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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 21st OF SEPTEMBER, 2022

WRIT APPEAL No. 1176 of 2019

BETWEEN:-

1. STATE OF M.P. HOME DEPARTMENT THROUGH
PRINCIPAL SECRETARY, GOVT. OF M.P. HOME (POLICE)
DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)

2. THE DIRECTOR GENERAL OF PLICE POLICE
HEADQUARTERS JAHANGIRABAD, BHOPAL.,
(MADHYA PRADESH)

3. THE TREASURY OFFICER, DISTRICT TREASURY,
BHOPAL, M.P.

.....APPELLANT

(*SHRI ADITYA GARG, LEARNED GOVERNMENT ADVOCATE FOR
THE APPELLANTS/STATE*).

AND

DILIP RAO TAMBE S/O LATE SHRI SHRIDHAR RAO
TAMBE, AGED ABOUT 60 YEARS, OCCUPATION: RETD.
GOVT. SERVANT FROM THE POST OF
SUPERINTENDENT OF POLICE, DEWAS, (M.P.) AT
PRESENT R/O TILAK PATH RAMBAG INDORE
(MADHYA PRADESH)

.....RESPONDENT

(*SHRI VIJAY PRABHAKAR SARAF, LEARNED COUNSEL FOR THE
RESPONDENT*)

This appeal coming on for orders this day, JUSTICE VIVEK

RUSIA passed the following:

ORDER

The appellants/State have filed present Writ Appeal being

aggrieved by order dated 16.08.2018 passed in Writ Petition No.2673/2010 whereby order of punishment has been quashed with liberty to pass appropriate order keeping in view the pension rules.

Brief facts of the case are as follows:

[2] The Writ Petitioner served with charge-sheet on 18.04.2006, Enquiry Officer submitted a report on 09.01.2018. The Writ Petitioner was served with the enquiry report on 21.01.2008 with a second show cause notice. The Writ Petitioner submitted a reply on 15.02.2008. The Writ Petitioner was given one last increment on 01.01.2009, thereafter he retired from services upon attaining the age of superannuation on 30.09.2009. Vide order dated 07.01.2010, the State of Madhya Pradesh in the name of Governor, decided to punish him by reduction of one pay increment and stoppage of next pay increment with the cumulative effect which would result in the non-grant of increment due on 01.01.2009, hence, he would suffer the loss of two increments and pay fixation below two increments, accordingly, vide order dated 07.01.2010 he has been imposed punishment of reduction by two pay increments with cumulative effect having a consequential effect in the pension.

Being aggrieved by the above punishment the writ petitioner filed the Writ Petition before this High Court.

[3] The Writ Court has set aside the aforesaid punishment order on the ground that the respondents could have withheld or withdrawn the pension or part thereof whether permanently or for a specified period in order to recover the pecuniary losses caused to the Government. Since in the present case, there is no pecuniary loss caused to the Government, therefore, recovery ordered by the respondents equivalent to the amount due to the reduction of two increments is contrary to Rules 9 of the M.P. Civil Services (Pension) Rules, 1976 (Wrongly typed as M.P. Civil Services (Classification, Control and Appeal) Rules, 1966). The Writ Court

has quashed the order and remanded back the matter to the authority to pass appropriate order keeping in view the Pension Rules. Hence, this appeal before this Court.

[4] Since there is a delay of 238 days in filing the Writ Appeal, thus I.A. No.3341/2019 is being filed to condone the delay. The reasons mentioned in the application and there is no objection by the writ petitioner, I.A. No.3341/2019 is allowed. Delay is hereby condoned.

[5] Undisputedly, the Writ Court did not enter into the merits of the case and quashed the punishment order on technical grounds.

[6] The appellant contends that there is a delay in passing the impugned order although the departmental enquiry had been completed before the date of superannuation. Opinion from PHQ was sought for punishing him by the stoppage of one increment and to reduce the pension by one increment in the pay, but the final punishment order could be passed by the State Government on 07.10.2010 with approval in the name of the Governor in conformity with Rule 9 of the Pension Rules.

[7] Rule 9 (1) of the M.P. Civil Services (Pension) Rules, 1976 has rightly been quoted in the impugned order but the name of the Rules has been wrongly typed as M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. The appellants are not disputing that the Writ Court has passed the impugned order relying on Rule 9 of the M.P. Civil Services (Pension) Rules, 1976, therefore, the said typing mistake is hereby ignored.

The dates given above are not in dispute. Rule 9 of the M.P. Civil Services (Pension) Rules, 1976 is reproduced below:-

"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];

(2) (a) The departmental proceedings [xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment :-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

[(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings :

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceeding, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64], as the case may be, shall be sanctioned :

- : 5 :-

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as if for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount, of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) 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, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

[7] Sub Rule 1 of Rule 9 gives the right to the Governor to withhold or withdraw the pension or part thereof, whether permanently or for a specified period and order the recovery from

- : 6 :-

the pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Sub Rule 2 (a) deals with the departmental proceedings instituted while the Government servant was in service and retired before the conclusion of the departmental enquiry but for the purpose of continuance of the departmental enquiry, he shall be deemed to be Government Servant continued into services. The authority subordinate to the Governor shall submit a report regarding its finding after the conclusion of the departmental enquiry and based on it the Governor under Sub Rule 1 Rule 9 has the right to withhold or withdraw the pension and order for recovery from the pension if the pensioner is found guilty of grave misconduct. Thus, only two punishments can be imposed *first* is the stoppage of withdrawal of the pension or part thereof permanently or for a specified period, *second is* recovery from the pension. Admittedly, there is no recovery from the writ petitioner. The only punishment which could be imposed is withholding or withdrawal of pension as he had retired before the conclusion of departmental enquiry and passing of punishment order. The punishment order is not for withholding or withdrawing the pension, permanently or for period temporary or some period, therefore, the Writ Court has rightly set aside the punishment part of the order as it was in conformity with Rule 9 (1) of Pension Rules and granted liberty to pass appropriate order.

In view of above, we do not find any infirmity in the impugned order, the Writ Appeal is hereby dismissed.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE