

HIGH COURT OF MADHYA PRADESH : JABALPUR

Writ Petition No. : 8047/2016(S)

Parties Name : Arun Kumar Pandey
-Versus-
State of Madhya Pradesh & Others

Bench Constituted : Hon'ble Shri Justice J.K.Maheshwari

Judgment delivered by : Hon'ble Shri Justice J.K.Maheshwari

Whether approved for reporting : Yes

Name of counsel for the parties:

For the Petitioner:

Shri Rahul Mishra, Counsel for the petitioner.

For the respondent/State :

Shri Girish Kekre and Shri Naveen Dubey, Government Advocates.

Law laid down:

- Merely registration of the FIR and offence by the Lokayukt Establishment would not debar the petitioner because the judicial proceedings have not deemed to be instituted on the date of attaining the age of superannuation by the petitioner.
- The Governor is having the right to withhold or withdraw the pension or part thereof in the contingencies specified in Rule 9(1), in case an employee is found guilty of grave misconduct or negligence committed by him during the course of his employment either in departmental or judicial proceeding. Therefore, Rule 9 of the Pension Rules limits the power of the competent authority only with respect to pension and service gratuity not for other retiral benefits. However the right of the Governor to "withhold" or "withdraw" the pension can be exercised against the Government servant after retirement or otherwise against whom departmental or judicial proceedings are instituted or the judicial proceedings are continued under sub-rule (2) then the provisional pension and death-cum-retirement gratuity as provided under Rule 64 shall be sanctioned.
- In the present case, the situation is not covered either to withhold or withdraw the pension but it persist with the department on attaining the age of superannuation by the petitioner to whom the pension and the gratuity has not been paid by the department in reference to Rule 64. However, it is not a case wherein withholding or withdrawing of pension has been directed by the Governor against the employee after superannuation.

Significant Paragraph Nos. : 14-19

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(BEFORE : JUSTICE J.K.MAHESHWARI)

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Arun Kumar Pandey

Vs.

State of Madhya Pradesh & Others

Shri Rahul Mishra, Advocate for the petitioner.

Shri Girish Kekre and Shri Naveen Dubey, Government
Advocates for the respondents/State.

ORDER

Jabalpur, Dated : 21.12.2017

This petition under Article 226 of the Constitution of India has been filed by the petitioner, who is a retired government servant seeking direction against the respondents to release his full pension, gratuity, GIS, FBF and leave encashment with interest @ 12% per annum from the date of his entitlement till its payment. The direction has also been sought against respondent No.6 to issue the Pension Payment Order w.e.f. 1.2.2016 and to pay the arrears of the pension along with the interest, holding that the action of the respondents to withhold the pension, gratuity, GIS, FBF and leave encashment is illegal, arbitrary and contrary to the provision of law.

2. The facts unfolded to file the present petition are that the petitioner was working on the post of Assistant Labour Officer, Rewa. In a trap made on 8.1.2016 of one Om Prakash Mishra, Labour Inspector, the petitioner was also made accused and the

offence was registered by the Lokayukt Establishment at Crime No. 0/16 under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act wherein the Challan has not yet filed. He has attained the age of superannuation on 31.1.2016. On retirement the GPF was paid but other post retiral dues have not been paid, however, asking the aforementioned reliefs this petition has been filed. It is said while issuing the notice to the respondents, this Court vide order dated 4.5.2016 directed that if there is no legal impediment, the respondents shall start anticipatory/provisional pension to the petitioner within 30 days from the date of communication of the order. In furtherance to the said order 90% anticipatory pension has been started but gratuity, GIS, FBF and leave encashment have not been settled and paid, therefore, prayed for appropriate directions.

3. The respondents/State have filed their reply *inter alia* contending that the petitioner was caught red handed along with Om Prakash Mishra in a raid conducted by Lokayukt Establishment on 8.1.2016. Against him, the offences were registered under various provisions of the Prevention of Corruption Act at Crime No. 16/2016. In the aforesaid Criminal Case though challan has not yet filed in the competent Court. It is stated, petitioner cannot claim full pension, gratuity and other benefits, because he is not entitled to receive it. It is said, looking to the averments made in the reply, the judgments relied by petitioner is of no help to him unlike an employee retired from service with dignity. The Government is paying 90% anticipatory pension to the petitioner regularly and the

GPF and GIS have already been paid to him, therefore, plea taken that the respondents have withheld the legitimate retiral benefits of the petitioner is not just.

4. The petitioner has filed the rejoinder *inter alia* clarifying that the petitioner was not caught red handed in the raid conducted by the Lokayukt Establishment but it was his junior colleague Om Prakash Mishra (Labour Inspector) caught. The fact to join him as accused in the said raid has not been denied. It is said, till date neither any disciplinary action has been taken against him nor challan has been filed in the competent criminal Court. In such circumstances in view of the provisions contained under Rule 9(6) (b) of the *M.P. Civil Services (Pension) Rules, 1976* (hereinafter referred to as the Pension Rules) withholding of the pension is not permissible.

5. The respondents/State have filed the additional reply attaching one document Annexure R-1 dated 4.2.2017 received from the office of Lokayukt Establishment to indicate that in the criminal case petitioner is also an accused and the investigation is pending against him, however, he is not entitled to claim any relief.

6. Learned counsel for the petitioner has strenuously urged that the "judicial proceedings" have not yet instituted to debar him from the pension as per Rule 9(6)(b) of the Pension Rules, therefore, withholding of pension and gratuity is not permissible. In support of the said contention, reliance has been placed on the judgment of

the Apex Court rendered in Civil Appeal No. 10866/2016 (**State of Uttar Pradesh and others Vs. Dhirendra Pal Singh**) decided on 15.11.2016. The reliance has also been placed on a judgment of this Court in **Prahlad Amarchya Vs. State of M.P. and others** passed by the Indore Bench in W.P. No. 8514/2013 on 10.3.2016 to contend that without filing the challan before the competent criminal Court, it cannot be said to be the proceedings pending for the purpose of withholding pension and gratuity, therefore, denial of the gratuity and the pension and other post retiral benefits is arbitrary and against the rules.

7. On the other hand, learned Government Advocates representing the State submit that if Rule 9 is read conjointly with Rule 64 of the Pension Rules the intention of legislature would clear by which on pendency of the investigation even before the Lokayukt Establishment, pension and gratuity can be withheld subject to final outcome of the departmental or judicial proceedings, therefore, the action taken by the respondents/State is in conformity to law.

8. After having heard learned counsel for the parties at length and on going through the material available on record, the question for consideration is "whether on account of registration of FIR by the Lokayukt Establishment joining the petitioner as an accused and without filing the Challan, would it amounting to institution of the judicial proceedings however, the pension and gratuity can be withheld by the department by conjoint reading of Rules 9 and 64 of

the Pension Rules?”.

9. To appreciate the rival contentions as advanced and to answer the question posed, first of all the relevant provisions of the Pension Rules are required to be referred. In this regard Rule 9 is relevant, however, reproduced as thus :-

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 proceedings, 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, 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 proceedings, 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:

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 decided 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.

10. As argued by learned Government Advocate, Rule 64 of the Pension Rules is also relevant, however, it is reproduced as thus:-

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 proceeding, 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 Officer after adjusting dues mentioned in sub-rule (2) of rule 60, under intimation to Audit 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.

11. On perusal, it is apparent, as per Rule 9(1), the Governor is having right either to withhold or withdraw a pension or its part permanently or for specified period and may order for recovery from pension of the pecuniary loss caused to the Government either in whole or in part as a consequence of departmental or judicial proceedings. Rule 9(2) applies with respect to departmental proceedings whereby if any departmental proceedings are instituted during course of employment or during re-employment, shall be deemed to be proceedings against the Government servant, which shall be continued and concluded by the authority who commenced the same. Thereafter that authority shall submit a report regarding its finding to Hon'ble the Governor. If departmental proceedings are not instituted while Government servant was in service up till retirement or during his re-employment, it shall not be instituted without sanction of Hon'ble the Governor; it shall not be in respect of an event, which took place 4 years before such institution. In case the proceedings have been instituted after retirement, it shall be conducted by such authority in such a place as directed by the Government as per procedure applicable to the departmental proceedings. If it is found in the said enquiry that the act of the Government servant may lead to a conclusion of dismissal from service, if he was in employment, in such contingency, the proposal to withhold or withdraw a pension or its

part either permanently or for a specified period or of recovery from his pension for whole or part pecuniary loss caused due to his negligence or breach may be ordered. Sub-rule (3) of Rule 9 deals the situation in case the judicial proceedings is not instituted while the Government servant was in service before retirement or during re-employment, it shall not be instituted for the cause of action arose four years prior from the date of institution. Sub-rule (4) deals with the situation in the case of a Government servant who has retired on attaining the age of superannuation 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, sanctioned. As per Rule 6(b), in case on Police report or on the complaint, when the Magistrate takes the cognizance, it would be the date of institution of the judicial proceedings.

12. In the said context the meaning of the judicial proceedings would be relevant. Under the Pension Rules, it has not been defined but the case at hand relates to registration of an offence due to which the pension has been withheld, however, the definition of the judicial proceedings may be taken from Section 2(i) of the Criminal Procedure Code, which is reproduced as thus:-

2(i):- "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;

13. On perusal of Section 2(i), it is apparent that any proceeding in the course of which the evidence is or may be legally taken on

oath would be called the judicial proceeding, therefore, it is now clear that on filing a complaint on the Police report, if the competent criminal Court has taken cognizance, the said date would be the date of institution of judicial proceedings. Such judicial proceedings would mean any proceedings, in which evidence can be taken on oath.

14. Simultaneously in Rule 9 of the Pension Rules the term “pension or its part” is used, however, its meaning, is also required to understand. In this context, definition of “Retirement benefits” is relevant. As per Rule 3(q), “Retirement benefits” include pension or service gratuity, and death-cum-retirement gratuity, as admissible. Thus, in the context of the aforesaid legal position, it can safely be concluded that the Governor is having the right to withhold or withdraw the pension or part thereof in the contingencies specified in Rule 9(1), in case an employee is found guilty of grave misconduct or negligence committed by him during the course of his employment either in departmental or judicial proceeding. Therefore, Rule 9 of the Pension Rules limits the power of the competent authority only with respect to pension and service gratuity not for other retiral benefits. However the right of the Governor to “withhold” or “withdraw” the pension can be exercised against the Government servant after retirement or otherwise against whom departmental or judicial proceedings are instituted or the judicial proceedings are continued under sub-rule (2) then the provisional pension and death-cum-retirement gratuity as provided under Rule 64 shall be sanctioned. Rule 64 would cover only those

employees who have retired and against whom the judicial proceedings are instituted, in such circumstances, the head office shall authorize the payment of provisional pension not exceeding maximum pension 50% or 50% of the gratuity taking into consideration the gravity of charges. However, it is made clear here that Rule 9 confers power to the Governor while Rule 64 is for the departmental head to take action under the contingencies as specified under Rule 9(4). In the present case, the situation is not covered either to withhold or withdraw the pension but it persist with the department on attaining the age of superannuation by the petitioner to whom the pension and the gratuity has not been paid by the department in reference to Rule 64. However, it is not a case wherein withholding or withdrawing of pension has been directed by the Governor against the employee after superannuation.

15. In the aforementioned situation, the factual aspect of the case is required to be looked into. In the present case, a raid was conducted by Lokayukt Establishment on 8.1.2016 wherein as reveal, one Om Prakash Mishra was caught red handed and he was junior colleague of the petitioner, therefore, he was also made accused in the case. The offence under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act has been registered and it is under investigation with the Lokayukt Establishment and challan has not yet filed against the petitioner. The petitioner has attained the age of superannuation on 31.1.2016 and from the date of his retirement till date final pension has not been paid and the amount of gratuity has also not been paid though the GIS and GPF have

been paid, as stated by learned Government Advocates, therefore, looking to the definition of the Retirement benefits, which includes pension, gratuity and death-cum-retirement gratuity have some relevance for the purpose of Rule 9(4) and Rule 64 of the Pension Rules but withholding of Pension by the department is only permissible when the judicial proceedings have been instituted otherwise the Governor ought to have exercised the power under Rule 9.

16. As discussed above on the facts it is luculent that challan in the investigation/inquiry of the Lokayukt has not yet filed, therefore, merely registration of the FIR and offence by the Lokayukt Establishment would not debar the petitioner because the judicial proceedings have not deemed to be instituted on the date of attaining the age of superannuation by the petitioner. As apparent from the definition of the judicial proceeding in case evidence is regularly taken on oath it be called as judicial proceeding, therefore, the context as referred in Rule 64 even to take a departmental action by the departmental head as a subsequent act of judicial proceeding instituted, however, the said situation would not arise until the charge sheet has been filed, on framing the charge and evidence is started, therefore, the investigation and enquiry made by the Lokayukt would not come within the connotation "judicial proceedings instituted" and "judicial proceeding", therefore, the departmental head is not supposed to withhold pension or gratuity of the petitioner. Thus, in view of the foregoing discussion, the stand taken by the State Government in

their return is contrary to the spirit of Rules 9 and 64, therefore, the said stand is hereby repelled.

17. The judgment of the Apex Court in the case of **Dhirendra Pal Singh (supra)** is relevant which is in reference to Article 351-A of the *U.P. Civil Service Regulations* wherein *pari materia* provision as enumerated under Rule 9 of the Pension Rules, has been dealt with. The Court said, indeed, it is true that in the said judgment, scope of Rule 64 has not been dealt with but the contingency regarding judicial proceedings instituted has been considered, therefore, to such extent my view fortifies from the judgment of the Apex Court. Simultaneously, in the case of **D.D.Tiwari (D) thr. Lrs Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others**, the Apex Court has laid down the similar preposition of law analyzing the scope of pending judicial proceeding and concluded that the gratuity be paid along with the interest @ 9% per annum. In the case of **Ramesh Chandra Gupta Vs. State of M.P. and others** reported in **I.L.R. (2010) M.P. 2506** the issue involved in the present case is not similar but the issue of withholding of pension by the departmental head has been dealt with and it was not found in accordance with law and without observing principle of natural justice. In the case of **Prahlad Amarchya (supra)** the issue akin to the present case has been dealt with in the context of the judgment of **Union of India Vs. K.V. Jankiraman** reported in **(1991) 4 SCC 109**. The Indore Bench of this Court referring the provision of Rule 9(6)(b) of the Pension Rules has dealt with the issue of meaning of judicial proceeding, however, in the said case the Court directed for

payment of pension and gratuity to the petitioner.

18. In the present case, the inescapable conclusion which can be arrived at is that the action of the respondents of withholding of gratuity and non payment of pension is not in conformity to the provision of Rule 9 and Rule 64 of the Pension Rules as discussed hereinabove.

19. In view of the foregoing discussion, this petition succeeds and is hereby allowed. Respondents are directed to extend the benefit of gratuity and pension to the petitioner within a period of two months from the date of communication of this order. The amount of gratuity and the arrears of the pension be calculated and paid within the time so specified along with the interest @ 7% per annum (bank rates prevalent now-a-days). In case the benefit of GIS, FBF and leave encashment has not yet been paid to the petitioner, it be paid at the rate as specified hereinabove.

(J.K. Maheshwari)
Judge