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WP-3562-2014

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 25<sup>th</sup> OF FEBRUARY, 2026WRIT PETITION No. 3562 of 2014*AJAY KUMAR PANDVIA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Alok Katare - Advocate for the petitioner.*

*Ms. Smrati Sharma - Government Advocate for the respondent/State.*

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ORDER

This petition, under Article 226 of the Constitution of India, has been filed seeking the following reliefs:-

*"(i) That, the Hon'ble Court may kindly be pleased to allow this Writ Petition;*

*(ii) That, the order dated 3.4.2014 Annexure P/1 passed by the respondent no.1 may kindly be directed to be quashed.*

*(iii) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner."*

2. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Sub Engineer on 05.03.1984 and subsequently, vide order dated 24.04.1999, the petitioner was declared as Gazetted Officer. Thereafter, on the basis of some false complaint a criminal case was registered against the petitioner under Sections 420, 467, 468, 471 and 120-B of IPC and Section 15 of the Prevention of Corruption Act. The petitioner was government employee, the permission under Section 197 of CrPC was not taken before filing



of the challan against the petitioner. Therefore, by order dated 06.03.2010, the Special Court has refused to take cognizance of the case for want of requisite permission from the government under Section 197 of Cr.P.C. It is further submitted that challan has been filed before Special Judge. Thereafter, petitioner requested for his voluntary retirement and his request was accepted and petitioner was voluntary retired on 05.08.2010. It is submitted that before issuing the impugned order, no consultation was made with the State Public Service Commission. However, it is further submitted that the approval or consultation of the State Public Service Commission is not mandatory for matters relating to pension.

3. The aforesaid powers were exercised under Rule 9 of the Pension Rules 1976 and though the powers under Rule 9 is conferred upon the Governor and not to the State Government, the impugned order was passed in the name of Governor by the State Government. Before passing of the said order, no opportunity of hearing was ever granted to the petitioner, no notice was issued to him, thus the said order has been passed in utter violation of principle of natural justice. Aggrieved by the aforesaid order of withholding of 100% of pension, the present petition has been filed.

4. Learned counsel for the petitioner had vehemently argued that under Rule 9 of the Pension Rules 1976 the State Government is not having any authority to pass order of withholding pension of a retired employee and it is prerogative of Governor who can exercise such powers, thus, the order which is not issued by the Governor suffers from vice of perversity and, therefore, is liable to be set aside.

5. It was further submitted that the order passed by respondents in exercise of powers of Rule 9(1) of the Pension Rules 1976 is without following the



provisions as contained under Rule 8 of the Pension Rules 1976, which provides for giving an opportunity of hearing to the employee before withdrawing/withholding the pension and since no opportunity of hearing has been granted to the petitioner before passing the impugned order, the said order is per se illegal and since it is against the statutory provisions, deserves to be quashed.

6. It was further argued that as per the provisions contained under Rule 9 of the Pension Rules 1976, it is the Governor who reserves the right of withholding or withdrawing a pension or a part thereof, either permanently or for a specified period, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct, but herein the order has been passed by the State Government in the name of Governor and not by the Governor, therefore, the said order passed invoking the provisions under Rule 9(1) of the Pension Rules, 1976 is not sustainable.

7. It is further argued that the second proviso appended with the Pension Rules, 1976 provides that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension as determined by the Government from time to time, but in the present case the entire pension of the petitioner has been withdrawn/withheld, which is in total derogation of the proviso appended to Rule 9 (1) of the Pension Rules, 1976, thus, it was submitted that the impugned order being perverse in nature deserves to be quashed.

8. While placing reliance in the matter of **Radha Krishna Sharma Vs. State of M.P. & ors.** reported in **ILR 2021 MP 1641 (DB)** ; it was contended that even the Governor in case of pensioner, who is found guilty of grave misconduct in judicial proceedings has to apply his/her mind to contemplate on the relevant



factors of the gravity of offence as to whether the trial Court had imposed maximum or minimum punishment prescribed under the law, expected hardships and whether there are any extenuating circumstances which may lead to success in the appeal filed against the conviction and sentence and after considering those factors, the Governor has to decide whether to withdraw/withhold pension entirely or partly and further whether this withdrawing/withholding would be temporary or permanent.

9. On the basis of aforesaid arguments it was submitted that the present petition deserves to be allowed and the matter deserves to be relegated back to the authorities for fresh consideration of withholding/withdrawing of the entire pension of the petitioner. To bolster his submissions, he has further placed reliance in the matter of **State of M.P. and others Vs. Dr. Yashwant Trimbak** reported in AIR 1996 SC 765 and in the matter of **Sher Singh Bhadoriya Vs. State of M.P.** passed by this Court on 04.10.2023 in W.P. No.2509/2013.

10. *Per contra*, learned Government Advocate appearing for the State submitted that provisions of Rule 9(1) of the Rules of 1976 do not provide for giving any opportunity of hearing in express terms, therefore, the contention raised on behalf of the petitioner that no opportunity of hearing was granted before passing of the impugned order has no force and the impugned order, therefore, cannot be said to be vitiated on this count.

11. It was further argued that the order impugned is passed in the name of the Governor and, therefore, it cannot be said that it has not been passed by the Governor and had been passed as per the provisions contained in Rule 9(1) of the Rules of 1976, which could entail the dismissal of the said order.

12. It was further argued that the petitioner was involved in an offence governed under the provisions of Prevention of Corruption Act which involves



moral turpitude and has ended in his conviction and since there is not stay on the conviction, only the sentence has been suspended, therefore, the impugned order cannot be said to be bad in law and looking to the gravity of office the said order cannot be said to be unjustified and in accordance with law. On the strength of above arguments, it was submitted that the present petition is devoid of any substance and, therefore, it is liable to be dismissed.

13. Heard learned counsel for the parties and perused the record.

14. The question which is posed before this Court and which is required to be answered is as to whether while passing an order of withholding/withdrawing of the entire pension; firstly the employee is required to be heard in case where the said withdrawal/withholding of the pension is with due regard to the criminal trial faced by the petitioner and had ended in conviction and secondly whether while passing the order of withdrawal/withholding of pension under Rule 9 (1) of the Rules of 1976 the authority passing such an order is required to apply his or her mind on the relevant factors of the gravity of offence and thirdly as to whether the order passed in the name of Governor by the State Government can be said to be an order passed by the Governor as per the provisions contained in Rule 9(1) of the Rules of 1976.

15. Before analysing the contentions of rival parties, it would be apposite to go through the provisions of Rule 9(1) of the Rules of 1976, which is quoted herein under:-

*"9. Right of Governor to withhold or withdraw pension. - (1) 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 proceeding, 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 State Public Service Commission shall be consulted before any final orders are passed :Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time]."*

16. The Division Bench of this Court in the matter of **Radha Krishna Sharma Vs. State of M.P. & ors. (Supra)** as quoted by the learned senior counsel has culled down the basic ingredients of Rule 9(1) of the Rules of 1976 as under:-

- (a) The Governor alone is vested with power of withdrawing/withholding pension of a retired government servant;*
- (b) The withholding/withdrawing can be of the entire pension or part thereof;*
- (c) This withdrawing withholding of pension can be permanently or for a limited period;*
- (d) The power is further vested with the Governor of ordering recovery from pension of whole or part of the pecuniary loss caused to the government;*
- (e) The aforesaid powers of withdrawing/withholding pension or recovering loss from pension can be exercised only after conduction of departmental enquiry or judicial proceedings;*
- (f) It is further necessary that this departmental enquiry or judicial proceedings must find the pensioner guilty of grave misconduct or negligence for any act committed during the period of his service including service rendered during re-employment.*

17. In the aforesaid context, if the facts of present matter is analyzed, it could be observed that so far as withdrawing/withholding of pension after conducting departmental inquiry is concerned, the delinquent pensioner is required to be given reasonable opportunity of hearing, however, if the withdrawing/withholding of the pension upon the pensioner is based upon he having been found guilty in some judicial proceedings, then the Rules does not in any express terms provides for giving further opportunity before withdrawal/withholding of his pension. Though, looking to the nature of the



offence in which the Petitioner is convicted, if involves moral turpitude and the petitioner has been found guilty of grave misconduct in judicial proceedings, it is apparently clear that pre-requisites for invoking the power of the Governor to withdraw/withhold the pension under Rule 9(1) of the Rules of 1976 are satisfied. However, the said powers cannot be said to be unfettered in the case like present one, as the petitioner has been found guilty of grave misconduct in the judicial proceedings and the authority is required to apply his or her own mind with regard to the relevant factors of gravity of the offence, the period of punishment and other extenuating circumstances and after considering those factors, it is to be decided whether the withdrawal or withholding of the pension entirely or partly be done or further whether the withdrawing/withholding would be temporary or permanent and in that context the delinquent pensioner is required to be granted opportunity of hearing.

18. The said opportunity to the delinquent pensioner cannot be said to be an empty or mere formality, as he would be in the best position to bring to the knowledge to the Governor the various extenuating circumstances which may not be available to the Governor by the functionaries of the State. This opportunity of hearing is also required to be given to the delinquent pensioner as withdrawing/withholding of the pension temporarily or permanently affects the rights and livelihood of the pensioner.

19. Affording this opportunity at the aforesaid stage is all the more necessary since the ultimate result of the exercise of withdrawing/withholding pension partly or fully, temporarily or permanently vitally affects the right of livelihood of the petitioner, which is directly related to the right to life.

20. Pertinently, pension is not a bounty but right available to the pensioner in the evening of the life and is a reward for the services rendered to the state. Any



reduction/withdrawing/withholding of pension, partly or fully, temporarily or permanently causes serious adverse civil consequences, therefore, such a decision cannot be taken without hearing the pensioner, who is intended to be adversely affected.

21. It is trite law that any decision taken which causes civil consequences of adverse nature out to be preceded by affording reasonable opportunity of being heard or else such decision renders itself to be abhorrent to the basic fundamentals of the rule of law and this principle applies even where statute does not in express terms provide for affording of reasonable opportunity of hearing. This aspect had been considered by Division Bench of this Court in the matter of **Radha Krishna Sharma (Supra)** and while placing reliance in the matter of **State of Punjab Vs. K.R. Emy and Sobhag Rai Mehta reported in (1973)1 SCC 120**, it had been held that great prejudice is caused to a pensioner by non affording of an opportunity prior to withdrawal of pension.

22. In the conspectus of the above discussion and interpretation of the provisions of Rule 9(1) of Rules of 1976, this Court is of the considered view that Petitioner/Pensioner was entitled for grant of opportunity of being heard prior to issuance of order withdrawing pension. In light of the aforesaid, the third aspect is not required to be gone into at this stage.

23. Considering the rival submissions and going through the language of Rule 15 (3) of the Rules of 1966 and Rule 9 of the Rules of 1976 as well as judgments of the Division Bench in the case of **Radha Krishna Sharma (supra)** and **Dhirendra Kumar Dubey (supra)**, it appears that consultation with the State Public Service Commission (PSC) is mandatory and therefore, if the consultation with PSC is not carried out, then it vitiates the proceeding.

24. So far as withholding of entire pension permanently is concerned,



Apex Court in the case of **Jarnail Singh (supra)** has given the guidelines in following manner :-

*5. Rule 3 of the C.C.S. (Pension) Rules, 1972 contains the definitions. Clause (o) in sub-rule (1) of Rule 3 is as under:-*

*"Pension" includes gratuity except when the term pension is used in contradistinction to gratuity.*

*From this definition of the word 'pension', it is clear that ordinarily the word 'pension' wherever used in these Rules includes gratuity except when the term 'pension' is used in contradistinction to gratuity.*

*6. Rule 9, to the extent it is relevant for our purpose, is an under:-*

*9. Right of President to withhold or withdraw pension. - (1) The President 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 a 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:*

*Provided that the Union Public Service Commission shall be consulted before any final orders are passed :*

*Bearing in mind the definition of the term 'pension' in Rule 3(1)(o), the term 'pension' used in Rule 9(1) must be construed to include gratuity since the term 'pension', in the context, is not used in contradistinction to gratuity. Learned counsel for the appellant, however, referred to the amendment made in Rule 9(1) by the Central Civil Services (Pension) Third Amendment Rules, 1991, whereby the term 'pension' has been substituted by the expression 'pension or gratuity, or both' and consequential amendments made in that sub-rule. The question is : Whether this amendment made in 1991 indicates, as contended by learned counsel for the appellant, that 'pension' alone could be withheld under Rule 9(1) and not also the gratuity prior to the amendment of Rule 9(1) in 1991? In our opinion, the definition of 'pension' in Rule 3(1)(o) quoted above negatives the appellant's contention and clearly indicates that the 1991 Amendment is merely clarificatory and makes explicit that which was clearly implicit prior to that amendment by virtue of the definition of term 'pension' in Rule 3(1)(o). This clarification appears to have been made only to remove the doubt*



*created by the decisions relied on by counsel for the appellant which are considered hereafter.*

*9. Reference to some other provisions in the Central Civil Services (Pension) Rules, 1972 supports the view we have taken. Rule 69(1)(c) provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceeding against the Government servant. Rules 71 and 73 relating to recovery and adjustment of Government dues and the express provision in Rule 73(3) for adjustment of dues against the amount of death-cum-retirement gratuity payable to the Government servant also reinforce this conclusion. Article 366 of the Constitution of India contains the definitions for the purpose of the Constitution and there in Clause (17) is defined 'pension' to include gratuity as well. This definition of 'pension' in the Constitution also indicates that conceptually the term 'pension' includes gratuity. In Rule 3(1)(o) of the Central Civil Services (Pension) Rules, 1972, the term 'pension' is defined to include gratuity except when the term 'pension' is used in contradistinction to gratuity, in consonance with the basic concept. The contention of the appellant was, therefore, rightly rejected by the Tribunal.*

Thus, from above guidance and from the very perusal of Rule 9, it can be safely inferred that full pension can be withheld permanently.

25. However, in view of the above discussion when consultation with State PSC was not carried out in the instant case and same was required to be done, thus, proceeding got vitiated.

26. Consequently, the present petition is hereby allowed and **disposed of** in the following terms:-

(i). The impugned order dated 03.04.2014 (Annexure P/1) is hereby set aside.

(ii). The matter is relegated to the competent authority to pass fresh order after following due process of law within a period of four months from the date of receipt of certified copy of this order after getting approval from the State Public



Service Commission.

27. However, this Court has not expressed any opinion on the merits of the case.

**(ANAND SINGH BAHRAWAT)**  
**JUDGE**

Monika