

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

Indore, Dt.16.01.2019

Shri Aviral Vikas Khare, counsel for the petitioner.

Ms. Nidhi Bohra, G.A. for the respondents/State.

With the consent of parties, heard finally.

ORDER

Petitioner has filed the present petition being aggrieved by the order dated 7.11.2017 passed by the Joint Director, Urban Administration and Development, Bhopal by which 50% of the gratuity amount i.e. Rs.4,70,429/- has been sanctioned and provisional pension has been fixed.

2. According to the petitioner, he is entitled for 100% gratuity amount and pension under the provisions of Rule 9(4) and 64 of M.P. Civil Services Pension Rules after retirement from service.

3. Facts of the case in short are that the petitioner was retired after attaining the age of superannuation on 31.08.2011 from the post of Executive Engineer in Urban Administration and Development Department. Before retirement he was on deputation with the Municipal Corporation, Indore. After retirement he filed the writ petition seeking release of pensionary dues, leave encashment, gratuity etc.. By order dated 29.7.2013, writ petition No. 9070/2012 was allowed with a direction to the respondents to make payment of pensionary dues to the petitioner with interest @ 12.5% per annum. Thereafter the petitioner filed the contempt petition No. 115/2014 followed by another Contempt Petition bearing No. 429/2014. Finally vide order dated 20.10.2014, respondents has withheld the gratuity amount and part of the pension due to pendency of

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

two criminal cases registered under the Prevention of Corruption Act bearing crime No. 27/2008 and 57/2010.

4. Being aggrieved by the order dated 20.10.2014, petitioner filed Writ Petition No. 3650/2015. By order dated 11.5.2016, writ court set aside the aforesaid order and directed the respondents to decide the petitioner's case afresh about release of gratuity amount in the light of Rule 9(4) and 64 of the Civil Services Pension Rules, 1976. When the aforesaid order was not complied with, petitioner filed Contempt Petition No. 636/2016. During pendency of Contempt Petition, by impugned order dated 7.11.2017, the respondents has fixed the provisional pension i.e. Rs. 17,708/- per month and released 50% of the gratuity amount i.e. Rs.4,70,429/-. By order dated 13.11.2017, Contempt case No. 636/2016 was also disposed of with liberty to the petitioner to file fresh writ petition in case he is still aggrieved in the matter, hence the present petition before this Court.

5. Petitioner has assailed the impugned order on the ground that under sub rule (4) of Rule 9, the respondents can release the provisional pension and withdraw the death-cum-retiral gratuity in case of retired employee against whom retiral or judicial proceedings are instituted. Rule 9(6)(b) of Rules, 1976 clarifies that the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or judicial proceedings shall be deemed to be instituted in case of criminal proceedings on the date on which the complaint or report of the police officer of which the Magistrate takes

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

cognizance. In the present case the Magistrate took cognizance after the retirement of the petitioner, therefore the provisions of Rule 9(4) and Rule 64 would not apply. In support of his contention, petitioner has placed reliance upon the judgment of Division Bench judgment of this Court in the matter of **Ramlal Malviya Vs. State of Madhya Pradesh and others** (Writ Appeal No. 243/2017) decided on 15.09.2017.

6. After notice, the respondents have filed the return by submitting that vide order dated 11.5.2016 passed in W.P.No. 3650/2015 this Court has held that as per co-joint Rule 9(4) and Rule 64 the gratuity amount to the extent of 50% can be released to the petitioner taking into account the gravity of the charges leveled against him, therefore the respondents has rightly passed the order dated 7.11.2017 in compliance with the order passed by this Court. It is also alleged that before retirement of the petitioner, investigation had been started by the Lokayukt police under the provisions of Prevention of Corruption Act, 1988 under Crime No. 24/2008 and 57/2010 and now the investigation has been completed and chargesheet has been filed on 20.5.2013 and 22.6.2015 in both the criminal cases respectively. Hence, the respondents have rightly granted the provisional pension and withheld 50% of the gratuity amount.

7. Petitioner has filed the rejoinder by submitting that by judgment dated 23.5.2018 passed in S.T.No. 57/2010, he has been discharged in connection with the charge under crime No. 57/2010.

8. I have heard learned counsel for the parties.

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

9. Facts of the case are not in much dispute. The petitioner retired w.e.f. 31.8.2011 and the chargesheet in both the criminal cases were filed after his retirement. The language of Rule 9(4) of Pension Rules, 1976 is very clear and specific and according to which the Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted, a provisional pension and death-cum-retirement gratuity as provided in Rule 64, shall be sanctioned. The stage of institution of judicial proceeding has been clarified in sub rule 6(b) of Rule 9 and according to which the criminal proceedings shall be deemed to be instituted on the date on which the Magistrate takes the cognizance.

10. The Division Bench of this Court in the case of Ramlal Malviya (supra) has also held that judicial proceedings shall be deemed to be instituted in a criminal case on the date on which the complaint or the report of the police officer is made and the Magistrate has taken the cognizance, and hence directed the respondents to release the full pension as well as the gratuity amount.

11. Para 5,6,7 and 8 are relevant which are reproduced hereinbelow :-

“05- The aforesaid statutory provision of law makes it very clear that judicial proceedings shall be deemed to be instituted in a criminal case on the date of which the complaint or report of the police officer is made of which the Magistrate has taken cognizance. In the present case, Challan was filed on 30/04/2016 and therefore on 31/12/2015 judicial proceedings were not pending against the present appellant and therefore, in the considered opinion of this Court the petitioner is entitled for grant of full pension and gratuity.

06- The other aspect of the case is that the learned Single Judge has taken care of Rule 9 as well as Rule 64 of

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

the Pension Rules. Under Rule 9, in case the appellant is convicted the government does have a right to withheld or withdraw the pension. Rule 64 is not applicable in the present case as at the time of retirement, judicial proceedings were not pending.

07- The division Bench of this Court in the case of **State of Madhya Pradesh Vs. Prahalad** (Writ Appeal No.153/2017, decided on 10/04/2017) has taken a similar view earlier. Paragraphs No.3 to 8 of the aforesaid judgment reads as under:-

“3. Facts of the case are that the respondents attained the age of superannuation on 31/12/2012, however while he was in service a criminal case was registered against him at crime No.5/2010. After registration of criminal case, he was superannuated and State Government has granted permission to prosecute him on 04/01/2013, thereafter charge-sheet has been filed on 19/02/2013, meaning thereby charge-sheet has been filed after the retirement from service and after grant of permission to prosecute him.

4. The question before Writ Court was that after retirement of respondents whether he can be prosecuted or not ? Learned Writ Court relying on the decision in the matter of **Union of India vs. K.V. Jankiraman report in (1991) 4 SCC 109** has held that as per rule 9 (6) (b) of M.P. Civil Service (Pension) Rules, 1976 the judicial proceedings shall be deemed to be instituted in respect of a criminal case on the date on which cognizance has been taken and the Magistrate on the basis of report, cognizance has been taken after retirement.

5. Learned Writ Court has come to the conclusion that cognizance was taken after the date of retirement of the respondents and charge-sheet was filed on 19/02/2013, thereafter directed to release gratuity as well as full pension of the respondents within a period of 60 days from the date of receipt of certified copy of the order. It was also observed that in case the amount of pension, gratuity as well as other terminal dues are not paid within 90 days, the same shall carry interest @ Rs.8.5% per annum from the date of entitlement till it is actually paid to the respondents.

6. Learned counsel for the appellant has placed reliance on a decision in the matter of **Amrit Rao Mukut Rao Survey vs. State of M.P. 1999 (1) M.P.L.J. 105** wherein learned Writ Court has held that criminal proceedings are deemed to be instituted on the date on which the complaint is made.

7. On the other hand, learned counsel for the respondents has drawn our attention in the matter of **Parmanand Champalal Lad vs. State of M.P. 2004 (4) M.P.L.J. 199, Aditya Mishra vs. State of M.P. 2014 (2) M.P.L.J. 59 and Kamla Bai vs. Nathuram Sharma and others 2014 (2) M.P.L.J. 62** and submits that this question has been considered by this Court time and time again.

8. Admittedly, in the present appeal, charge-sheet has been filed on 19/02/2013 and keeping in view the law laid down in **Parmanand Champalal Lad (Supra), Aditya Mishra (Supra) and Kamla Bai (Supra)**, we are of the view that learned Writ Court has rightly allowed the writ petition filed by the respondents (herein) and directed to pay the amount alongwith interest.”

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

08- In light of the aforesaid, this Court is of the opinion that the present writ appeal deserves to be allowed and is accordingly allowed. The petitioner shall be entitled for full pension and gratuity as well as other terminal dues, however, in case the petitioner is held guilty in the criminal case, the respondents shall be free to take action against the petitioner under Rule 9 of the M. P. Civil Services (Pension) Rules, 1976. The exercise of granting pension, arrears of pension and gratuity be concluded within a period of 90 days from the date of receipt of certified copy of this order.”

12. According to the respondents, they have passed the order on 7.11.2017 in compliance to the order passed by the writ court in W.P.No. 3650/2015. At the time of argument in the said writ petition, counsel for the petitioner had submitted that petitioner is entitled to release of the gratuity amount to the extent of 50% in terms of the provisions of M.P.Civil Services (Pension) Rules. The writ court has also observed that as per co-joint reading of Rule 9(4) and 64 of the Rules, the gratuity amount to the extent of 50% can be released but set aside the order dated 24.10.2014 with a direction to the competent authority to decide the petitioner's claim afresh about release of the gratuity amount keeping in view the provisions contained in Rule 9(4) and Rule 64. After the aforesaid Order passed on 11.5.2016, now the Division Bench of this Court in the case of Ramlal Malviya (supra) has held that retired employee against whom the criminal case has been instituted after retirement shall be entitled for full pension and gratuity.

13. So far as applicability of Rule 8 is concerned, the same is applicable where the pensionary/retired Government employee is convicted by a serious crime or found guilty of grave misconduct, the pension sanctioning authority may pass an order in writing to withdraw or withhold the pension.

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

W.P. No.21375/2017

(Suresh Kumar Vs. State of M.P. and another)

In the present case the petitioner has not been convicted or found guilty of grave misconduct so far, therefore the stage of Rule 8 has not come yet. So far as Rule 9 is concerned, the power is vested with the Government to withhold or withdraw the pension or part if in any departmental or judicial proceeding, the petitioner is found guilty of grave misconduct or negligence during the period of his service. In the present case the judicial proceedings are still pending against the petitioner and competent authority has not passed any order under Rule 9 so far.

14. Therefore in view of the law as held by Division Bench, the impugned order dated 7.11.2017 withholding of 50% of the gratuity amount and denial of full pension is set aside. The respondents are directed to grant full pension as well as gratuity amount to the petitioner.

Writ Petition is allowed and disposed of.

(Vivek Rusia)
Judge

mk

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
W.P. No.21375/2017
(Suresh Kumar Vs. State of M.P. and another)