretary
Finance Department
Secretariat, Velagapudi
Amaravati
..Respondents

JUDGMENT PRONOUNCED ON: 11.08.2020

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
AND**

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law
Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment?



*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

AND

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! Counsel for the petitioner : Sri Naumene Suraparaj Karlapalem

^ Counsel for the respondent : Learned Government Pleader for Finance
Planning

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> HEAD NOTE:

? Cases referred

1. (1984) 3 SCC 161
2. (1982) 2 SCR 365
3. (1995) ILLJ 622 SC
4. (1994) 1 SCR 857
5. 1996 CRILJ 3983
6. (2003) 12 SCC 293
7. (1971) 2SCC 330
8. (1976) ILLJ 377 SC
9. ILR 1967 Punj & Har 278



- 10.1983 AIR 130
- 11.Civil Appeal No.1677-1678 of 2020 dated 18.02.2020
- 12.(2013) 12 SCC 210
- 13.(2006) 7 SCC 651
- 14.Civil Appeal No.6156 of 2013 dated 07.08.2020
- 15.W.P.No.2630 of 2014 dated 16.02.2016
- 16.W.P.No.352 of 2014 dated 27.11.2015
- 17.AIR 1971 SC 530
- 18.AIR 1985 SC 553
- 19.AIR 1985 SC 356
- 20.AIR 1961 SC 298
- 21.AIR 1968 SC 1053
- 22.AIR 1960 SC 932
- 23.AIR 1978 SC 597
- 24.AIR 1986 SC 180
- 25.(1991) ILLJ 395 SC
- 26.AIR 1999 SC 1416
- 27.(2013) 3 Mah.L.J 126
- 28.W.P.No.3208 of 2011 dated 08.12.2014
- 29.1993 (o) MPLJ 663
- 30.1979 MPLJ 379
- 31.(2001) 3 ILR 387
- 32.AIR 1956 SC 479
- 33.AIR 1955 SC 25
- 34.1955 (1) SCR 599
- 35.AIR 1959 SC 149
- 36.AIR 1967 SC 52
- 37.AIR 1982 SC 33
- 38.AIR 2003 SC 250
- 39.AIR 2013 SC 565
- 40.(2017) 1 SCC 148
- 41.AIR 1962 SC 1139
- 42.(1987) 2 SCC 469
- 43.AIR 1980 SC 1622
- 44.(1994) 2 SCC 240
- 45.2014 (8) SCC 894



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

AND

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION (PIL) No.128 OF 2020

ORDER: *(Per Hon'ble Sri Justice M. Satyanarayana Murthy)*

The petitioner – Smt. Dinavahi Lakshmi Kameswari, retired District and Sessions Judge, being a pensioner, filed this writ petition under Article 226 of the Constitution of India invoking pro bono publico claiming Writ of mandamus declaring the action of the respondent authorities in deferring the salary/wage/remuneration /Honoraria on gross basis of all the Government Employees including serving and retired employees of all PSUs/Government aided Institutions /Organizations/ Universities/ Societies/Autonomous bodies semi-autonomous bodies in respect of their salary/wage/honoraria/pensions, except the salary/wage/remuneration/honoraria of employees of Medical & Health Department, Police Department and Sanitation workers working in rural local bodies/urban local bodies i.e. Nagar Panchayats/ Municipalities/Municipal Corporations by way of an executive order under G.O.Ms.No.26 and 37 for deferring the salary for the months of March and April payable in April and May 2020, without declaring a financial emergency under Article 360 of the Constitution of India and without deriving any authority from any statute for the time being in



force as illegal, arbitrary and violative of Articles 21 and 300-A of the Constitution of India and consequently direct the Respondent State Government to disburse the salary to all the Government Employees including the salary of serving and pension to retired employees of all PSUs/Government aided Institutions/ Organizations/ Universities /Societies/ Autonomous Bodies/Semi-Autonomous bodies etc., forthwith.

The petitioner is a retired District and Sessions Judge having been appointed in the year 1989 and had retired on attaining the age of superannuation in the year 2018. However, after bifurcation of the State of Andhra Pradesh into Andhra Pradesh and Telangana, the petitioner was allotted to Telangana State and had worked in the State of Telangana till her retirement. Since her pension is being paid by State of Telangana by virtue of her allotment to Telangana Judiciary, the petitioner claims that she has no personal interest in the matter so far as State of Andhra Pradesh is concerned and as such, the petitioner is entitled to file the present writ petition by way of public interest litigation espousing public cause, as most of the employees are not in a position to access to justice for redressal of their grievance independently.

The petitioner narrated global impact of Covid-19 being caused and declaration of lockdowns in more than 130 countries in the entire world. In view of the extreme danger to public health and safety, the



Government has invoked provisions of Disaster Management Act, the Ministry of Home Affairs had issued certain guidelines. The Government of India had imposed lockdown from 14.04.2020 onwards for containment of Covid-19 pandemic, barring essential Services. The respondent/State Government had issued the impugned G.O.Ms.No.26 dated 31.03.2020 deferring part of Salary/Wage/ Remuneration /Honorarium/Pension on gross basis, for the month of March, 2020 payable in the month of April, 2020 and also issued another vide G.O.Ms.No.27 dated 04.04.2020, the State Government exempted from deferment of salary to the employees of (i) Medical & Health Department; (ii) Police Department and (iii) Sanitation workers working in Rural Local Bodies/Urban Local bodies i.e. Nagar Panchayats/Municipalities/Municipal Corporations and ordered payment of full eligible salary. Subsequently, in partial modification of G.O.Ms.No.27 dated 04.04.2020, the State Government issued G.O.Ms.No.37 dated 26.04.2020, ordering for payment of full pensions to all categories of pensioners and deferred payment of part of Salary/Wage/ Remuneration /Honorarium, for the month of April, 2020 payable in the month of May, 2020. Though such an order of the Government is laudable, it is by no stretch of imagination a bounty. However, not only the employees of the above three departments are entitled to draw their full eligible salary, but also each and every government employee is entitled to draw their full eligible



salary, cannot be deprived of except by authority of law for the time being in force.

The Government had further passed G.O.Ms.No.37 dated 26.04.2020 stating that, as the circumstances prevailing since the issuance of the orders in G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.27 dated 04.04.2020 respectively have not been materially altered and the deferred payment of part of salary/wage/remuneration/honorarium etc.,shall continue for the month of April 2020 payable in May 2020. While passing the said G.O.Ms.No.27 dated 04.04.2020, the Government had also exempted pensioners from the deferred payment of their pension along with the departments exempted under G.O.Ms.No.27 dated 04.04.2020. Therefore, except the employees belonging to (i) Medical & Health Department; (ii) Police Department and (iii) Sanitation workers working in Rural Local Bodies/Urban Local bodies i.e. Nagar Panchayats/Municipalities/Municipal Corporations, the employees belonging to the remaining departments are being denied their part of salary/wage/remuneration/honorarium though they are rightfully and lawfully entitled to.

It is contended that at the very threshold the impugned G.O. Ms 26 dated 31-03-2020 was issued without reference to any provision of law. The only statute that was referred to in the impugned GO was the Disaster Management Act,2005, and the guidelines issued by the



Government of India under Order No.40-3/2020-DM-I(A), dated 24-3-2020 issued by the Ministry of Home Affairs. Neither the Disaster Management Act, 2005, nor the guidelines of the Government of India conferred any power on the Government of Andhra Pradesh to defer payment of part of salary to Government Employees. Further, deductions or recoveries in salary can only be made pursuant to the manner contemplated under the provisions of the appropriate Service Rules, but not otherwise. Therefore the very Government Orders are without any authority of law and are liable to be set aside.

It is contended that right to receive salary is a property within the meaning of Article 300A of the Constitution of India and it can be deprived only by authority of law which is evidently lacking in the instant case on hand. Further, the expression “Law” means either an Act of Parliament or an Act of Legislature or at least a Rule having a statutory character but by no means could an Executive Order be equated to “Law”. For the time being, the Government of Andhra Pradesh does not have any particular law to aid it in denial or deferment of part of salary to Government Employees for any purpose whatsoever, regardless of the nomenclature employed by the State for defending such an action. As such, the very GOs that was issued were a mere executive order which transgressed its statutory bounds.



It is specifically contended that as a result of the measures taken to contain the pandemic, while the revenue streams have totally dried up due to the lockdown, the demand on State resources may have increased tremendously for contact tracing, quarantining, providing personal protection equipment, drugs, health facilities, etc., & for providing financial assistance to the poor people most affected by the lockdown, it does not give any authority to the Government of Andhra Pradesh to defer payment of salary of Government Employees without any authority drawn from any statute whatsoever. If at all there exists circumstances to believe that a situation has arisen whereby the financial stability or Credit of the State is threatened, the Government ought to have taken recourse under Article 360 of the Constitution of India to declare a Financial Emergency in case the Government intends to issue directions for the reduction of the same. Without declaring a Financial Emergency under Article 360 of the Constitution of India, any deferment of salary of employees of the State, or even a temporary deferment of the salary in part or in whole, would amount to violation of Articles 21 and 300A of the Constitution of India.

It is contended that while the Constitution of India provides for a specific recourse to be taken in case of a threatened Financial Stability or a Credit of the State, the State cannot circumvent the said constitutional provisions and take a short-cut route of passing an executive order to



achieve the same result, more so without any authority derived out of a statutory or a legal framework.

Common counter has been filed on behalf of all the respondents contending that, when the matter came up for hearing before the Court, it was represented that the Government had already issued G.O.Ms.No.44 dated 22.05.2020 directing to pay the salary/wage/remuneration/honorarium without deferment i.e. full, from the month of May, 2020 onwards, duly effecting all the applicable types of recoveries/deductions. The said G.O.Ms.No.44 dated 22.05.2020 was already brought on record and it was filed vide Memo dated 23.05.2020. The salary of all the employees since then has been paid in full, except for the months of March and April, 2020 where 50% of the salary was deferred, the salary for all the subsequent months has been paid in full.

It is further submitted that, due to Covid-19 pandemic, lockdown measures which were undertaken to curb the spread of the virus, the State Government has taken a major hit in terms of revenues generated. In view of the same, the Government had discussions with the stakeholders and decided to defer payment of part of the salary until the financial situation of the State gets better. The Government held discussions and deliberations with various employees, organizations and only after their consent was received that payment of part of the salary



was deferred and stated that it was not a unilateral decision of the State Government.

It is further contended that the present petitioner has no locus to file the public interest litigation. Since the issue under consideration pertains to the salary of employees and pension of retired employees, any aggrieved employee may approach the Court by way of a writ petition, and that, the petitioner has not stated as to what is the public interest which is being espoused by her and drawn attention of this Court to the judgment of the Supreme Court in **Bandhua Mukti Morcha v. Union of India**¹, where the Apex Court held as follows:

“Indeed, that was the foundation on which public interest jurisdiction was judicially recognized in situations such as those in the persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and under trials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the Rules of standing.....”

It is further contended that, the State Government incurs an expenditure of Rs.5,000 crores per month towards salary and pension to all the Government/retired employees. Out of this, an amount of Rs.3,600/- crores pertains to salaries and Rs.1,400 crores pertains to

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(1984) 3 SCC 161



pensions. Due to outbreak of Covid-19 pandemic, the Government has also incurred higher expenses in terms of making arrangements for quarantine centers, tracking and tracing of persons infected with Covid-19, procurement of Rapid Testing Kits, Personal Protection Equipment (PPE), establishment of testing laboratories etc.

It is further contended that, due to outbreak of Covid-19 pandemic and due to imposition of national-wide lockdown and subsequent restrictions imposed on transportation and economic activities, the revenue receipts of the State have been drastically affected. The States' own revenue consisting of tax revenue and non-tax revenue have shown a precipitous decline of 52% i.e. Rs.7593 crores in first quarter of 2020-21 as compared to 2019-20. The receipts were only Rs.7,089 crores against Rs.14,682 crores of 2019-20. The States' own revenue have not shown any appreciable improvement in the month of July, 2020 also as the decline is to an extent of 49% amounting to Rs.2,129 crores for the first 20 days of the month of July, 2020 as compared to 2019-20. The receipts were only Rs.2,253 crores as against Rs.4,382 crores for the first 20 days of the month of July, 2019. It is further submitted that the Government has merely deferred the payment of part of salary to the employees and it is the endeavour of the Government that all the deferred salary are recompensated as soon as the financial status of the State improves and finally prayed to dismiss the writ petition. A memo is filed placing all the copies of G.Os.



During hearing, learned counsel for the petitioner Sri Naumene Suraparaj Karlapalem contended that the pension is not a bounty and it is a remuneration paid after retirement for the services rendered by a government servant. Apart from that, salary is a consideration payable to employee for the service rendered during the past month and non-payment of it would deprive the livelihood of the said employees working and retired from state services. In the absence of any authority under law, such deferment of part of salary for the months of March and April 2020, payable in April and May, 2020 and non-payment of pension to retired employees for the month of March 2020 is violative of Article 300-A of the Constitution of India and requested to quash the G.Os while ordering payment of deferred salary for the month of March and April, 2020 and pension for the month of March, 2020.

Whereas, Sri C. Sumon, learned Special Government Pleader vehemently contended that the financial resources of the State are dried up totally due to Covid-19 pandemic and the government was forced to incur huge amount to take safety measures for the health and lives of the citizenry of the State and that, keeping in view the guidelines issued by the Ministry of Home Affairs and Ministry of Health and Family Welfare, the State was forced to incur huge amount, besides loss of revenue during the lockdown period. When there is no sufficient revenue for the government, liability of payment of salary and pension became burden to the government and the act of state cannot be said to be



arbitrary, illegal or violative of any of the constitutional provisions, and the Court must take into consideration the situation prevailing during March and April 2020. Learned Special Government Pleader also further contended that the petitioner has no locus standi to prosecute the proceedings by way of public interest litigation, requested to dismiss the petition.

Considering rival contentions, perusing the material on record, the points that arise for consideration are:

1. ***Whether the petitioner being a retired Judicial officer who was allotted to the State of Telangana after separation from State of Telangana and State of Andhra Pradesh is competent to file writ petition, invoking pro bono publico?***
2. ***Whether deferment of part of salary to the government servants for the months of March and April, 2020 and deferment of part of pension to the retired government servants for the month of March, 2020, is permitted by any authority of law? If not, is it violative of Articles 21 and 300-A of the Constitution of India. If so, whether G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 are liable to be quashed or set-aside?***

POINT No.1

SCOPE OF PUBLIC INTEREST LITIGATION

Public Interest Litigation is a judicial invention, not defined anywhere, but it can be described as a kind of constitutional adjudication in pursuit of constitutional justice, promoting the concept of



Welfare State. The notion of justice is fundamental to all organized civilizations, communities and cultures. It inheres in the attempt of communities to organize themselves as a collective and the dispensation of justice is the highest dharma. Dispensation of justice is complete, when the law that gives a right or prohibits the infringement thereof also gives a remedy.

Access to justice is said to be a right vested in every citizen and is necessary complement of administration of justice. The absence of legislation or legislative silence in regard to such access will not jeopardize that right. Citizens can access courts for resolution of disputes and seek appropriate remedies for the wrongs, injuries or damage suffered by them. Certain constitutional directives provides for another important dimension of administration of justice. Viz., access to justice for the socially, economically and/or politically disadvantaged or other disabled or weaker sections of the community. Women and children are given a special place of protection. The following principles emanate from the constitutional objectives:-

- (a) Securing social, economic and political justice to all people (The Preamble of the Constitution of India)
- (b) Securing the functioning of all the institutions of national life towards the above objective (Article 51A)
- (c) Ensuring that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39A)



Public Interest Litigation is understood and treated as the citizens' invocation and use of the delivery of legal services in aid of and as a tool of administration of justice. It guarantees opportunities for securing justice and just distribution of material resources of the community. But, there are certain constitutional limitations for exercising power of judicial review in Pro Bono Publico, as laid down by the Apex Court in catena of perspective pronouncements, which guide all Courts while exercising such power.

Even, in view of the law declared by the Hon'ble Apex Court in **Badhua Mukti Morcha v. Union of India** (referred supra), relied on by the learned Special Government Pleader, any citizen of the country can file any public interest litigation when the public is unable to access the courts for justice. Here, the petitioner is native of Draksharamam and retired Judicial officer, allotted to the State of Telangana. She being the citizen of this country can question the State acts if those acts are violative of any constitutional provisions. If the petitioner is denied her right to approach the court by invoking pro bono publico, it is denial of her right on the ground that she has no interest directly or indirectly in the litigation and it would amount to depriving a citizen of India to access to Justice for violation of any of the constitutional provisions and that was not the main intention of the public interest litigation.



The main intention is to dispense with litigational competence, to promote social justice and to provide justice to the needy to the people who are unable to access to the Courts because of their financial or other social constraints. But, to achieve such object, the Courts are exercising power of judicial review under Article 226 of the Constitution of India, invoking *pro bono publico* jurisdiction in Public Interest Litigation. Thus, public interest is a pre-requisite for Public Interest Litigation. For a Public Interest Litigation, it must be demonstrated that the interest or concerns of a class, section or a group of people, are involved. It must be further shown that there is a constitutional or legal dimension to that interest or concern. The action on behalf of such individuals will receive due acceptance however subject to the fitness of the person or persons seeking to represent such individuals. There is certain “nogo” area where the Court cannot exercise power in the name of Public Interest Litigation. Public Interest Litigation is not a process to be invoked or used for the purpose of seeking or laying down advisory opinions on matters of governance and exercise of governmental authority, since PIL is a supplement to existing means of constitutional governance. Thus, the very intention of exercise of power under Article 226 of the Constitution of India in a Public Interest Litigation is to render justice to the needy, irrespective of their litigational competence when they are unable to access justice on account of their economic or social background, but, it cannot be used as a tool to achieve different purposes.



The Apex Court laid down certain parameters to exercise such jurisdiction. Time and again, the Apex Court expressed its disconcert about the practice of filing of PILS without any basis to create sensation in the public or popularize themselves in the public through print, electronic media by the persons themselves or at the instance of the persons behind themselves either for personal gain or for political gain.

Repeatedly the Apex Court held that none has a right to approach the Court as a public interest litigant and that Court must be careful to see that member of the public, who approaches the Court in public interest, is acting bona fide and not for any personal gain or private profit or political motivation or other oblique considerations. (Vide: **S.P. Gupta v. Union of India**²). Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or

2 [1982]2SCR365



member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

Courts must do justice by promotion of good faith, and prevent abuse of law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (Vide: ***“State of Maharashtra v. Prabhu”***³ ***“Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills”***⁴). No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (Vide: ***“Dr. B.K. Subbarao v. Mr. K. Parasaran”***⁵).

3 (1995)ILLJ622SC

4 [1994]1SCR857

5 1996CriLJ3983



Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

In the present facts, the petitioner had no personal interest, but she approached the Court, Court representing more than four lakh employees, besides approximately equal number of pensioners. Each and every employee or pensioner cannot approach this Court spending huge amount and time. Even if everyone files such petitions, no purpose would be served, except multiplication of work and duplication of order. No personal or political colour is attributed to the very filing petition. In the absence of attribution of any malafides or political or other reasons, the petitioner being a citizen is entitled to espouse the cause of a class of citizenry. Hence, we find that the public interest litigation is maintainable. Consequently the request of the State is rejected, holding this point against the State Government and in favour of the petitioner.

POINT No.2

By virtue of G.O.No.26 Finance (HR-V-TFR-AL-EWF) Department dated 31.03.2020 the Government deferred payment of Salary/Wage/ Remuneration /Honorarium/Pension on gross basis, for the month of March, 2020 payable in the month of April, 2020, including pension for the month of March, 2020 referring the guidelines issued by the Ministry of



Home Affairs and Disaster Management Act. The said G.O.No.26 Finance (HR-V-TFR-AL-EWF) Department dated 31.03.2020 reads as follows:

**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Finance Department - Disaster Management Act, 2005 – COVID-19
Pandemic – Payment of Salaries / Wages / Remuneration /
Honorarium / Pensions – Deferment of payment – Orders – Issued. ----

FINANCE (HR-V-TFR-AL-EWF) DEPARTMENT
G.O.Ms.No.:26 **Dated: 31.03.2020**
Read the following:-

1. The Disaster Management Act, 2005
2. MHA, GoI Order No.40-3/2020-DM-I(A), dated 24.3.2020.
3. G.O.Rt.No.216, Health Medical & Family Welfare (B2)
Department, dated:24.03.2020.

ORDER: Whereas the COVID-19 outbreak has occurred in Wuhan, Hubei Province in China in December 2019, & has rapidly spread throughout the globe, with startling speed. The virulent strain of the virus & the ease of the spread of the contagion has led to the recognition of COVID-19 by the World Health Organisation (WHO) as a global pandemic.

2. Recognizing the extreme danger to Public Health and Safety, preventive measures are initiated by the State Governments across the country in coordination with Ministry of Health and Family Welfare.

3. Further, vide the G.O. mentioned in the reference 3rd read above, the Government of Andhra Pradesh has instituted a "Lockdown", till the 14th of April 2020, under the Disaster Management Act, 2005 as per the guidelines issued by the Ministry of Home Affairs, Government of India for the containment of the COVID-19 pandemic. Barring the essential services, all commercial/non-essential services have been shut down.

4. As a result of the above measures taken, while the revenue streams have totally dried up due to the lockdown, the demand on State resources has increased tremendously for contact tracing, quarantining, providing personal protection equipment, drugs, health facilities, etc. & for providing financial assistance to the poor people most affected by the lockdown.

5. Government, after careful consideration of the situation arising due to the COVID-19 outbreak, the economic consequences of the lockdown, the cessation of the revenue inflows and extra burden imposed on the State's resources to contain the epidemic & to provide relief to the people affected/likely to be affected, hereby orders for the deferment of Salaries/Wages/Remuneration/Honorarium/Pensions on gross basis, as per the following pattern:

- i. There shall be (100)% deferment in respect of Hon'ble C.M / Hon'ble Ministers / Hon'ble M.L.As / Hon'ble M.L.Cs, Chairperson & Members of all Corporations, elected representatives of all Local Bodies & people holding equivalent posts, as per the orders issued from time to time.



- ii. There shall be (60)% deferment in respect of All India Service Officers viz., IAS, IPS and IFS;
- iii. There shall be (50)% deferment in respect of all other Government employees, including work-charged employees & persons engaged under the category of direct individuals professions & through 3rd party, except Class-IV Employees;
- iv. There shall be (10)% deferment in respect of Class-IV, Out-sourcing, Contract and the Village & Ward Secretariat employees.
- v. The deferment mentioned in respect of Para 5(i), (ii), (iii) & (iv) supra shall be made applicable mutatis-mutandis in respect of the retired employees in the respective categories.
- vi. The above deferment shall be equally applicable to the serving & retired employees of all PSUs / Government aided Institutions / Organizations / Universities / Societies / Autonomous bodies / Semi autonomous bodies, etc. in respect of their Salaries/Wages/Honorarium/Pensions.

6. The above orders shall come into force in respect of the Salary/Wages/ Remuneration/Pensions for the month of March 2020, payable in the month of April 2020 and will continue to be in force till further orders.

7. In case of the Bills which are already uploaded for payment, the deferment shall be centrally effected through the CFMS.

8. In case of the Bills pertaining to the month of March 2020 which are yet to be uploaded in CFMS, the Bills shall be passed only after effecting the provisions of this G.O. read in Para 5 (i) to (vi).

9. The DTA/PAO/DWA and all the Drawing & Disbursing Officers shall ensure that the above order is implemented, without any deviation.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

NILAM SAWHNEY

CHIEF SECRETARY TO GOVERNMENT

It is equally not in dispute that, by virtue of G.O.Ms.No.27, the salary payable to Medical & Health Department, Police Department, Sanitation workers working in Rural Local Bodies/Urban Local Bodies i.e Nagar Panchayats/Municipalities/Municipal Corporations is ordered to be paid and whereas in the later G.O.No.37 dated 26.04.2020, certain percentage of salary and pension payable to the government servants of the state for the months of March and April was also deferred.



In view of the undisputed facts, it is relevant to refer to various provisions of Constitution and other allied laws.

The word “Pension” is defined under Article 366(17) of the Constitution of India and it reads as follows:

“pension means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund”

The definition of “pension:” as given in Article 366(17) is not all pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life. (*vide Kerala State Road Transport Corporation v. K.O. Varghese*⁶)

Though Revised Pension Rules are in force in the State of Andhra Pradesh, the word “Pension” is not defined in the Act.

Thus, in view of the definition of “Pension”, it is an amount payable to a retired employee for the past service rendered by him to the State. Such pension is the livelihood to a person who is in twilight or at the dawn of life. If, for any reason, the pension is not paid, it is hardly difficult to survive for the rest of the life, incurring various expenditures

6 (2003) 12 SCC 293



at the old age whose health becomes deteriorated on account of advanced age and thereby it is imperative to incur substantial amount for their medical and maintenance. However, the State is competent to defer payment or deduct pension of the state employees by authority of law for the public purpose. On account of deferred payment of pension to retired employees *en masse* on the ground of imposition of lockdown or any other ground mentioned in the counter affidavit filed by the State is not justifiable action.

‘Pension’ can be deferred/withheld or stopped only in certain circumstances enumerated under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 and it reads as follows:

9. Right of Government to withhold or withdraw pension :-

1 (1) The Government reserves to themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specific period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any 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 :

Provided that the Andhra Pradesh Public Service Commission shall be consulted before any final orders are passed. 1 [“However, consultation with Andhra Pradesh Public Service Commission is not necessary, when the pensioner is found guilty in any judicial proceedings”.]

Provided further that a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45]

Provided also that the penalty of withholding of entire pension or gratuity or both may be imposed against the retired Government servant upon being found guilty or upon conviction in a court of law for the offences of grave charges namely proved cases of misappropriation, bribery, bigamy, corruption, moral



turpitude, forgery, outraging the modesty of women and misconduct.”

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

In the instant case on hand, none of the circumstances as mentioned in Rule 9 of the Andhra Pradesh Revised Pension Rules are prevailing to defer payment of part of the pension payable to the government retired employees for the months of March, 2020. Such deferment of payment of pension would amount to violation of fundamental rights guaranteed under Article 21 of the Constitution of India. This issue is no more *res integra*, in view of the law declared by the Apex Court in various judgments commencing from **Deoki Nandan Prasad v. State of Bihar and Ors**⁷ wherein the Apex Court Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not

7 (1971) 2 SCC 330



depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in **State of Punjab and Anr. V. Iqbal Singh**⁸.

A Full Bench of the Punjab and Haryana High Court in **K.R. Erry v. State of Punjab**⁹ considered the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show-cause in that regard must be given to the officer. This view regarding the giving of further opportunity

8 (1976) 111 LJ 377 SC

9 [ILR 1967 Punj & Har 278]



was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show-cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence no opinion is expressed regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. The Apex Court did not agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

Having due regard to the above decisions, Apex Court was of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order, the State had no power to withhold the same. Similarly, the said claim is also property



under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that 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 the Constitution, and as such the writ petition under Article 32 is maintainable...”

In **D.S Nakara and others v. Union of India**¹⁰, Justice D.A. Desai, who spoke for the Constitutional Bench, in his inimitable style, considered the right of pension framing various issues, particularly defining pension and whether it is a property or not etc, concluded that pension cannot be withheld except by authority under law. The same principle is reiterated in **Dr. Hira Lal v. State of Bihar and others**¹¹.

In **State of Jharkhand v. Jitendra Kumar Srivastava**¹², while dealing with Rule 43(b) of Bihar Pension Rules with regard to claim of the petitioner for payment of provisional pension, gratuity etc. in terms of Resolution No. 3014 dated 31.7.1980, the Division Bench of the Apex Court held that the State had no authority or power to withhold pension or gratuity of a government servant during pendency of the departmental proceedings.

In **State of West Bengal v. Haresh C. Banerjee and Ors**¹³, the Apex Court recognized that even when, after the repeal of Article 19(1)(f)

¹⁰ 1983 AIR 130

¹¹ Civil Appeal No.1677-1678 of 2020 dated 18.02.2020

¹² (2013) 12 SCC 210

¹³ (2006) 7 SCC 651



and Article 31 (1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution, the same is reiterated by Division Bench of Apex Court in **Hari Krishna Mandir Trust v. State of Maharashtra**¹⁴. Right to receive pension was treated as right to property. The High Court of Judicature of Bombay in **Purushottam Kashinath Kulkarni and others v. The State of Maharashtra and others**¹⁵ and The High court of Chattisgarh in **Ramlal Sharma v. State of Chattisgarh**¹⁶ relying on **D.S Nakara and others v. Union of India** (referred supra), concluded that payment of pension cannot be deferred. It is thus a hard earned benefit of an employee in the nature of property.

Coming to deferment of salary, the contention of the petitioner is that a salary payable to an employee cannot be deferred to any extent, except authorized by law.

The word 'salary' is not defined in any enactment, but salary is a fixed regular payment, typically paid on a monthly basis but often expressed as an annual sum, made by an employer to an employee. Thus, salary is a form of payment from an employer to an employee,

¹⁴ Civil Appeal No.6156 of 2013 dated 07.08.2020

¹⁵ W.P.No.2630 of 2014 dated 16.02.2016

¹⁶ W.P.No.352 of 2014 dated 27.11.2015



which may be specified in an employment contract. It is contrasted with piece wages, where each job, hour, or other unit is paid separately, rather than on a periodic basis. In accounting, salaries are recorded on payroll accounts. Though the word 'salary' was not specifically defined under any statute, the Court may fall back on the law laid down by the Apex Court in various judgments and dictionary meaning of salary.

According to Cambridge dictionary, "**salary**" is defined as the total amount of money that an employee is paid every year to do their job, or one of the payments they receive each month as part of the job.

In Collins dictionary, "**salary**" is the money that someone is paid each month by their employer.

The word 'property' is inclusive of both movable and immovable property, both pension and salary payable to an employee can be said to be part of the property, as held by the Apex Court in **Madhav Rao Scindia v. Union of India**¹⁷, where the Apex Court opined that that Privy Purse payable to ex-rulers is property. In **K. Nagraj v. State of A.P**¹⁸, Apex Court opined that right of person to his livelihood is property which is subject to rules of retirement. **In State of Kerala v. Padmanabhan**¹⁹ the Apex Court opined that right of pension is property under the Government service Rules, In **Madhav Rao Scindia Vs. State**

17 AIR 1971 SC 530

18 AIR 1985 SC 553

19

AIR 1985 SC 356



of **M.P**²⁰, and **State of M.P. Vs. Ranojirao**²¹, the Apex Court opined that property in the context of Article 300-A includes 'money', salary accrued pension, and cash grants annually payable by the Government ; pension due under Government Service Rules; a right to bonus and other sums due to employees under statute.

Thus, in view of the definitions referred above, salary is an amount payable by an employer to an employee for the service rendered by him under a tacit contract of employment. In the present case, there is a contract for payment of salary between the State and its employees on their reporting to duty consequent upon their appointment to service. When, there is a contact between the employee and employer for payment of salary either monthly or annually, duty of the State is to pay salary as agreed. Article 72 of the Andhra Pradesh Financial Code deals with claims of government servants, due date for payment of pay, allowance etc and it reads as follows:

- (a) Except as provided in clauses (b) and (c) the pay and allowances, leave salary and other monthly recurring payments of all the State Government employees and also the salaries/wages to work-charged establishments and menials paid from contingencies become payable on the last working day of the month to which they relate except for the month of March which shall be paid on the first working day of April. In case the last working day of the

20

AIR 1961 SC 298

21

AIR 1968 SC 1053



month happens to be a bank holiday, the disbursement shall be made on the previous working day.

- (b) (i)(a) The persons become due for payment only on the expiry of the month to which they relate. However, when the first day (including Sunday) of the following month is a public holiday, on which funds for disbursement of pensions cannot be drawn from the Treasury or the Bank, as the case may be, the pensions shall be paid on the last working day of month to which they relate except for the month of March which shall be paid on the first working day of April. However, in such cases other than March if the last working day of the month also happens to be a Government holiday or Bank holiday, disbursement shall be made on the previous working day.
- (b)(i)(b) Pensions which are paid through Banks and Post Offices are to be paid on the last working day of each month except for the month of March which shall be paid on the first working day of April. However, in such cases other than March if the last working day of the month also happens to be a Bank or Postal holiday disbursement shall be made on the previous working day.
- (c) The payment due for a part of a month should ordinarily be made at once without waiting till the end of the month in the following circumstances:-
- (1) When a Government servant proceeds out of India on deputation, leave or vacation, and does not elect to draw leave salary in India under the provisions of Fundamental Rule 91.
 - (2) When a Government servant is transferred to another Audit Circle, or within the same Audit Circle and –
 - (i) to or from the Public Works Department or the Forest Department,
 - (ii) from one Public Works Division to another, or



- (iii) from one department to another so that there is a change in the controlling authority, or
 - (iv) to or from famine duty.
- (3) When a Government servant is promoted from a non-gazetted to a gazetted post or reverted from a gazetted to a non-gazetted post in circumstances involving a transfer from one office to another.
- (4) When a Government servant finally quits the service of the Government or transferred to foreign service.
- (5) When a portion of a civil pension is commuted, in which case the amount of the unreduced pension due up to the day preceding that on which the commutation takes effect should be paid along with the commuted value of the portion commuted.

In view of Article 72 of the Andhra Pradesh Financial Code, it is the duty of the State to pay salary on the last working day of the month of a government servant on presentation of bills. Non-payment of salary would amount to denial of livelihood.

Payment of salary or pension to the employees is only to eke out their livelihood during their service by way of salary and after retirement by way of pension. If, whole or part of the salary or pension is deferred, it amounts to denial of right to life guaranteed under Article 21 of the Constitution of India. Initially, right to livelihood was not recognized as fundamental right under Article 21 of the Constitution of India. But, later it was recognized as Fundamental Right by judicial interpretation to Article 21 of the Constitution of India.



Article 21 of the Constitution of India guarantees right to life. The right to life includes the right to livelihood. Time and again the Courts in India held that Article 21 is one of the great silences of the Constitution. The right to livelihood cannot be subjected to individual fancies of the persons in authority. The sweep of the right to life conferred by Article 21 is wide and far reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

In **Re: Sant Ram**²² a case which arose before “**Maneka Gandhi Vs. Union of India**²³”, the Supreme Court ruled that the right to livelihood would not fall within the expression “life” in Article 21. The Court observed:

“The argument that the word “life” in Article 21 of the Constitution includes “livelihood” has only to be rejected. The question of livelihood has not in terms been dealt with by Article 21.”

22 AIR 1960 SC 932

23 AIR 1978 SC 597



In “***Olga Tellis Vs. Bombay Municipal Corporation***²⁴” the Apex Court held as follows:

"If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21."

(Emphasis is supplied).

The right to live with human dignity, free from exploitation is enshrined in Article 21 and derives its life breadth from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include the right to live with human dignity, the right to take any action which will deprive a person of enjoyment of basic right to live with dignity as an integral part of the constitutional right guaranteed under Article 21 of the Constitution of India.

In “***Delhi Transport Corporation v. D.T.C. Mazdoor Congress***²⁵”, the Supreme Court while reiterating the principle observed that the right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. Income is the foundation of many fundamental rights. Fundamental

24 AIR1986SC180

25 (1991)ILLJ395SC



rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

The Apex Court in various judgments interpreted the right to livelihood is a part of right to life under Article 21 of the Constitution of India and it is relevant to refer the principle in “**M. Paul Anthony Vs. Bharat Gold Mines Limited**”²⁶, the Apex Court held that when a government servant or one in a public undertaking is suspended pending a departmental disciplinary inquiry against him, subsistence allowance must be paid to him. The Court has emphasized that a government servant does not lose his right to life. However, if a person is deprived of such a right according to the procedure established by law which must be fair, just and reasonable and which is in the larger interest of people, the plea of deprivation of the right to livelihood under Article 21 is unsustainable.

Thus, in view of the law laid down by the Apex Court in various judgments (referred supra), widening the meaning of word ‘right to life’ includes ‘right to livelihood’, right to livelihood is a fundamental right, and it is an integral part of right to life guaranteed under Article 21 of the Constitution of India. Therefore, non-payment of part of eligible salary and pension to the employees in service and to the employees retired

26 AIR 1999 SC 1416



from service by issuing G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 is violative of Article 21 of the Constitution of India.

The major contention of the petitioner from the beginning is that, deferment of part of salary and non-payment of pension as stated above, is contravention of Article 300 of the Constitution of India. No doubt, as per Article 300-A of the Constitution of India, no citizen of India be deprived of his/her right to property, except by authority of law. As salary and pension form part of property of an individual to attract Article 300-A of the Constitution of India, such right cannot be taken away except by authority of law.

On a bare look at Article 300-A of the Constitution of India, any citizen of India cannot be deprived of their right to property, except by authority under law. That means a property of any citizen of India cannot be taken unless the State is authorized to do so. In **Shapoor M. Mehra v Allahabad Bank**²⁷, wherein Bombay High Court opined that retiral benefits including pension and gratuity constitute a valuable right in property.

In **Deoki Nandan Prasad v. State of Bihar** (referred supra), the Apex Court held as follows:

"(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim is also property

27 (2012) 3 Mah.L.J 126



under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable."

11. In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues..."

Thus, both salary and pension payable to the employees in service or retired from service falls within the definition of property under in Article 300-A of the Constitution of India.

Though the Constitution of India permits the State to deprive any person's right in property by authority of law, the respondents were unable to show any provision which authorized the State to defer payment of part of salary/pension to the employees in service or retired from service. In the absence of any statute governing deferment of salary or pension, deprivation of right to property by employees in service or retired employees would amount to violation of constitutional right guaranteed under Article 300-A of the Constitution of India. In this regard, it is profitable to mention few judgments of the Apex Court and other Courts with regard to right of the state to defer payment of salary, pension etc.

In **Dr.Smt. Manmohan Kaur v. The State of M.P**²⁸ the Gwalior Bench of Madhya Pradesh High Court had an occasion to deal with non-



payment of salary and pensionary benefits, held that deferment or non-payment of salary or part of it is illegal. In another judgment of High Court of Madhya Pradesh in **Suresh Kumar Dwivedi and others v. State of Madhya Pradesh**²⁹ held that the dignity of a man is inviolable, as enshrined in Article 21, which cannot assured unless his personality is developed, and the only way to do that is to educate him. Thus, the Directive Principles which are fundamental in the governance of the country, cannot be isolated from the fundamental rights guaranteed under Part III of the Constitution. These principles have to be read into the fundamental rights. Both are supplementary to each other. The Court referred the earlier case of a Division Bench in **Siddhi Bala Bose Library Association v. State of Mahdya Pradesh**³⁰ while considering the validity of Section 5 of the Act, after referring to various provisions of the Act in some detail, in paragraph 4 has observed that the provisions of the Act mainly provide for a machinery to ensure payment of full salary in time without any unlawful deduction to recognized teachers and other employees every month through the treasury, availability of enough funds for this purpose and utilization of the amount of grant and most of the fees received from the students to make this payment. The Act has also made provisions to secure the tenure of service of teachers, etc. and provide for recruitment of suitable staff. Suitable provision has also been

29 1993 (0) MPLJ 663

30 1979 MPLJ 379



made to ensure compliance of the provisions by the management of the private educational institutions. To secure payment of salary within time before the expiry of 20th of each month without any unauthorised deduction, as required by Section 3, Section 5 provides for constitution of 'Institutional Fund.' Various sub-clauses of this section show that the Institutional Fund is constituted mainly for the purpose of disbursement of salary of teachers and employees of that institution in the manner specified in Section 5 itself. The Education Officer or his nominee under Sub-section (7) is not empowered to act otherwise, his function is only to ensure that the money available in the Institutional Fund is utilized for the purposes specified and that it is done efficiently.

In **North Malaysia Distributors Sdn Bhd v. Ang Cheng Poh**³¹, the Malaysian Court held that the employer's unilateral reduction of an employee's salary constituted a significant breach of going to the root of the contract of employment. Such breach shows that the employer is no longer wants to be bound by one of the essential terms of the contract. That being said, there are certain situations in which a unilateral salary reduction may be permissible where an employee is legitimately demoted, the demotion will usually come with a salary reduction to reflect the employee's lower job ranking. Some companies may also choose to impose salary cuts as an alternative to retrenchment. In such situations,

31 (2001) 3 ILR 387



in the event of a dispute, the Industrial Court will examine all circumstances as a whole to determine whether the salary cut was an unfair labour practice. In the event the employee feels that the salary cut is not made in good faith, she/he can consider filing a claim of constructive dismissal on the basis that the salary reduction is a fundamental breach of contract.

There is a distinction between pay docking of employees and deferment of salary. Pay docking is nothing but reduction of employee's salary. Docking the pay of exempt employees is permissible in certain circumstances. In the instant case, complaint of the petitioner is not pay docking, but it is only a deferment of part of the salary or pension. However, such deferment is contrary to law laid down by various courts, as referred in the earlier paragraphs, since no law authorizes the government to permit the employer to defer payment of salaries or pension which is payable on the last working day of the same month, as per Article 72 of Andhra Pradesh Financial Code. Therefore, in the absence of any authority of law, deferment of part of salary or pension amount to violation of constitutional right guaranteed under Article 300-A of the Constitution of India, since such deferment is without any authority of law.

At this stage, it is relevant to refer the meaning of 'authority of law'. The Apex Court while considering the word used 'law' under Article 13 and 300-A of the Constitution of India, construed the meaning of word



“Law” not only with reference to Article 13 of the Constitution of India, but also with reference to Article 300-A and 31C of the Constitution of India. The Apex Court in “**Bidi Supply Co. Vs. Union of India**³²” and “**Edward Mills Co.Ltd. Vs. State of Ajmer**³³” held that the law, in this Article, means the law made by the legislature and includes *intra vires* statutory orders. The orders made in exercise of power conferred by statutory rules also deemed to be law. (Vide: **State of M.P. Vs. Madawar G.C.**³⁴) The Law does not, however, mean that an administrative order which offends against a fundamental right will, nevertheless, be valid because it is not a “law” within the meaning of Article 13 (3) of the Constitution of India (Vide: **Bashesar Nath Vs. C.I.T.**³⁵ and “**Mervyn Coutindo Vs. Collector, Customs Bombay**³⁶”)

Therefore, whatever legislation made by the Legislature or Parliament alone can be said to be law within the meaning Article 13 (3) of the Constitution of India. At the same time, the Apex Court in “**Bishambhar Dayal Chandra Mohan Vs. State of Uttar Pradesh**³⁷” while deciding the issue with reference to Article 300-A of the Constitution of India defined the word “authority of law”, held that Article 300-A provides that no person shall be deprived of his property save by

32 AIR 1956 SC 479

33 AIR 1955 SC 25

34 1955 (1) SCR 599

35 AIR 1959 SC 149

36 AIR 1967 SC 52

37 AIR 1982 SC 33



authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word 'law' in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law.

In “**Hindustan Times Vs. State of U.P.**”³⁸ the Apex Court while referring to “**Bishambhar Dayal Chandra Mohan Vs. State of Uttar Pradesh**” (referred supra) held as follows:

“By reason of the impugned directives of the State the petitioners have been deprived of their right to property. The expression 'law', within the meaning Article 300A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law.”

Thus, in view of the law laid down by the Apex Court in the judgments (referred supra), law means the legislation passed by the parliament or State Legislation or Statutory rules or orders.

No doubt, as discussed above, right to livelihood of a person can be deprived by authority of law. Article 300-A of the Constitution of India,

38 AIR 2003 SC 250



protects right of an individual, but such right in the property can be deprived of save by authority of law.

The right to property is now considered to be not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension (Vide: ***Tukaram Kanna Joshi Vs. M.I.D.C.***³⁹)

Right to property of a private individual, though, permitted to be deprived of, it must be by authority of law. Still, Article 25 (1) of the Universal Declaration of Human Rights recognized such right in property as human right, which reads as follows:

“Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

India is a State Party to the declaration, but the right to property is not being considered as human right till date by many Courts. Right to

39 AIR 2013 SC 565



property in India at present protected not only under Article 300-A of the Constitution of India, but also recognized as human right under Article 25 (1) of the Universal Declaration of Human Rights. A liberal reading of these two provisions, the intention to protect the owners of either movable or immovable only from Executive fiat, imposing minimal restrictions on the power of the State. This is in sharp contrast to the language adopted in the Indian Constitution.

In the instant case on hand, except reduction of pensionary benefits under Rule 9 of the Andhra Pradesh Revised Pension Rules and reduction of salary in terms of C.C.A Rules, if the government servant is found guilty of misconduct after conducting necessary enquiry, no other procedure is available in any statute to defer payment of salary, pension or defect of salary or pension in part or in full. But the question of all the employees in the state guilty of any misconduct to defer payment of salary or pension in the present case does not arise. Therefore, deferring payment of part of salary to employees in service and pension to retired employees is deprivation of a citizen in right to property. Such deprivation is violative of fundamental rights guaranteed under Article 21 and Constitutional Right to property under Article 300-A of the Constitution of India and Human Rights of livelihood as per Article 25(1) of Universal Declaration of Human Rights, since the government servants after retirement being pensioners would be deprived of their livelihood, though they are under obligation to meet different expenses, including



maintaining their health condition for the rest of their life. Similarly, the employees in service are bound to face certain difficulties, if salary payment is deferred either in full or part for the reason that sometimes most of the employees would be under obligation to repay housing loans and would be having other financial commitments, their regular maintenance, besides deduction of income tax and other tax liabilities. If, part of the amount is appropriated toward those liabilities, hardly the balance amount which the employees would be receiving would not be sufficient for their livelihood. While deciding such an issue, the Court has to take into consideration the common man's and middle class employee's lifestyle and decide the case in a proper perspective. If, an ordinary employee is maintaining minimum standard of life, he is bound to incur different expenses towards education of his/her children, discharging different liabilities etc. In those circumstances, it is difficult for any ordinary employee to maintain himself/herself. Therefore, such deferment of part of salary or pension creates dent on the financial condition of an ordinary employee or a pensioner who is getting meager income as a salary or pension. That would temporarily deprive right to property, though not authorized by law, certainly violates the fundamental rights guaranteed under Article 21 and Constitutional Right to property under Article 300-A of the Constitution of India and Human Rights of livelihood as per Article 25(1) of Universal Declaration of Human Rights and such deprivation is illegal and impermissible.



One of the contentions raised by this petitioner is that, when the other departments like Medical & Health Department, Police Department, Sanitation workers working in Rural Local Bodies/Urban Local Bodies i.e Nagar Panchayats/Municipalities/Municipal Corporations are being paid their full salary without deferment, the other employees shall also be paid full amount of salary and pension, since they are entitled to receive equal pay for equal work. In the instant case, undisputedly, G.O.No.27 dated 04.04.2020 has limited payment of salaries to Medical & Health Department, Police Department, Sanitation workers working in Rural Local Bodies/Urban Local Bodies i.e Nagar Panchayats/Municipalities/Municipal Corporations employees who are frontline warriors to prevent spreading of Covid-19 and the other employees were not given the benefits to claim full salary, thereby such deferment of salary to employees of other departments is contrary to the concept of equal pay for equal work, as enshrined under Articles 14, 15 & 16 of the Constitution of India. At this stage, it is profitable to the law laid down by the Apex Court in **State of Punjab and Ors. v. Jagjit Singh and ors**⁴⁰ the Supreme Court held that an employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities and certainly not in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human

40 (2017) 1 SCC 148



dignity. Anyone who is compelled to work at a lesser wage does not do so voluntarily he or she does so to provide food and shelter to his or her family, at the cost of his or her self-respect and dignity, at the cost of his or her self-worth, and at the cost of his or her integrity. Any act of paying less wages as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. The Apex Court further observed that India being a signatory to the International Covenant on Economic, Social and Cultural Rights, 1966, there is no escape from the obligations thereunder in view of the different provisions of the Constitution. Thus, the principle of “equal pay for equal work” constitutes a clear and unambiguous right and is vested in every employee, whether engaged on a permanent or temporary basis. Equal pay for equal work is not a constitutional right or a fundamental right. It can be described through the interpretations of Articles 14,15 ad 16 which guarantees fundamental rights of equality before law, protection against any kind of discrimination and equal opportunities in the matters of public employment. The UDHR (Universal Declaration of Human Rights) states that without any discrimination employee has the right to pay for equal work. The preamble of the Constitution of International Labor Organization proclaims the principle of equal remuneration for equal work. Article 4(3) of the European Social Charter which provides the



right to fair remuneration and includes the recognition of right to men and women workers to equal pay. This has been considered as a good practice by various organizations including the United Nations. The Indian Constitution has also made several other Acts for protecting the individuals from irrational way of payment for the work that they have done.

In **Kishori Mohanlal Bakshi v. Union of India**⁴¹ the Apex Court dealt with reference to Articles 39(d) and 41 of the Constitution of India, and held that such discrimination is impermissible. In **Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'Costa and Others**⁴² the issue of concern was a claim for equal remuneration for Lady Stenographers and Male Stenographers. This was ruled in favour of lady stenographers as the Court was in favour of equal pay. But, here discrimination is not between male and female employees, but between employees of one department and the other department. Such discrimination is impermissible in view of law declared by the Supreme Court in **Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'Costa and Others** (referred supra) and **Kishori Mohanlal Bakshi v. Union of India** (referred supra).

41 AIR 1962 SC 1139

42 (1987) 2 SCC 469



In any view of the matter, the employees of two departments who are rendering equal service, cannot be discriminated, as it is violative of Articles 14, 15 & 16 of the Constitution of India.

One of the contention raised by the petitioner is that, in the absence of imposition of any financial emergency under Article 360 of the Constitution of India, salary cannot be deferred or reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State.

No doubt, when financial emergency is declared in the State, Article 360(4)(a)(i) of the Constitution of India permits reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State. But, in the State of Andhra Pradesh, no such financial emergency was in force during the months of March and April, 2020 and no other law permits such deferment of salary or pension etc., payable to the employees of the State or State Corporations, etc.

One of the contention of the respondent/State Government is that, the State Government in consultation with certain association employees took such decision for deferment of salary.

As seen from the material produced along with the counter or additional material, there is nothing to show any consultation with the association employees or agreement between the associations and the State. Except making a bald allegation in the counter affidavit, no details



as to the consultation and agreement for deferment of part of the salary for March and April, 2020 and pension for the month of March, 2020 were produced before this Court. Even otherwise, salary payable to an individual employee whose services are engaged by the State Government throughout the month and if, for any reason, the salary is not paid at the end of the month, the employees have to starve for the next month besides facing financial problems and cannot work with empty stomach for the next month. Such starvation may lead to different complications like loss of immunity which is the main cause for infecting Covid-19.

As discussed above, in the absence of any financial emergency, by exercising power under Article 360 of the Constitution of India or any other law permitting the State Government to defer payment of part of salary of the employees or pension of retired employees, such deferment is illegal.

Learned Special Government Pleader for State explained the State's economic crunch, lack of resources to meet the liability to pay full salaries to the employees during the months of March and April 2020 and as to how the resources are dried up in the State Government are extracted while narrating the facts in the counter filed by the State.

No doubt, on account of lockdown, there was no business activity in the State, as a matter of fact, in the Country as well as State's generation of income or taxes by the Government is reduced to minimum extent. Merely because the Government is without any resources to meet



the liability to pay full salary or pension to the employees, the State employees cannot be deprived of their right to property in the absence of any authority of law. But, when the State is under any obligation to pay the salary to employees and pension to retired employees, the financial constraints is not relevant for disowning the liability to pay the full salary and pensions to the employees of the State and retired employees.

Justice Krishna Iyer in **Municipal Council Ratlam v. Shri Vardichand**⁴³, while rejecting the plea of financial difficulty of the Municipal Council in effectively protecting the Right to Health of the citizens, had observed as follows:

“Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights”. Of course, I agree that law is realistic and not idealistic. What cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle, the progressive taxation system of the country gives enough powers to the government to make its revenue systems workable. However, in a Constitutional Democracy, it cannot be accepted that the financial difficulties of the government can override the rights of the citizens.

Applying the principle laid down in the above judgment to the present facts of the case, the State’s dried up financial resources to meet the liability to pay salaries and pensions is not a ground and the State cannot run away from discharging its duty to pay salaries having extracted work from the employees and such act is violative of the

43 AIR 1980 SC 1622



fundamental right guaranteed under Articles 21 and 300-A of the Constitution of India and Human Right under Article 25(1) of Universal Declaration of Human Rights. Hence, the plea of lack of financial resources to meet the liability is not a ground to defer payment of salary or pension.

The deferred salaries for the month of March and April, 2020 are not yet paid to the State Government employees on the ground of lack of financial resources. As discussed above, it is not a ground to defer the salaries, pensions and for the delay in payment of salary or pension, the respondent-State Government is liable to pay interest on deferred part of salary and pension, as held by the Apex Court in **Union of India v. Justice S.S. Sandhawalia (Retd.) and others⁴⁴, D.D. Tewari (dead) through LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others⁴⁵**. In view of the law declared by the Apex Court in the judgments referred supra, the State employees are entitled to claim interest on the deferred part of salary and pension @ 12%. Though no interest is claimed, since the jurisdiction in public interest litigation is equitable and the Court has to render justice to the public at large. Hence, by examining equity jurisdiction interest @ 12% on the deferred salary or pension is awarded.

44 (1994) 2 SCC 240

45 2014 (8) SCC 894



One of the references made in the G.Os deals with regard to State Plan prescribed under Section 23 of the Disaster Management Act and it reads as follows:

State Plan.—

- (1) There shall be a plan for disaster management for every State to be called the State Disaster Management Plan.
- (2) The State Plan shall be prepared by the State Executive Committee having regard to the guidelines laid down by the National Authority and after such consultation with local authorities, district authorities and the people's representatives as the State Executive Committee may deem fit.
- (3) The State Plan prepared by the State Executive Committee under sub-section (2) shall be approved by the State Authority.
- (4) The State Plan shall include,—
 - (a) the vulnerability of different parts of the State to different forms of disasters;
 - (b) the measures to be adopted for prevention and mitigation of disasters;
 - (c) the manner in which the mitigation measures shall be integrated with the development plans and projects;
 - (d) the capacity-building and preparedness measures to be taken;
 - (e) the roles and responsibilities of each Department of the Government of the State in relation to the measures specified in clauses (b), (c) and (d) above;
 - (f) the roles and responsibilities of different Departments of the Government of the State in responding to any threatening disaster situation or disaster.
- (5) The State Plan shall be reviewed and updated annually. (6) Appropriate provisions shall be made by the State Government for financing for the measures to be carried out under the State Plan.
- (7) Copies of the State Plan referred to in sub-sections (2) and (5) shall be made available to the Departments of the Government of the State and such Departments shall draw up their own plans in accordance with the State Plan

None of the provisions of the Disaster Management Act, more particularly, Chapter III which deals with State Disaster management Authorities consisting of Sections 14 to 24. In the absence of any provision in the Disaster Management Act, to defer payment of salary



either in part or in full and pension, we can safely hold that G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 are not based on any authority of law, except executive fiat, thereby G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 shall be declared as arbitrary and illegal and violative of fundamental rights.

In view of our foregoing discussion, we have no hesitation to hold that G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 are violative of Articles 14, 15, 16, 21 and 300-A of the Constitution of India, Human Right to Livelihood guaranteed under Article 25(1) of Universal Declaration of Human Rights and consequently declared as illegal and arbitrary, while quashing G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020

In the result, writ petition is allowed declaring G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 as illegal and arbitrary and consequently set-aside. The State Government/Respondent Nos. 1 & 2 are directed-

- i) ***To pay deferred salary/wage/remuneration /Honoraria on gross basis to all cadres of State Government employees, including all PSUs/Government aided Institutions /Organizations/ Universities/ Societies/ Autonomous bodies, semi-autonomous bodies for the months of March and April, 2020, payable in the months of April and May, 2020 respectively, within two months from today, together with interest @ 12% per annum on the deferred salary.***



- ii) **To pay deferred pension to the pensioners retired from State Government service for the month of March, 2020 payable in the month of April, 2020, within two months from today, together with interest @ 12% per annum on the deferred pension.**

Consequently, miscellaneous petitions pending if any shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

JUSTICE LALITHA KANNEGANTI

Date:11.08.2020

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MSM,J & LK,J
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
AND
THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

(pre-delivered judgment in)

WRIT PETITION (PIL) No.128 OF 2020

DATED: 11.08.2020

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