

DEMOCRACY GIVES AND DEMOCRACY TAKES AWAY!

INTRODUCTION

In these exceptional circumstances when a majority of people have lost their livelihoods. When destitute people with over a month of economic lockdown are on the verge of starvation when inflation has catapulted to a record. The not so '*Welfare State*' has yet again stood up to add another fardel on those hungry heads.

A recent government order (**GO**) by the Telangana government directed a cut in salaries and pensions (50%) of government employees and retired persons in a view of the difficult financial situation due to these unprecedented times. This move was heavily denounced by the retired personnel, destitute senior citizens, abandoned by their children as their livelihood solely depended on such pensions.

The unacceptable move was soon brought to the doors of the High Court seeking to quash the GO as it was irrational for the citizen whose livelihood solely depended on the same. The government mooted that it was not a cut just a deferment to spare money in the fight against the novel coronavirus. The government has completely seemed to ignore the accepted position that gratuity and pension are not bounties but the benefits earned by the employee by dint of his long, continuous, faithful and unblemished service.¹

This article majorly pivots around the backdrops of this move in these struggling times by the Telangana Government, setting up a path for similar orders by other State governments.

SCHEME INTRODUCED BY THE GOVERNMENT

The Telangana Government on March 30th issued a GO announcing massive pay cuts for elected representatives and deferment in pension of the civil servants by 50%.² Not long after this announcement of the Telangana Government other state governments of Rajasthan,

¹ State of Jharkhand v. Jitendra Kumar Srivastava, AIR 2013 SC 3383

² <https://www.news18.com/news/india/coronavirus-all-of-telanganas-elected-representatives-govt-employees-retirees-to-see-50-pay-cut-2557775.html>

Odisha, Kerala, Maharashtra, and Andhra Pradesh also announced pay cuts and pension cuts to back up the state's economy amid the Coronavirus outbreak.³

The Andhra Pradesh High Court took Suo moto action of a letter filed by Advocate Ravi Shankar Jandhyala challenging the GO passed by the Andhra Pradesh government issuing directions for deferment in pension of civil servants amid coronavirus and allowed the government time of one week to respond.⁴ In light of this case in the Honourable High Court, the Andhra Pradesh government decided to allow the pensioners full pension according to the usual scale and procedures.⁵

A similar case was filed in the Kerala High Court against a GO issued by the government stating that the salaries of all government employees who receive a gross salary of above Rs. 20,000 would be deferred to the extent of six days every month from April till August. The Kerala High Court stayed this order of the state government holding that, *“There seems to be some ambiguity in the challenged GO on how the amounts proposed to be set apart would be utilized by the government. It only refers to the financial difficulties that are faced. The said financial difficulty is not a ground for the State Government to defer the payment of salary. The deferment of salary, for whatever purposes it may be, amounts to a denial of property.”*⁶

Another set of PILs was filed against the Telangana government's order of deferment in pension seeking directions to grants full pension in this time of crisis. The High Court after considering the submissions from both sides asked the state government to reconsider its decision.⁷ On the next hearing, the Advocate General B. S. Prasad informed the court that the government has considered reviewing its decision and has decided to defer 25% pension rather than 50% with effect from April. The Chief Justice of Telangana High Court, namely, Justice

³ <https://www.businessinsider.in/india/news/after-telangana-maharashtra-announces-60-pay-cut-for-government-employees/articleshow/74912477.cms>

⁴ <https://www.barandbench.com/news/litigation/plea-challenges-deferment-of-pension-payment-amid-covid-19-andhra-pradesh-high-court-allows-govt-1-week-to-respond> and <https://www.livelaw.in/news-updates/ap-hc-takes-suo-moto-case-on-letter-petition-against-govt-decision-to-defer-payment-of-salaries-pension-amid-covid-19-154995>

⁵ <https://www.thehindu.com/news/national/andhra-pradesh/pensioners-in-andhra-pradesh-to-get-full-payment/article31439843.ece>

⁶ <https://www.barandbench.com/news/litigation/breaking-deferment-of-salary-amounts-to-denial-of-property-kerala-hc-stays-state-govt-move-to-defer-payment-of-salaries-to-govt-employees> and <https://www.livelaw.in/top-stories/kerala-hc-stays-govt-order-on-deferment-of-payment-of-salary-to-govt-servants-amid-covid-19-155901>

⁷ <https://www.thenewsminute.com/article/reconsider-decision-defer-pension-payment-retired-staff-hc-telangana-govt-122817> and <https://www.tkbsen.in/2020/04/hc-tells-telangana-govt-to-review-decision-on-pension-payment-of-retired-employees/>

Raghvendra Singh Chauhan adjourned the case for three weeks and have directed the state government to file a counter-affidavit justifying its decision to defer payment to 25%.⁸

PENSION VIS A VIS ARTICLE 21

A very fascinating development to the constitution is the extended provisions given to Article 21 of the Constitution of India. Article 21 states that “*No person shall be deprived of his life or personal liberty except according to the procedure established by law*”.⁹ Article 21 has been given the status of fundamental and the courts continue to extend its provisions and the law in its eternal glory has always welcomed them. The word fundamental implies the right with which a person is born with and such right is available to them even when he is a culprit.

Article 21 contains four important aspects which are life, liberty, procedure, and law. In the current scenario, the focus of this article would revolve around life and personal liberty. The courts in India have given a wide spectrum to right to life where the right to life does not limit itself to mere existing, it entails living a decent life. It is based on the principle that man is more than an animal, the innate sentience possessed by him sets him apart. The law or the act of the government has no existence in the eyes of the law if it is depriving a person of his fundamental right and does not conform to justice and fair play.¹⁰ In the present case, the stance of the government concerning the pension scheme mentioned above is questionable.

Various rights are considered fundamental even when no express provisions are mentioned under Article 21 right to pension being one of them. Pension and gratuity are the hard-earned fruits of an employee’s blood and sweat and cannot be taken away without the due process of law. The apex court, as well as the high Courts of the nation, have reiterated that pension is a part of the fundamental right guaranteed under Part III of the Indian Constitution.¹¹

The stance of the government to deprive the citizens of their pension violates the fundamental right guaranteed to them under Article 21 of the constitution of India. In the abovementioned case,¹² the court has stated that “*The right to life, we acknowledge, encompasses several rights but for the time being we are concerned with three important constitutional rights, each one of them being basic and fundamental. These rights articulated by the petitioner are the right to*

⁸ <https://www.thehansindia.com/telangana/file-counter-affidavit-justifying-25-deferment-in-pension-telangana-high-court-orders-government-619088>

⁹ Article 21 of Constitution of India, 1950.

¹⁰ Olga Tellis and others v BMC and others, (1985) 3 SCC 545

¹¹ Dr. Ashwani Kumar v. Union of India And Ors, (2019) 2 SCC 636

¹² Ibid p. 11

live with dignity, the right to shelter, and the right to health. The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens.”

Where we see that the fundamental rights of citizens are violated, the only justification for the government’s action is the action has been taken to sustain the financial loss the government is facing due to economic shutdown. However, all the actions of the government should be in the interest of the public and pass the test of reasonableness.¹³ The stance of the Telangana government was weak in both these aspects and hence the only justification fails on this accord.

When the government is facing a financial loss and difficulties the citizens are no exception. Even when certain aspects of life like the food and shelter are taken care of by the government the needs of the individual do not end there. Pension raised family expenditures, lowering poverty, and the effect was smaller on families headed by illiterate persons suggesting lower pension coverage of this most disadvantaged group. Further, I find that households spent most of the pension income on medical care and education, suggesting possible intra-family transfers across generations. Pension thus possesses supreme importance for the sustenance and livelihood of a person, thus a reduction in the pension rates by an amount as high as 50%, and 75% contravenes with fundamental principles enshrined in the constitution.

The stance of the government apart from being unreasonable and violative of Article 14 and Article 21 of the Indian constitution disregards the stance of the courts in innumerable cases one of them being of *S. K. Mastan Bee vs The General Manager, South Central Railway*¹⁴ - the appellant filed the petition stating that she was entitled to the family pension on death of her husband, a claim which was rejected by the divisional manager of south-central railways, the supreme court here said that rejecting a bona fide claim to pension was violative of Article 21, the right to life guarantees a right to live with dignity and therefore the apex court directed the respondents to calculate and pay the arrears of pension payable to the appellant. The pension which should be processed earlier than the usual time is what the ideal governance is and not deprivation.

¹³ Article 14 of Constitution of India, 1950.

¹⁴ *S. K. Mastan Bee vs The General Manager, South Central Railway*, (2003) 1 SCC 184

CONCLUSION

At the end of this article, the author would again raise the importance of pension to the households and the governments do not have the authority to withhold the rights of the citizens. Pension is not a bounty but is a valuable property and it cannot be taken away without the due process of law. The same was also held in the case of the *State of Jharkhand vs Jitendra Kumar Srivastava*¹⁵ that pension is a property under Article 300A of the Constitution of India and deprivation of the same deprives the individual of all the valuable fundamental rights. The Honourable High Court of Telangana has also correctly pointed out in the ongoing case¹⁶ that the order of the government has come as a rude shock and COVID battle has to be fought in such a manner where the deadly virus doesn't wipe away the necessities.

The author would also like to point out that the government has considered the pension as a bargain but has failed to understand that the pension is a valuable right to property and there is no bargain when it comes to right. Even if the government changes its stance to provide pension up to 75 percent or even 90 percent the same would be as immoral and wrong as it is in the current situation. The Supreme court has stated in the case of *State of Kerala and Ors. Vs. M. Padmanabhan* that "*Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.*"¹⁷

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¹⁵ *State of Jharkhand vs Jitendra Kumar Srivastava*, (2013) 12 SCC 210,
<https://indiankanoon.org/doc/186974830/>

¹⁶ <https://timesofindia.indiatimes.com/city/hyderabad/have-mercy-review-pension-cut-decision-hc-tells-govt/articleshow/75212557.cms>

¹⁷ *State of Kerala and Ors. v. M. Padmanabhan*, AIR 1985 SC 356