

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 23rd OF NOVEMBER, 2022

WRIT APPEAL No. 1808 of 2018

BETWEEN:-

1. **HIGHER EDUCATION DEPARTMENT PRINCIPAL SECRETARY
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **THE COMMISSIONER HIGHER EDUCATION DEPARTMENT
HIGHER EDUCATION SATPURA BHAWAN (MADHYA PRADESH)
THE DIRECTOR DIRECTORATE OF PENSION PROVIDENT FUND**
3. **AND INSURANCE 26, KISAN BHAWAN, MANDI BOARD, JAIL
ROAD, ARERA HILLS (MADHYA PRADESH)**

.....APPELLANT

**(SHRI SHREYA RAJ SAXENA, LEARNED DY. ADVOCATE GENERAL
FOR APPELLANTS/STATE.)**

AND

**TEJPRAKASH VYAS S/O DR. POORANNAND VYAS, AGED ABOUT
68 YEARS, OCCUPATION: RETD. FH-67, SCHME NO. 54,C/O MR.
VERMA BEHIND SOFTVISION COLLEGE INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

**(SHRI RISHI TIWARI, LEARNED COUNSEL FOR THE
RESPONDENT.)**

This appeal coming on for on admission this day, JUSTICE VIVEK

RUSIA passed the following:

ORDER

The State of M.P. and two others have filed the present writ appeal being aggrieved by order dated 23.3.2018 passed by the writ Court in W.P. No.7222/2016 whereby they have been directed to release the pension of the petitioner within a period of 60 days as no departmental inquiry is pending against him.

Facts of the case, in short, are that the respondent was appointed on 9.9.1974 and received various promotions from time to time and he attained the age of superannuation in the year 2014. He was placed under suspension on 30.3.2012, he preferred an appeal which was allowed and the suspension order was revoked. A departmental inquiry was also initiated but that came to an end on 24.8.2015. By that time, the respondent attained the age of superannuation on 31.8.2014. After retirement, the appellants withheld full pension of the petitioner and also withheld 25% of the gratuity, hence he approached this Court by way of writ petition. The appellants filed the reply in the writ petition contending that after conclusion of the departmental inquiry, vide order dated 24.8.2015 a minor penalty was imposed on him after retirement. Now, W.P. No.5585/2014 (PIL) has been filed against the alleged illegality committed by the petitioner and the same is pending before this Court, hence the appellants have withheld the retiral dues of the petitioner. The Writ Court after examining the facts in totality has held that the pendency of PIL will not entitle the State Government to withhold the retiral dues of the petitioner and directed to the same within 60 days with interest. Hence, this writ appeal before this Court.

Learned Dy. Advocate General appearing for the appellants/State is justifying the action of the appellants/State in the light of Rule 64 of M.P. Civil Services (Pension) Rules, 1976 (for short "Pension Rules") as the judicial proceeding by way of PIL is pending against the petitioner.

Rule 64 of the Pension Rules deals with provisional pension where departmental or judicial proceeding may be pending. Rule 64 is reproduced below :

"64. Provisional pension where departmental or judicial proceeding may be pending. - (1) (a) In respect of Government servants refer to in sub-rule (4) of Rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date ,of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) Provisional gratuity shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office after adjusting dues mentioned in sub-rule [(2)]of Rule 60, under intimation to Audi Office. Payment of provisional pension/gratuity made under sub-rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension/gratuity finally sanctioned is less than the provisional pension/gratuity or the pension/gratuity is reduced or withheld either permanently or for a specified period."

Admittedly, no departmental inquiry is pending against the petitioner. So far as judicial proceedings are concerned, the word “judicial proceeding” is dealt with in sub rule (6) of rule 9 of the Pension Rules and according to which, judicial proceedings shall be deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made. So far as civil proceedings are concerned, Clause (ii) of rule 9(6) provides that the judicial proceedings shall be deemed to be instituted in the case of civil proceedings, on the date the plaint is presented in the court. Admittedly, no such proceedings are pending against the petitioner. So far pendency of a PIL is concerned, it is not a judicial proceeding on which rule 64 of the Pension Rules can be applied. Even if, in future, the High Court directs registration of a criminal case against the petitioner, rule 64 of the Pension Rules will not apply and that would be governed under rule 8 of the Pension Rules. At this stage, the pension and other retiral dues of he petitioner cannot be withheld. In view of the above, we find no ground to interfere with the impugned order passed by the Writ Court.

Accordingly, this writ appeal fails and is hereby dismissed in *limine*.

[VIVEK RUSIA]
JUDGE.

[AMAR NATH (KESHARWANI)]
JUDGE.

Alok/-