

**HIGH COURT OF MADHYA PRADESH: BENCH AT  
INDORE**  
**SINGLE BENCH: HON'BLE SHRI JUSTICE VIVEK RUSIA**

**WRIT PETITION No.19762/2018**

**KANHAIYALAL S/O LATE BRAJLAL PRAJAPAT**  
**Vs.**  
**THE JAWAHARLAL NEHRU KRISHI VISHWAVIDYALAYA &  
OTHERS**

Shri Amit Raj, Advocate for the petitioner.  
Shri Ajay Mishra, Advocate for the respondent No.1.  
Shri Vivek Khedkar, Advocate for respondents No.2 & 3.  
Shri Sanjay Sharma, Advocate for respondent No.4.

**O R D E R**

(Passed on 12.09.2019)

Petitioner has filed the present petition not against any particular order passed by the respondent but challenging the inaction on the part of the respondents by which they are not giving pension to him under the provisions of the M.P Civil Services (Pension) Rules, 1976 (for short '**the Rules of 1976**') and Madhya Pradesh (Work Charge and Contingency Paid Employees) Pension Rules, 1979 (for short '**the Rules of 1979**').

Facts of the case in short are as under:

2. Petitioner was appointed in the year 1970 as daily wager in the College of Agriculture, Indore. Later on he was regularized into the service vide order dated 21.03.1990 in the contingency establishment and he became entitled to receive all the benefits of a regular employee including the benefits of pension, gratuity etc. The respondent issued a Circular dated 17.03.2003 by which the benefit of GPF has

been extended to the employees appointed prior to the year 1988. After attaining the age of superannuation i.e. 60 years, the petitioner retired from service on 31.01.2008. After retirement he submitted an application on 08.12.2008 seeking payment of post retiral benefits. Thereafter, the petitioner filed a writ petition No.466/2011 before this Court which was disposed off on 09.04.2012 with direction to the respondents to pay the retiral dues to the petitioner within a period of two months. It has also been observed that if the provisions of the Employees Provident Fund Act, 1952 (for short '**the Act of 1952**') are not applicable to the petitioner then the amount of provident fund paid by the petitioner is liable to be refunded. After the aforesaid order, petitioner again submitted a representation to the respondents for grant of the benefits. The petitioner again approached this Court by way of Writ Petition No.2861/15 in which the respondents took a stand that the petitioner is not entitled for pension under the Employees Pension Scheme, 1995. The writ petition was disposed of vide order dated 24.04.2017 with direction to the respondents to refund the amount of provident fund lying with the employer.

3. Now the petitioner has approached this Court that he worked for 18 years after regularization till retirement in the contingency paid regular establishment, therefore, he has completed the qualifying service for pension under the Rules of 1976, hence the respondents be directed to grant him pension and other post retiral benefits.

4. After notice, respondent No.1 Jawaharlal Nehru Krishi Vishwavidyalaya (hereinafter referred as “JNKVV”) filed return by submitting that vide order dated 31.12.1994 the university has decided to give pension, gratuity, family pension and commutation of pension under the provisions as laid down in JNKVV Service Pension Rules, 1987, as per the Rules of 1976 and M.P Civil Services (Pension Commutation) Rules, 1976, as amended time to time, to regular and full time employees of the Vishwavidyalaya w.e.f 01.04.1987. The pension rules shall not apply to persons in work charge establishment and persons paid from contingency. In the order itself the regular employee has been defined and according to which an employee appointed substantively, officiatingly/temporarily on a regular tenure post in regular scale and not being paid from contingency or employees on deputation from other organizations, therefore, the petitioner being an employee under the contingency paid establishment is not entitled for the pension under the Rules of 1976. It is further submitted that earlier the petitioner filed a petition for releasing the provident fund and gratuity amount and an amount of gratuity of Rs.97,698/- has already been released to him.

5. Respondents No.2 & 3 have also filed the return by submitting that the petitioner was an employee of respondent No.1/university. He was retired on 31.01.2008 prior to formation of respondent No.2/university, therefore, even if any pension or other retiral benefit is payable to him then the

respondent No.1 is liable to pay the same. However, respondents No.2 & 3 have supported respondent No.1 on the merit of the case. The respondent No.4 has also filed the return submitting that JNKVV was not complying the provisions of the Employees Provident Fund Act, 1952 and the scheme framed thereunder in respect of deduction of daily wage employees. An enquiry under section 7(A) of the Act of 1952 was conducted and it has been held that the provisions of the Act are applicable to the said employees and accordingly an assessment was made vide order dated 19.10.2006. While directing JNKVV to deposit the amount of Rs.27,29,56,557/- for the period from 01.04.1992 to 31.03.2006. The JNKVV preferred an appeal under section 71 against the order dated 19.10.2006. Vide order dated 13.11.2009 the same has been remanded back for reassessment of the dues from 01.08.1988. Against the aforesaid order the organization has preferred a writ petition before the Principal Bench in which the stay order has been granted. It is submitted that once the dispute in respect of applicability of the Act of 1952 is put to rest the petitioner would be entitled for provident fund accordingly as the period prior to 2006 is pending adjudication.

6. Shri Amit Raj, learned counsel for the petitioner submits that vide order dated 21.03.1990 sanction has been granted for payment of time-scale in the pay-scale of Rs.725-900/- from the contingency fund of the university. The petitioner gave joining on 26.03.1990 and worked till the

retirement, therefore, under the Rules of 1979 he is entitled for regular pension. In support of his contention he has placed reliance over the judgment passed by the Division Bench of this Court in the case of **Rahisha Begum w/o late Ashraf Khan vs. State of M.P & others 2010 (4) MPLJ 332** and the judgment passed by the Single Judge in the case of **Satyanarayan Gupta vs. M.P Housing Board and others 2008 (4) MPLJ 396**. He further submits that the respondents have wrongly placed reliance over the order dated 31.12.1994 which cannot supersede the statutory provisions being an executive instruction and in support of his contention he has placed reliance over the judgment passed by this Court in the case of **Archana vs. State of M.P & others 2007 (1) MPLJ 484**. He submits that once the Rules of 1976 have been adopted by the university, therefore, as per the judgment passed in the case of **Satyanarayan Gupta (supra)**, the Rules of 1979 will also be applicable in the case of the petitioner.

7. Shri Ajay Mishra, learned counsel for the respondent No.1 submits that the university is an autonomous body having its own service rules. The Vice Chancellor of the University has granted sanction to the decision taken by the Board of Management in its 140<sup>th</sup> meeting held on 03.12.1994 for grant of pension under the JNKVV Pension Rules, 1987 and the Rules of 1976. The persons in the work charge establishment and contingency have specifically been excluded from the purview of pension rules. The university

has not adopted the Rules of 1979, therefore, the petitioner is not entitled for pension.

8. Initially, the petitioner filed writ petition No.466/2011 seeking direction to the respondent for release of amount of GPF and other retiral dues with arrears and interest. The writ petition was disposed of with direction to furnish an undertaking in writing by the petitioner that the respondent No.3 in case it is found that the provisions of the Act of 1952 are not applicable to respondent No.1 then petitioner shall be liable to refund the amount and the respondent No.1 shall do the needful for payment of GPF and pension. As per the respondent No.4 the issue in respect of applicability of the Act of 1952 to the establishment of respondent No.1 has not been decided so far. If it is held that the Act of 1952 is applicable to the petitioner and other similarly placed employees then certainly the petitioner is not entitled for pension either under the Rules of 1976 or the Rules of 1979. The issue is pending before the Principal Bench in various writ petitions filed by respondent No.1. In a subsequent writ petition No.2861/15 vide order dated 24.04.2017 this Court has already directed the university to give attested form No.19 to respondent No.4 for release of the dues to the petitioner. Now by way of this petition the petitioner is specifically seeking the relief of grant of pension and other retiral dues under the Rules of 1976.

9. The Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules have been framed for the

employees of the State Govt. The respondent No.1 being a university is required to adopt these rules, then only the petitioner would be entitled for pension under the said rules. According to the petitioner once the university has adopted the Rules of 1976 then by implication the Pension Rules of 1979 will also be applicable to the employees of JNKVV as held by this Court in the case of Satyanarayan Gupta (supra).

In the case of Satyanarayan Gupta the M.P Housing Board has adopted the Rules of 1976 for its employees and it was a case of M.P Housing Board that the Rules of 1979 have not been adopted. The writ Court has held that once the Rules of 1976 have been made applicable then the Rules of 1979 will also be applicable. The M.P Housing Board preferred a writ appeal against the aforesaid order (W.A.No.484/08) and by order dated 11.03.2010 the Division Bench has dismissed the writ appeal but on other grounds that the writ petitioner therein could not be treated as work charged and contingency paid employee as he was a regular employee.

10. In the present case, the respondent No.1/university has its own pension rules i.e. JNKVV Service Pension Rules, 1987 and also taken a decision to grant pension under the Rules of 1976 to its full time and regular employees but not to the persons in the work charged and contingency establishment and paid from the contingency fund. The petitioner has not challenged the validity of the order dated 31.12.1994 in this writ petition. By this order the persons working in the work charged and contingency paid

establishment and paid from contingency fund have been excluded from the Pension Rules of 1976. The relevant part of the order reads as under:

**JAWAHARLAL NEHRU KRISHI VISHWA VIDYALAYA  
SERVICES PENSION RULES, 1987  
(PENSION, GRATUITY & COMMUTATION)**

1. Applicability of the Pension, Family pension & Commutation benefits:-
  - 1.1 The pension, gratuity, family pension and Commutation of pension benefits admissible to the Govt. servants of Madhya Pradesh, under the Madhya Pradesh Civil Services (Pension) rules, 1976 and the M.P Civil Pension (Commutation) Rules, 1976, as amended from time to time may be made applicable to the officers, teachers & service personnels, other than the Chancellor and Vice-Chancellor, with effect from 1.4.1987.
  - 1.2 These rules shall not apply to :-
    - (i) Persons paid from Contingencies.
    - (ii) Persons in casual and daily rated employment.
2. Schemes: Consequent thereon, there shall be the following two schemes in operation, in the Vishwa Vidyalaya.
  - Scheme -A. Employees Contributory Provident Fund Scheme, as per statute 42 to statute 53, under Chapter-v of the JNKV, Statute 1964, and
  - Scheme-B. Pension and Gratuity Scheme of the State Govt. of Madhya Pradesh, under the M.P Civil Services (Pension) Rule 1976, as amended from time to time.

11. The Pension Rules of 1979 have not been adopted by the university. The Pension Rules of 1979 provides for grant of pension to the contingency paid employees under the provisions of the Rules 1976 but same is not vice-versa. The respondent No.1 being a university is required to adopt the Rules of 1979 then only the petitioner would be entitled to claim pension, therefore, at this stage, the petitioner is not entitled for pension under the Rules of 1979. However, if in



future the Principal Bench of this Court comes to the conclusion that the provisions of the Act of 1952 are not applicable to the university then the petitioner may revive his claim for grant of pension under the Rules of 1976 or Rules of 1979.

12. Accordingly, the petition is dismissed.

**(VIVEK RUSIA)  
JUDGE**

**hk/**

