

**IN THE HIGH COURT OF MADHYA PRADESH AT
INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 2098 of 2010

BETWEEN:-

TOOFAN SINGH RAGHUVANSHI S/O LATE SHRI KAMAL SINGH, AGED ABOUT 59 YEARS, OCCUPATION: NIL 24A,RAGHUVANSHI COLONY,MARIMATA,INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN, SENIOR ADVOCATE ASSISTED BY MS. RACHANA ZAMINDAR, ADVOCATE)

AND

MANAGING DIRECTOR M.P.STATE CIVIL SUPPLIES CORPORATION LTD. OTHER ORGANIZATION HEAD OFFICE BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VINAY KUMAR ZELAWAT, SENIOR ADVOCATE ASSISTED BY SHRI AASHAY DUBEY, ADVOCATE)

WRIT PETITION No. 3202 of 2012

BETWEEN:-

TOOFAN SINGH S/O KAMAL SINGH RAGHUVANSHI, AGED ABOUT 62 YEARS, OCCUPATION: RETD. 63A,RAGHUVANSHI COLONY,MARIMATA SQ.NR.PUNJAB NATIONAL BANK,INDORER (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN, SENIOR ADVOCATE ASSISTED BY MS. RACHANA ZAMINDAR, ADVOCATE)

AND

**M.P.STATE CIVIL SUPPLIES CORPORATION PARYAVAS
BHAWAN,BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI VINAY KUMAR ZELAWAT, SENIOR ADVOCATE ASSISTED BY SHRI
AASHAY DUBEY, ADVOCATE)**

Reserved on : 11th September, 2023

Delivered on : 29th September, 2023

These petitions having been heard and reserved for order coming on for pronouncement this day, the court pronounced the following:

O R D E R

Regard being had to the similitude in the controversy involved in the present cases, with the joint request of the parties, these petitions are analogously heard and being decided by this common order. Facts are being taken from W.P. No.2098 of 2010.

02. The petitioner has filed the present petition under Article 226 of the Constitution of India seeking direction to the respondents to supply the copies of the documents as mentioned in Annexure-P/9 and other representation.

03. Facts of the case in short are as under:-

3.1. The petitioner in the services of M.P. State Civil Supplies Corporation Limited was posted as District Manager in the year 1986. The petitioner was served with a charge-sheet dated 14.03.2005 in respect of irregularities in sale and purchase of Mung and causing loss to the tune of Rs.18,52,000/-. The petitioner submitted a reply to the charge-sheet denying the charges. The detail enquiry was conducted and the Enquiry Officer submitted a report to the effect that charge No.1 is

partially proved and rest of the charges are not proved. The disciplinary authority did not agree with the findings recorded by the Enquiry Officer and on 08.08.2007 passed an order of dismissal from service with recovery of Rs.13,38,000/-. The petitioner assailed the aforesaid order by way of W.P. No.4950 of 2007. Vide order dated 24.07.2009, the writ petition was allowed and the matter was remanded to the disciplinary authority first to issue a show-cause notice specifying the reason of disagreement with the Enquiry Officer. After remand, the petitioner was taken into the service and show-cause notice dated 22.12.2009 was issued to him. The petitioner submitted a preliminary reply and in order to clarify certain position requested for some additional documents. The petitioner also sent a legal notice when the documents were not supplied. During pendency of the said enquiry before the disciplinary authority, the petitioner attained the age of superannuation and retired from service w.e.f. 30.06.2010. The petitioner approached this Court by way of this writ petition seeking direction from the respondent to supply the documents.

3.2. Vide order dated 23.04.2010, this Court restrained the respondent to proceed further with the Departmental Enquiry. The respondent filed a reply on 06.08.2010. Thereafter, the writ petition was admitted for final hearing. Now the petitioner filed an application for taking document on record on 25.08.2023. Along with the same, the order dated 05.05.2010 is filed whereby the disciplinary authority had passed the order of penalty of compulsory retirement with recovery of Rs.13,38,000/- from the retiral dues. Since there is an interim order in the writ petition, therefore, vide order dated 06.05.2010, the aforesaid

punishment order has been kept in abeyance in order to avoid the contempt proceeding.

04. Shri Girish Patwardhan, learned Senior Counsel appearing for the petitioner submits that in Service Rules, there is no such provision for proceeding further with Departmental Enquiry after retirement, therefore, now the enquiry is liable to be treated as dropped and the retiral dues of the petitioner are liable to be released without making any recovery. In support of his contention, learned Senior Counsel has placed reliance upon couple of judgments delivered in the cases of *Central Bank of India v/s C. Bernard* reported in (1991) 1 SCC 319 & *Bhagirathi Jena v/s Board of Directors, O.S.F.C. & Others* reported in (1999) 3 SCC 666.

05. Shri Vinay Zelawat, learned Senior Counsel for the respondent submits that the enquiry which had been initiated during service is liable to be continued after retirement under the provisions of Pension Rules and the order of punishment has already been passed before retirement of the petitioner and the same is not under challenge in the present writ petition. Hence, the present writ petition has rendered infructuous.

06. The respondent filed the reply on 06.08.2010, in which they did not disclose that the enquiry had already been completed and the final order had been passed on 05.05.2010. If order had been passed on 05.05.2010, then it should have been disclosed in the return, for which there is no such explanation. The petitioner filed the writ petition alleging that the documents demanded by him were not supplied, therefore, he was not in a position to given effective reply. The petitioner has also not challenged the order dated 05.05.2010, whereby

he was compulsory retired. The petitioner filed another writ petition i.e. W.P. No.3202 of 2012 seeking direction from the respondent to release his retiral dues. In this petition also, the fact of order of punishment is not disclosed, therefore, the said order of punishment was never supplied to the petitioner. The order of retirement is filed, in which also nothing has been mentioned about pendency of Departmental Enquiry. Therefore, *prima facie*, it appears that the order of punishment is an anti-dated order. No provision of law has been brought on record to show that the enquiry can continue after retirement of the employees of the Corporation.

07. So far as supply of documents to the petitioner is concerned, the petitioner participated in the entire Departmental Enquiry, but did not demand any such documents, however, in the show-cause notice, the disciplinary authority relied on various documents and communications in order to record the disagreement with the Enquiry Officer. Therefore, these documents are liable to be supplied to the petitioner as demanded by him. As per the return, the petitioner was permitted to inspect these documents, but since there was an interim order, therefore, without leave of this Court, the respondent ought not to have concluded the enquiry in this matter. This Court was required to examine whether the documents demanded by the petitioner were permitted to be inspected or were necessary to be supplied. Without waiting for adjudication for the Departmental Enquiry, the disciplinary authority has passed the order. Admittedly, this order was not disclosed in the return as well as by way of reply in W.P. No.3202 of 2012. Therefore, this order is an anti-dated order and was not passed at that relevant point of time. This petition is

pending since 2010 and no efforts were made by the respondent to get the stay vacated. Therefore, the retiral dues of the petitioner are wrongly withheld. No purpose would be served at this stage to direct the respondent to supply the documents and conclude the enquiry as no provision of law has been brought on record to show that the enquiry can be concluded after retirement.

08. Since the punishment order is passed during the pendency of this petition in which stay is operating in favour of the petitioner, hence, the order is non-est in law. The respondent has acted in disobedience of the interim passed by this Court. Accordingly to the petitioner, enquiry has been completed and punishment has been imposed on the petitioner. But the petitioner did not submit any reply to the show-cause notice because the documents as demanded by the petitioner were not supplied and there is stay operating in his favour. Therefore, now no liberty can be granted to the respondent to conclude the enquiry after 12 years. Now all the enquiry pending against the petitioner is treated to be dropped. His retiral dues be paid to him.

08. Writ Petition stands disposed of to the extent indicated above. The order passed by this Court in the present case shall govern the connected the petition also, therefore, the connected writ petition also stands disposed of to the same extent.

Let a copy of this order be kept in the connected petition also.

(VIVEK RUSIA)
J U D G E