

**IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 2529 of 2013

BETWEEN:-

**ALOK SHUKLA S/O LATE K.D.SHUKLA,
AGED ABOUT 58 YEARS, OCCUPATION:
ASSISTANT ENGINEER (RETIRED)
MAINTENANCE SUB DIVISION MOTI
JHEEL PUBLIC HEALTH ENGINEERING
DEPARTMENT, R/O 12 TAGORE NAGAR
UNIVERSITY ROAD GWALIOR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI BRIJESH SHARMA - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY
PUBLIC HEALTH ENGINEERING
DEPARTMENT MANTRALAYA GOVT. OF
M.P. VALLABH BHAWAN BHOPAL M.P.
(MADHYA PRADESH)**
- 2. ENGINEER-IN-CHIEF, PUBLIC HEALTH
ENGINEERING SERVICES, (MADHYA
PRADESH)**
- 3. CHIEF ENGINEER, PUBLIC HEALTH
ENGINEERING, PHE GWALIOR REGION,
(MADHYA PRADESH)
EXECUTIVE ENGINEER, PHE
DEPARTMENT, MAINTENANCE**
- 4. DIVISION NO.2 MOTI JHEEL, GWALIOR
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI M.S.JADON – GOVERNMENT ADVOCATE)

ORDER RESERVED ON : **23.08.2023**
ORDER PASSED ON : **04.10.2023**

This petition having been heard and reserved for order coming on for pronouncement this day, this Court passed the following order:-

ORDER

The present petition is preferred under Article 226 of the Constitution seeking following reliefs:-

(1) That the respondents be directed to finalize the pension case of the petitioner and restore the entire pension and other post-retire dues and make the payment of the arrears along with interest @ 10% per annum from the date the same became due till actual payment.

(2) Issue a writ of mandamus or any other writ, order or direction in the nature of writ under Article 226 of the constitution of India as this Hon'ble Court may deem fit in facts and circumstances of the case.

(3) Cost of the petition may also be awarded.

2. Precisely stated facts of the case are that petitioner at the relevant time was working as Assistant Engineer in the Public Works and Health Department and was posted at Maintenance Sub-Division, Motijheel, Gwalior. Due to personal difficulties, petitioner

applied for voluntary retirement in the year 2009 as per the provision of Rule 42 (1) (a) of M.P. Civil Services (Pension) Rules, 1976 (hereinafter referred as “Rules, 1976”) and as submitted petitioner was having the required qualifying service for invoking the provision of the aforesaid rules as he was initially appointed in the department on 05.01.1981. Petitioner's application was accepted vide order dated 28.08.2009 and accordingly, the petitioner stood retired from the government service w.e.f. 31.08.2009.

3. Although petitioner was shown to be a suspended employee, however, petitioner was never placed under suspension and aforesaid mistake was rectified by issuing corrigendum to the order of (Annexure P-1) vide order dated 29.08.2009 and it has to be read as Assistant Engineer (Civil) and not as Assistant Engineer (Suspended). However, to appreciate the controversy in better perspective following list of dates and events are important:

Date	Event	Annexures
08/11/05	Charge sheet issued in respect to check period from 26.07.1986 to September 1995 i.e. with respect to the event which took place more than nine years back and charge sheet was issued after more than 10 years.	Annexure P-10

10/11/05	Another charge sheet issued for the check period from 29.04.1994 to 15.07.1994 and 22.11.1993 to 24.05.1994 i.e after more than eleven years	Annexure P/6
24.01.2007	With respect to the charge sheet dated 10.11.2005 the enquiry report was submitted by the inquiry officer on 24.01.2007 served over the petitioner vide letter dated 26.02.2007. In this enquiry also the inquiry officer has not found the charges proved.	Part of Annexure P-6
28.11.2007	Acting upon enquiry report the department took the final decision exonerating the petitioner and the matter was forwarded to cabinet on 28.11.2007.	As reflected in Annexure P-9
08.02.2008 23.02.2008 10.04.2008	As the copy of the enquiry report was also forwarded to Lokayukta Organization, an objection was raised and in regard to findings and directions were issued to take appropriate action	Annexure P-7
07/05/08	Petitioner being aggrieved of initiation of further inquiry preferred W.P.No.2088/2008(s) in which notice was issued and stay was granted.	Annexure P-8

31.08.2009	Petitioner, Assistant Engineer PHE, Gwalior stood superannuated on: application for voluntary retirement under Rule 42 (1) (a) of Pension Rules, 1976 being allowed and minimum pension of rupees 3025/- was sanctioned.	Annexure P-1
01/06/11	In the case of identically placed person and the delinquent officer along with the petitioner in the departmental inquiry namely Shri D.K. Jain Assistant Engineer was exonerated of the charges and the departmental proceedings were dropped.	Annexure P-9
01/06/11	With respect to the charge sheet issued on 08.11.2005 i.e. P/10 the enquiry report was submitted by the inquiry officer on 24.01.2009 and 30.04.2009 and charges being not found proved the order was passed exonerating the petitioner from the charges. (The same became final) Time consumed is approximately 6 years.	Part of Annexure P-10

09/04/13	As petitioner stood retired with effect from 31.08.2009 and the minimum pension was paid to him no review in respect to the pension payable to the petitioner being ever made and in view of the Pension Rules, 1976 the petitioner being entitled for restoration of the entire pension filed the writ petition praying for the relief to restore the entire pension and make payment of arrears along with interest @ 10% per annum. No return to the writ petition on merit was filed and even after the final order being passed in the pending DE and petitioner being exonerated as the entire pension was not restored an application 26.06.2018 was filed seeking interim relief in the matter of payment of finalizing the pension. The same was heard and decided by this Hon'ble court vide order 26.06.2018.	
03/08/17	In view of the development i.e. Annexure P/9 being passed the WP No. 2088/2008 (S) preferred by the petitioner was disposed of with the direction to the state to pass final order in case of the petitioner also taking note of the order passed in D.K. Jain's case.	Annexure P-11
17.01.2018	The final order in the pending departmental inquiry was passed exonerating the petitioner from the charges leveled in the DE.	Annexure P-13

02/08/18	After the interim order being passed the 90% gratuity and provisional pension is being sanctioned however the fact remains that till date the pension case of the petitioner has not been finalized. No PPO has been issued and to the most surprise even the provisional pension is not being disbursed to the petitioner since the month of March 2023.	
----------	---	--

4. It is the submission of learned counsel for the petitioner that the charge-sheet issued to the petitioner on 08.11.2005 was having same identical charges as issued on dated 10.11.2005 but the departmental inquiry was concluded and charges in the inquiry were not proved and therefore, competent authority passed the final order dated 01.06.2011 exonerating the petitioner from charges. The said order became final. Although, departmental inquiry consumed almost 6 years.

5. Another charge-sheet issued on 10.11.2005 but two charges were framed in the aforesaid departmental inquiry. In the said inquiry, charges were not found to be proved by the inquiry officer and the final decision was required to be taken by the competent authority and instead of taking final decision, report was forwarded to the Special Police Establishment (Lokayukta) vide memorandum dated 10.04.2008. Petitioner was informed that SPE/Lokayukta being not satisfied with the inquiry report directed to take further

action and has not agreed upon the finding recorded by the inquiry officer. Therefore, the opinion of inquiry officer and letter written by the Lokayukta were served to the petitioner. Being aggrieved by the action of not taking the final decision and further action being proposed, despite exoneration report of inquiry officer, petitioner filed writ petition vide W.P.No.2088/2008(s) before this Court in which while issuing the notices, further proceedings were stayed vide order dated 07.05.2008 (Annexure P-8).

6. During the pendency of the aforesaid writ petition, department further passed order dated 01.06.2011, wherein one Mr. D.K.Jain- Assistant Engineer (a delinquent facing DE alongwith petitioner) who has not filed the writ petition, his case has finally been decided and on the basis of inquiry report submitted by the inquiry officer which according to petitioner was identical to the other persons/petitioner inquiry proceedings were dropped. Since his inquiry was also an outcome of the recommendation made by the Lokayukta therefore, same treatment was required to be given to petitioner. However, petition preferred by the petitioner was kept pending.

7. Vide order dated 03.08.2017, this Court disposed of the petition of petitioner with a direction to the respondents to consider the case *viz-a-viz* Shri D.K.Jain. In pursuance thereof, order dated 17.01.2018 (Annexure P-13) was passed in which departmental inquiry instituted against the petitioner was closed without any punishment. Authority considered the report of inquiry officer

exonerating the petitioner. Meanwhile, petitioner has filed instant petition in year 2013 for finalization of his pension case. During the pendency of this petition, vide order dated 26.06.2018, interim order was passed in which respondent were directed to release full pension to the petitioner forthwith if there is no otherwise legal impediment. Till February, 2023, provisional pension was paid but as submitted by counsel for petitioner since March, 2023, petitioner is not getting even provisional pension.

8. According to him, gratuity was paid in the year, 2018 whereas, he retired in 2009. Therefore, acts of respondents is arbitrary and illegal.

9. While, referring Rule, 9 (4) (b) of Rules, 1976, it is submitted that there is no impediment in releasing the entire pension and other post retiral claims at best after two years of institution of departmental inquiry. Since, departmental inquiry was instituted in 2005, therefore, petitioner was entitled to get restoration of pension in the year 2007. He relied upon the case of **R.P. Kapur Vs. Union of India & Ors. (1999) 8 SCC 110 [Para-32]** and **State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210** in support of his submission to submit that pension is a property under Article 300 (A) of the Constitution and therefore, pension cannot be withheld for indefinite period. He also relied upon the case of the decision of Division Bench of this Court in the case of **Laxmi Narayan Chaurasiya Vs. State of M.P., 2020 SCC OnLine M.P. 931** and **State Of M.P. And Ors. vs R.K. Joshi And Ors. 2000 (1)**

MPLJ 467 wherein payment of interest over the pension withheld is discussed. He also relied upon the case of **B.D. Dubey Vs. State of M.P. and Ors., 2002 (3) MPLJ 483** and **Shivkumari Dubey Vs. State of M.P. and Ors., 2005 (1) MPLJ 274** and in the case of **Dr. Shrikant Kaushik Vs. State of M.P. and Ors..** passed by this Court in W.P.No.8528/2016 on 17.03.2023.

10. Learned counsel for the respondents/State opposed the prayer through reply and chart submitted with the synopsis submits that 90% of gratuity (Rs.5,01,355/-), pension arrears for the period of 01.09.2009 to 31.07.2018 amounting to Rs.23,55, 969/- pension for August and September, 2018 amounting to Rs.69,558/- and for the period October,2018 to January, 2019 salary Rs.34,779/- have been paid. Beside that GPF Rs.12,17,338/-, Insurance amount Rs.64,790/-, Surrender Leaves Rs.2,00,672/- and arrears of benefits of 6th Pay Commission Rs.2,73,987/- are also paid.

11. It is the submission of learned counsel for the respondents that since stay was operating against the cause of petitioner between the period 07.05.2008 till 03.08.2017 for more than 9 years and during that period no proceedings were undertaken against the petitioner therefore, petitioner cannot claim any interest over the said period when the stay was operating against him. Therefore, he is not entitled for any interest over the payments. However, respondents/Sate fairly submits that remaining dues shall be paid in accordance with law.

12. Heard the counsel for the parties at length and perused the

documents appended thereto.

13. This is the case where petitioner is seeking his pensionary dues as well as interest over late payment because of the pendency of proceedings.

14. Rule-9 of Pension Rules, 1976 contemplates Right of Governor to withhold or withdraw pension. Rule-9 (4) of Rules, 1976 is worth consideration in this regard and for better understanding all three Clauses-(a), (b) and (c) are reproduced for ready reference:-

“Rule-9 (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64], as the case may be, shall be sanctioned :

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not

reduced to less than [the minimum pension as determined by the Government from time to time]:

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as if for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of 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;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) 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].”

15. The said clause mandates that if the departmental proceedings which were instituted against the delinquent during or after his retirement and if the said proceedings are not completed within a period of two years from the date of institution, the entire amount of pension so withheld shall stand restored on the expiration of period of two years. Here, if petitioners contentions are accepted then petitioner would be entitled to get his pension restored w.e.f. November, 2007 because on 08.11.2005 and on 10.11.2005, two charge-sheets were issued to the petitioner. However, petitioner remained in department till 31.08.2009 and till then he was receiving regular salary. Therefore, he cannot be granted pension till he is superannuated. Petitioner was superannuated on 31.08.2009 therefore, period of computation as per Rule, 9 (4)(b) of Rules, 1976 may start w.e.f. 31.08.2009 therefore, contention of petitioner deserves to be modified to the extent that he may only get any benefit after completion of two years from the date of his retirement i.e. 31.08.2009. Therefore, as per the import of Rule, 9(4)(b) of Rules, 1976, petitioner may become entitled to get his pension restored w.e.f. September, 2011.

16. So far as arguments of respondents regarding operation of interim order dated 07.05.2008 in W.P.No.2088/2008 is concerned, it only stays further proceedings in the inquiry against the petitioner and it does not stay the effect of Rule-9(4)(b) of Rules, 1976 because Rule-9(4)(b) of Rules, 1976 nowhere contemplates that restoration of pension after two years would be subject to any interim order of any court of law. Word “Shall” as figures in Clause-B of Rule-9(4) of Rules, 1976 mandates about the compulsive nature of restoration of pension and since, pension rules are in respect of pension of Government Employees/Civil Servants therefore, it has to be read *in tandem* with the very object of concept of Pension and Pension Rules. Any other interpretation would frustrate the cause of justice because in that condition if the Employer/State Government intends to avoid giving pension to an employee then this mechanism would ensure denial of pension to the delinquent on flimsy pretext. At least, some definite amount of pension over and above minimum pension at least deserved to be given to petitioner.

17. However, question remains in the present case is computation of two years from which baseline. If the computation of two years is taken from date of institution of charge-sheet i.e. 08.11.2005 then date would come as 08.11.2007 but at that time, petitioner was in service. Petitioner resigned on 31.08.2009 therefore, in the present factual context, two years period can be reckoned only from date of retirement i.e. 31.08.2009. Therefore, it is held that petitioner is

entitled for restoration of pension on 01.09.2011.

18. However, it is the submission of counsel for the petitioner that he was paid all emoluments at belated stage and whenever, he approached the Court, then only, he was given part of some pensionary benefits. Since respondents have claimed that under different heads pensionary benefits have been given but excluding those emoluments which have already been given, for other pensionary benefits which are part of pension are required to be given and with interest.

19. Rule-3 and 4 of the Interest Act, 1978 alongwith different judgments of Apex Court as well as this Court persuades the Court to award interest. Rule 3 and 4 of the Interest Act, 1978 are worth consideration.

"3. Power of Court to allow Interest.-

(1) In any proceedings for the recovery of any debt or damages or in a n y proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the

date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1),-

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the

court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,-

(a) shall apply in relation to-

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect-

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest.

4. Interest payable under certain enactments.- (1)

Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of subsection (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely :-

(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action.

(d) where the claim is for dower or maintenance, from the date of the cause of action."

20. Combined reading of Sections 3 and 4 of the Interest Act further substantiates the case of petitioner. Instant case is proceedings under the constitutional/administrative law to claim damages also (beside other reliefs) from the State as per Section 3 of the Interest Act. It is also a case in which interest is payable by virtue of usage having the force of law as contained in Section 4 (1)

of the Interest Act. In case of **Dr. Uma Agrawal Vs. State of U.P. and another, 1999 (3) SCC 438**, the Hon'ble Apex Court has given guidance in following words:

"5. We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each

case."

21. In the case of **R.P. Kapur (supra), State of Jharkhand (supra), Laxmi Narayan Chaurasiya (supra) State Of M.P. (supra), B.D. Dubey (supra), Shivkumari Dubey (supra) and Dr. Shrikant Kaushik Vs. State of M.P. and Ors..** this aspect has been dealt with and Courts have rightly come to the conclusion that in case where delay in disbursement of due amount to the government servant is caused then it is to be saddled with interest.

22. This Court can profitably refer judgments passed by Hon'ble Apex Court in the case of **O.P. Gupta Vs. Union of India and others** reported in (1987) 4 SCC 328, **Union of India Vs. Justice S.S. Sandhawalia (RETD.) and others** reported in (1994) 2 SCC 240 and **Lallan Singh and Ors. Vs. State of Uttar Pradesh reported in (2015) 13 SCC 362.**

23. Here due to lackluster and discriminatory attitude of respondents whereby after conclusion of inquiry, neither competent authority took decision nor the office of S.P.E. was persuaded to take appropriate decision. The decision which has been taken on 17.01.2018 (Annexure P-3) could have been taken much before. Therefore, for the fault of their own, plea of respondents cannot be accepted regarding stay prevailing in the matter.

24. In the cumulative analysis, petitioner is entitled to get pension in accordance with law. Part of the pensionary benefits have already been paid to the petitioner therefore, those emoluments only which are to be paid to the petitioner as arrears

accumulated till date (of passing of this order) shall carry interest @ 6% per annum. Beside that respondents shall start disbursing pension as per his entitlement/in accordance with law immediately without any delay and arrears along with interest be paid within 4 months from the date of passing of this order.

25. Petition stands allowed and disposed of in above terms.

(Anand Pathak)
Judge