



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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 8th OF AUGUST, 2025

WRIT APPEAL No. 1238 of 2020

GENERAL ADMINISTRATION DEPARTMENT

Versus

PRABHAT KABRA

Appearance:

Shri Bhuwan Gautam – Govt. Advocate for the appellant/State.

Shri Anand Agrawal – Advocate for the respondent.

ORDER

Per: Justice Vivek Rusia

The appellant/State of M.P. has filed this writ appeal under Section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nyaypith Ko Appeal) Adhiniyam, 2005, against the order dated 26.06.2020 passed by the writ Court, whereby the W.P. No.337/2019 has been allowed and the order dated 10.10.2018 imposing 20% withholding of pension after retirement for the period of 10 years has been set aside.

Facts of the case, in short, are as under: -

2. The respondent/writ petitioner was working on the post of Dy. Collector in the revenue department of the State Government. When he was posted at Dewas as SDO (Revenue), he was served with the charge-sheet dated 29.10.2014. Thereafter, the writ petitioner submitted a reply

to the charge sheet along with documentary evidence.

3. Being dissatisfied with the reply, the disciplinary authority appointed the Inquiry Officer to conduct a departmental enquiry. The Inquiry Officer submitted its report on 09.02.2017, and the writ petitioner was called upon to submit an objection to the said report. After considering the enquiry report and objections submitted by the writ petitioner, vide impugned order dated 10.10.2018, the punishment of withholding of 20% pension for a period of 10 years after retirement was imposed.

4. The writ petitioner retired from service after attaining the age of superannuation on 31.10.2014; therefore, the enquiry which was initiated before retirement vide charge-sheet dated 29.10.2014 continued after his retirement under Rule 9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to as "Pension Rules"). Since the order of punishment was passed by the Governor, therefore, the writ petitioner did not prefer any appeal and directly approached to this Court by way of writ petition seeking quashment of order dated 10.10.2018 *inter alia* on the ground that *firstly*, the departmental enquiry was completed after retirement of the writ petitioner that too almost after the 4 years of retirement *secondly*, no permission was taken to continue with the departmental enquiry from the Governor after the retirement of the writ petitioner. The petitioner's grounds were very vague as the writ petitioner had been illegally terminated without any basis on documentary as well as legal evidence.

5. The respondent/State filed the reply by submitting that under Rule 9(2) of the Pension Rules, the departmental enquiry can be continued, for which the permission of the Hon'ble Governor is not required. After completion of the enquiry, the punishment order is liable



to be passed by the Governor and in the present case, the order has been passed in the name of Hon'ble Governor of M.P.; therefore, the writ petition is liable to be dismissed.

6. The writ Court vide order dated 26.06.2020 has allowed the writ petition on the ground that the respondent/State did not comply with the provisions of Rule 9 of the Pension Rules because the order does not show that the approval of the Governor was taken before passing the order of punishment. Hence, set aside the order dated 10.10.2018.

7. The appellant/State has preferred this writ appeal on the ground that the order passed in the name of the Governor is liable to be treated as the order passed by the Governor. The Hon'ble Governor does not have to pass an order if the Council of Ministers have taken such a decision and an order is passed in the name of the Governor, which will serve the purpose and meet the requirements of Rule 9(1) of the Pension Rules. The Hon'ble Governor acts on the aid and advice of his Council of Ministers except the matter which falls exclusively to be exercised by him in his discretion, therefore, the charge-sheet served upon the appellant in the name of Governor cannot be said to be without jurisdiction as held by Division Bench of this Court in the case of *Shanti Bavaria Vs. State of M.P. reported in 2018(2) MPLJ 383*. Hence, the order of the writ Court is liable to be set aside.

Submissions of writ petitioner/respondent's counsel

8. Shri Anand Agrawal, learned counsel appearing for the writ petitioner submits that the impugned order nowhere says that the file of the writ petitioner was sent to the Governor and the Governor himself passed an order which is requirement of Rule 9(1) of the Pension Rules,

therefore, the writ Court has not erred in setting aside the impugned order. It is further submitted that the pension of the writ petitioner has been directed to be withheld @ 20% for the period of 10 years from the date of retirement, which is 31.10.2014. Now, those 10 years have been completed, the pension of the writ petitioner is liable to be restored. The writ petitioner has already filed an application for release of 100% pension, gratuity amount and leave encashment.

Appreciation and conclusion

9. So far as the release of gratuity and leave encashment amount is concerned, there is no such restraining order under Rule 9(1) of the Pension Rules by the respondent/State; therefore, the said amount is liable to be released to the writ petitioner immediately. The period of ten years has already passed in the month of October, 2024, and because of the stay of the order passed by this Court, the appellant's departments are not releasing 100% amount of pension. Even though the stay has been in operation in this case, the period of punishment is only ten years, and therefore, immediately after completion of the 10 years of punishment, the 100% pension of the writ petitioner ought to have been released.

10. So far as the legal ground raised by the writ petitioner that the impugned punishment order has not been passed under Rule 9 has no substance because after the enquiry report submitted by the Inquiry Officer, the order of punishment has been passed in the name of the Governor. Therefore, no interference is called for in the impugned order dated 26.06.2020.

11. The appellants are directed to release 100% pension of the writ petitioner along with gratuity and leave encashment. Although the writ



petitioner did not seek for release of gratuity and pension, there is no document to show that the same had been released. Even otherwise, if not released, then the same be released forthwith along with the interest permissible as per law.

12. In view of the above, the present writ appeal stands **dismissed**.
No order as to costs.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

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