

Writ Petition No.3179/2009 (S)**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(SB : VIVEK AGARWAL, J.)****Writ Petition No.3179/2009 (S)**

Sawailal Jalon

Vs.

State of MP & Another.

Shri S.K. Sharma, learned counsel for petitioner.
Shri Yogesh Chaturvedi, learned Government Advocate for
respondents-State.

Date of hearing : 20.02.2018.

Whether approved for reporting : Yes.

Law laid down : Merely continuation of a departmental enquiry instituted against delinquent Government employee, who was in service, will not automatically terminate on completion of two years' period from the date of superannuation. In fact, if the departmental enquiry is not completed within two years of date of superannuation, then such an employee will become entitled for release of *cent percent* pensionary dues, but they will be subject to final outcome of the departmental enquiry and the intent of the Legislature is not to close the departmental enquiry with efflux of time, but not to harass an employee if the departmental enquiry is prolonged beyond a period of two years from the date of his superannuation. Governor can always withdraw, withhold or recover any portion of the pension subject to the condition that the remainder pension should not be less than the minimum pension prescribed under the Rules and if withdrawal or withholding or recovery amounts to rejection of pension to less than minimum, then in terms of the provisions contained in sub-rule (5) of Rule 43, the Government shall make good that portion of pension by sanctioning additional pension.

Significant paragraph numbers : 14 and 15.

ORDER

(Passed on 20th February, 2018)

1. Petitioner has filed this writ petition, whereby penalty for recovery of a sum of Rs.,40,487/- has been ordered from the

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pension of the petitioner in monthly instalments of Rs.1300/- per month in pursuance to the chargesheet issued on 09.12.1993 and the impugned order being passed after superannuation of the petitioner on 30.09.2002. According to the petitioner, the impugned order is in violation of the provisions contained in Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter for short 'Rules').

2. It is petitioner's contention that when the petitioner was posted as Block Development Officer, Nagaud during 1991, in relation to that work, a chargesheet was issued to the petitioner alongwith other Officers under the similar facts and circumstances. It is further submitted that copy of the chargesheet is Annexure P/2, in which there were allegations that he had forwarded proposals for various works under Jawahar Rozgar Yojna on the basis of the proposals presented by the Sub-Engineers without evaluating justification; this caused a doubt about his integrity. It was also alleged that against the instructions of the Panchayat and Rural Development Department dated 03.05.1989, the petitioner forwarded proposals for getting the work done through Sub-Engineers instead of Gram Panchayat and without there being any noting of the measurements in the Measurement Book, sanctioned the amounts as per the proposals of the Sub-Engineers showing gross dereliction of duty.

3. Petitioner submits that similar chargesheet was issued to one Shri J.P. Kori, Sub-Engineer and he had furnished detailed reply to the chargesheet, but without considering his reply dated 25.01.1995, inquiry was completed and the inquiry report was submitted on 22.08.2005 and 10.03.2006. Vide

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Order Annexure P/4, copy of this enquiry report was forwarded to the petitioner and his comments were sought inasmuch as the Inquiry Officer had found the charges proved against the petitioner, but the petitioner submits that these charges were proved against the petitioner so as to protect SDO Shri S.K. Pal, and when his superior authority SDO has been exonerated, then the petitioner too should have been exonerated from the departmental enquiry treating him to be innocent. He claims parity with Shri S.K. Pal, who has been exonerated from the charges vide Annexure P/6. Vide order Annexure P/6, the State Government noted that Shri S.K. Pal was found lacking in performing the work of supervision of the work of his subordinates under the Jawarhal Rozgar Scheme, but since he was already visited with warning by the Commissioner, Rewa Division, therefore, enquiry was closed against him.

4. In view of such facts, the learned counsel for the petitioner prays for quashing of the impugned order on twin grounds, namely, claiming parity with Shri S.K.Pal and secondly on the ground that no punishment could have been imposed on the petitioner in the year 2009 after 07 years of his attaining the age of superannuation and in addition it is submitted that the petitioner had only forwarded proposal and merely forwarding proposal does not amount to causing financial loss inasmuch as the petitioner was not a Drawing & Disbursement Authority.

5. Learned counsel for the State, on the other hand, submits that this Bench has no territorial jurisdiction to hear and decide this case inasmuch as the impugned order has

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been passed at Bhopal. It is further submitted that the order of recovery has been passed after taking concurrence of the M.P. Public Service Commission and, therefore, the petition deserves to be dismissed.

6. It is further submitted that the impugned punishment order has been passed after giving opportunity of hearing and conducting a detailed departmental enquiry, in which charges have been found to be proved against the petitioner and, therefore, this Court in writ jurisdiction is not entitled to sit as an appellate authority and thread bare analyze outcome of the departmental enquiry. It is also submitted that the petitioner is not entitled to claim any parity from Shri S.K. Pal inasmuch as the petitioner has been found to be guilty in the performance of his work causing loss to the Public Exchequer. It is also submitted that Shri S.K. Pal was never chargesheeted alongwith the petitioner and Sub-Engineer Shri Kori, who was chargesheeted alongwith the petitioner, has also been inflicted with penalty of recovery, which cannot be faulted.

7. As far as the respondents' contention as to the territorial jurisdiction is concerned, it is admitted position that the impugned order has been passed after superannuation of the petitioner and the petitioner has settled down in Morena after superannuation within the territorial jurisdiction of this Court, therefore, the petitioner is entitled to invoke jurisdiction of this Court challenging the impugned order.

8. Petitioner has assailed the impugned order in the light of the provisions contained in Rule 9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976. He submits that there is a bar on continuing the departmental enquiry inasmuch as the

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enquiry should have been completed within two years of superannuation of the petitioner in terms of the provisions contained in Rule 9 (4) (b) of the Rules and as it was not completed within the aforesaid time, no recovery can be ordered from the petitioner.

9. In fact, Rule 9(1) clearly provides that the Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government 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. Providing that the State Public Service Commission shall be consulted before any final orders are passed.

10. Sub-rule (2) of Rule 9 makes it clear that the departmental proceedings 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.

11. Sub-rule (3) of Rule 9 provides that no judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action, which arose or in respect of an event which took place, more than four years before such institution.

12. Rule 9 (4) of the Rules provides that in the case of a

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Government servant who has retired on attaining the age of superannuation and departmental proceedings are continued under sub-rule (2) will be entitled to provisional pension and death-cum-retirement gratuity as provided in rule 64. It further provides that there is proviso in this rule, which provides that if the departmental proceedings are not completed within one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year. Further provided that if it is not completed within a period of two years, then entire amount of pension shall stand restored. Clause (c) provides that if in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of rule 43. Sub-rule (5) of Rule 43 provides that where the amount of pension is less than the minimum pension as determined by the Government from time to time, the difference shall be made good by the grant of further increase in the pension.

13. Thus, the bar of institution of a departmental enquiry as provided under sub-rule (3) of Rule 9 and sub-rule (4) of Rule 9 of the Rules only provides that a person facing departmental enquiry shall be entitled to release of pension if the proceedings are not completed within two years of superannuation of a person.

14. In view of such facts and also the proposition of law laid down in the case of **State of M.P. v. R.L. Ogle as reported**

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in 2006 (1) MPLJ 412 holding that in view of clause (b) of third proviso to Rule 9(4) of the Rules, if the departmental proceedings is not concluded against a retired Government servant within a period of two years, the Government does not have any right to impose the penalty, has been held to be bad law in the case of **State of MP v. Puranlal Nahir : 2012 (1) MPLJ 677**. In fact in the case of **Puranlal Nihar**, it has been held that the disciplinary proceedings initiated by the State Government against a Government employee after his retirement does not automatically come to an end in case the enquiry is not concluded within two years of its inception and continued beyond the period of two years. Further held that the Governor is not precluded from passing final order in relation to payment of pension to a Government servant against whom disciplinary proceeding is initiated after retirement and is not concluded within two years from its institution. It has been further held that in cases where two provisions are absolutely contradictory to each other, the leading provision is said overriding the subordinate one. The first duty of that Court is to give effect to both the provisions, for it is presumed that the Legislature by including them in the same Act intended to give effect to both of them. It is only when reconciliation is not possible that it has to be seen as to which of the conflicting provision is leading one.

15. In view of such fact that the law laid down in the case of **R.L. Ogle (Supra)** has been overruled, the petitioner is not entitled to say that the Governor had lost right to withdraw his pension after being found guilty in the departmental enquiry merely because such punishment was not inflicted on the

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petitioner within two years of superannuation of the petitioner.

16. As far as parity part is concerned, as has been discussed, the petitioner cannot claim parity with Shri S.K. Pal, who has been punished separately and, therefore, in the opinion of this Court, the impugned order inflicting penalty of recovery does not suffer from any vice calling for its quashing. Thus, the petition fails and is dismissed.

(Vivek Agarwal)
Judge
20.02.2018

Mehfooz/-