

**THE HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

**Writ Petition No. 10006/ 2016**

**Chandramani Tripathi**

**Versus**

**State of Madhya Pradesh & Others**

Date of Order	25.02.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Petitioner: Shri Ajeet Kumar Singh, Advocate.  For Respondents/State: Shri Deepak Kumar Singh, Deputy Government Advocate.
Law laid down	The date of institution of judicial proceedings as per Rule-9(6)(b) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 - it is deemed to be instituted on the date on which the complaint is made to the Police Officer but not the date when cognizance is taken by the Court on the said complaint.
Significant Para Nos.	10, 14 & 15

**(O R D E R)**

**25.02.2020**

This petition is of year 2016 and pleadings are complete, therefore, with consent of learned counsel for the parties, it is heard finally.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner has not assailed any specific order, but sought a direction for the respondents to release his gratuity amount and also full pension with interest @8.5% per annum.

3. As per the facts of the case, the petitioner after attaining the age of superannuation, retired w.e.f. 31.12.2015 from the post of Assistant Sub Inspector (A.S.I.) from the Police Department. When he was in service, a Lokayukt had registered a case against him and the said case was pending and during the pendency of the said case, the petitioner got retired from service and is being paid anticipatory pension @90% and also released the amount of gratuity to that extent only. The challan was filed on 05.02.2016 and the charges were framed by the Special Court on 19.02.2016.

4. The criminal case is still pending. The petitioner submits that as per Rule-9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 [hereinafter referred to as 'the Rules, 1976'], only the Governor can withhold the pension that too under the circumstance when the employee is held guilty.

5. But, here in this case, there was no charge against the petitioner at the time of retirement, therefore, he submits that withholding of pension and gratuity is illegal and contrary to the law laid-down by the Supreme Court in the case of **Union of India Vs. K.V. Jankiraman** reported in **(1991) 4 SCC 109** and further reliance has been placed upon the order dated 10.03.2016 passed in **W.P. No.8514/2013 [Prahlad Amarchya Vs. Principal Secretary, State of M.P. & Another]** by the Indore Bench of this Court.

6. *Per contra*, learned Deputy Government Advocate for the respondents/State, relies upon the reply filed by them. As per the respondents, the provisions of Rule-9(4) and Rule-64 of the Rules, 1976, clearly provide that when a Government servant is retired 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.

7. It is also submitted by the respondents that the case on which the petitioner is placing reliance, is not applicable in the present case because the said case is

applicable in the matter of promotion, saying that if an employee is considered by the DPC and is facing any departmental or judicial proceeding, the recommendation of the DPC shall be kept in the seal cover. Accordingly, the respondents have claimed that the petition is without any substance and the contentions raised by learned counsel for the petitioner, are meritless, therefore, the petition should be dismissed.

**8.** The basic contention as raised by learned counsel for the petitioner is that on the date of retirement, there was no departmental or judicial proceedings pending against the petitioner, as he retired on 31.12.2015 but challan has been filed by the Lokayukt on 05.02.2016 and charges were framed by the Special Court on 19.02.2016, therefore, in view of the law laid-down by the Indore Bench in W.P. No.8514/2013, he is entitled to get 100% pension and gratuity because on the date of retirement, there was no judicial proceeding pending against him.

**9.** The Indore Bench in the aforesaid order, has observed that as per Rule-9(6)(b), judicial proceeding shall be deemed to be instituted in respect of a criminal

case, on the date on which the cognizance has been taken and the Magistrate takes cognizance on the basis of that report, therefore, judicial proceedings cannot be said to be pending on the date of retirement.

**10.** However, from bare reading of the respective provision i.e. Rule-9(6)(b) of the Rules, 1976, which is quoted hereinbelow:-

**“9. Right of governor to withhold or withdraw pension.**

(6) For the purpose of this rule –

(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.”

there is no doubt that the date of institution of judicial proceeding is not the date of taking cognizance by the Magistrate on a complaint or report made to a police officer, but the date on which the complaint or report is made to a police officer, is material and the same is treated to be the date of institution of judicial proceeding, if cognizance on the said report is taken by the Magistrate.

**11.** Although the interpretation as has been made by the Co-ordinate Bench in W.P. No.8514/2013, on which

the petitioner is placing reliance, does not seem to be proper and it gives completely different meaning as can be gathered from the respective provision as quoted hereinabove.

**12.** In my opinion, the date of making complaint or report to the police, is the date to be treated as the date of judicial institution. The order passed by this Court in the case of **Amrit Rao Mukut Rao Survey Vs. State of M.P.** reported in **1999(1) MPLJ 105**, gives stand to the view taken by this Court dealing with the same provision, has clarified that the date of making complaint or report to the police officer, is also treated to be the date of institution of judicial proceeding. The High Court in the case of **Amrit Rao Mukut Rao Survey (supra)**, has observed as under:-

“7. Sub-rule (6)(b) of Rule 9 of the Rules defines institution of judicial proceedings. It provides that 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, or which the Magistrate takes cognizance, is made, and in the case of civil proceedings, on the date the plaint is presented in Court. Therefore, criminal proceedings are deemed to be instituted on the date on which the complaint is made.

**8.** In the present case, the petitioner himself has stated that the report was lodged on the basis of the information on 27-11-1987. Thus judicial proceedings were instituted on 27-11-1987 before the retirement of the petitioner on 30-1-1988. Since the complaint

was made on 27-11-1987 it will be deemed that judicial proceedings were instituted on 27-11-1987 before the date of retirement of the petitioner.

9. Considering the scope of Rule 9(3) and Rule 9(6)(b) of the Rules, it is apparent that the proceedings were deemed to be instituted in the year 1987. Hence, under Rule 9(3) of the Rules, the proceedings cannot be quashed as the proceedings were instituted while the petitioner was in service, before his retirement.”

13. Thus, it is clear that the Indore Bench has not been apprised about the view expressed by the Coordinate Bench in the case of **Amrit Rao Mukut Rao Survey (supra)**, therefore, in view of the law laid-down by the larger Bench of this Court in the case of **Jabalpur Bus Operators Association Vs. State of M.P. & Others** reported in **2003(1) MPLJ 513**, the view taken by the Indore Bench in W.P. No.8514/2013 can be said to be *per incuriam* and the view taken by the High Court in the case of **Amrit Rao Mukut Rao Survey (Supra)** would prevail.

14. Even otherwise, the provision of Rule-9(6)(b) of the Rules, 1976, is also clear and gives the meaning that the date of institution of judicial proceedings would be the date on which the complaint or the report was made to the police officer.

15. In the present case, since the petitioner retired on 31.12.2015, but the offence has been registered

against him on 14.09.2015 i.e. prior to the date of retirement, meaning thereby that on the date of retirement, judicial proceedings were pending against the petitioner, therefore, in view of the provisions of Rule-64 of the Rules, 1976, petitioner's pension and gratuity is rightly withheld.

**16.** In view of the above, the order impugned passed by the authority withholding the pension and gratuity of the petitioner according to the provisions of Rule-64 of the Rules, 1976, is proper and does not call for any interference.

**17.** Accordingly, this petition being without any substance, is hereby **dismissed**.

**(SANJAY DWIVEDI)**  
**JUDGE**