

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 17790 of 2020

Between:-

**DASHRATH KUMAR S/O LATE SHRI
CHUNNILAL AGED 64 YEARS, RETIRED
DEPUTY SECRETARY, GOVT. OF M.P. R/O
HOUSE NO.32, DHAROHAR CAMPUS FACE -2,
GENHU KHEDA KOLAR ROAD, BHOPAL
(MADHYA PRADESH) 462042**

.....PETITIONER

**(BY SHRI OM SHANKAR PANDEY – ADVOCATE)
AND**

- 1. PRINCIPAL SECRETARY TO GOVERNOR OF
MADHYA PRADESH, RAJBHAWAN BHOPAL
462003.**
- 2. STATE OF MADHYA PRADESH THROUGH CHIEF
SECRETARY, GOVERNMENT OF MADHYA
PRADESH, MANTRALAYA, VALLABH BHAWAN
BHOPAL (MADHYA PRADESH) 462004**
- 3. PRINCIPAL SECRETARY (PERSONEL)
GOVERNMENT OF MADHYA PRADESH,
GENERAL ADMINISTRATION DEPARTMENT,
MANTRALAYA VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH) 462004**

.....RESPONDENTS

(BY SHRI LALIT JOGLEKAR - GOVERNMENT ADVOCATE)

Reserved on : 01-03-2023
Delivered on : 13-06-2023

This petition having been heard and reserved for orders coming on for pronouncement this day, delivered the following:-

ORDER

1. The present petition is preferred under Article 226 of the Constitution of India seeking following reliefs:

“(A) Calling the relevant records along with note sheets pertaining to issuance of show cause notice impugned order dated 27-05-2019 and pertaining dated 26-05-2020 (Annexure P/1) and dated 13-10-2020 (Annexure P/2) and appeal dated 21-08-2020.

*(B) Quashing the impugned order dated 26-05-2020 Annexure P/1 and order dated 13-10-2020 (Annexure P/2) as they are illegal, arbitrary and void ab initio;
AND*

(C) Directing the respondent No.3 to grant full pension regularly after fixation of pay in 7th pay commission with all consequential benefits, including all pensionary benefits i.e. gratuity etc and arrears of dues with 18 percent interest.

(D) Any other relief which this Hon'ble Court may deem fit; also be granted to the petitioner along with costs.”

2. Petitioner is aggrieved by the order dated 26-05-2020 (Annexure P/1) passed by respondent No.1 whereby the representations dated 07-06-2019, 10-06-2019 and 11-07-2019 were considered and rejected and final order dated 13-10-2020 (Annexure P/2) was passed forfeiting the pension of the petitioner permanently purportedly under the provisions of M.P. Civil Services (Pension) Rules, 1976 (in short 'the Pension Rules').
3. Precisely stated facts of the case are that petitioner was appointed to the post of LDC in the Madhya Pradesh Secretariat in August, 1966 and step up the ladder to the post of Deputy Secretary in December, 2011. He was superannuated from the services after attaining the age of superannuation from the post of Deputy Secretary, Government of Madhya Pradesh on 31-10-2016. It appears that on the complaint of Smt. Shaifali Tiwari, Jail Superintendent, Indore, case was registered by Special Police Lokayukt, Indore under Sections 13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') in which after investigation charge-sheet was filed and trial conducted. Special Court, Indore convicted the petitioner for offence under Section 13(1)(a) and 13(2) of the PC Act and awarded jail sentence of 4 years' RI with fine of Rs.1,000/- with default stipulation. Allegations against the petitioner were that he visited Indore as Deputy Secretary, Jail Department for grading ACR in Madhya Pradesh PSC and stayed at Hotel Balwas International at the instance of said Jail Superintendent.

4. After conviction recorded by the Special Court vide judgment dated 27-02-2019, a show cause notice was issued by the GAD, Mantralaya, Bhopal on 27-05-2019 to the petitioner under rule 8 of the Pension Rules and solicited reply.
5. Petitioner submitted detailed reply to the show cause notice vide reply dated 07-06-2019, 10-06-2019 and 11-07-2019. After considering replies, impugned order dated 26-05-2020 (Annexure P/1) has been passed. After decision of Cabinet taken on 13-10-2020, petitioner preferred this petition taking exception to both the orders.
6. It is the submission of learned counsel for the petitioner that the respondents did not consider the case in detail and pass the impugned order which is arbitrary and illegal. Petitioner was not convicted for a serious crime or was not found guilty of grave misconduct. It is further submitted that authority to withdraw or withhold the pension lies with the Governor of Madhya Pradesh and to no other authority. Here, without application of mind, decision has been taken by the incompetent authority. No serious crime or grave misconduct has been committed by the petitioner so as to attract such punishment of withdrawal of pension. Learned counsel for the petitioner relied upon judgment of Apex Court in the case of **Shanker Dass Vs. Union of India & Anr., AIR 1985 SC 772** and in case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. (2013) 12 SCC 210** and seeks parity.
7. Learned counsel for the respondents/State opposed the prayer and

contested the case by way of filing reply. It is submitted by learned counsel for the respondents that authorities have rightly considered the aspect of integrity and moral turpitude and thereafter invoked Rule 8(2) of the Pension Rules and in view of the Full Bench decision of this Court in the case of **Lal Sahab Bairagi vs. State of M.P. and Others reported in 2020 (2) MPLJ 551**, even opportunity of hearing is not required to be given. Since rules prescribes said withholding therefore, the impugned order is within the legal bounds. He prayed for dismissal of petition.

8. Heard learned counsel for the parties and perused the record.
9. This is a case where petitioner who suffered trial wherein trial Court recorded the conviction against him vide judgment dated 27-02-2019 for the alleged offence under Section 13(1)(a) and 13(2) of the PC Act and sentenced the petitioner.
10. So far as withdrawal of pension is concerned rule 8 is very luculent in this regard. Rule 8 is reproduced for ready reference:-

“8. Pension subject to future good conduct. - (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found

guilty of grave misconduct:

Provided that no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the pensioner, to make an appointment to the post held by him immediately before his retirement from service :

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) Where a pensioner is convicted of a serious crime by a Court of law, action under clause (b) of sub-rule (1) shall be taken in the light of the judgment of the Court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1)-

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning

authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the Governor, the State Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1); passed by any authority other than the Governor, shall lie to the Governor and the Governor shall in consultation with the State Public Service Commission pass such order on the appeal as he deems fit.

Explanation. - In this rule,-

(a) the expression "serious crime" includes a crime involving an offence under the Official Secrets Act 1923 (No. 19 of 1923);

(b) the expression "grave misconduct" includes the communication or disclosure of any secret official code or pass word or any sketch, plan, model, article, note, document or information such as is mentioned in Section 5 of the Official Secrets Act, while holding office under the government so as to prejudicially affect the interests of the general public, or the security of the

country.

[**Note** - The Provisions of this rule shall also be applicable to family pension payable under Rules 47 and 48. The authority competent to make an appointment to the post held by the deceased Government servant/ pensioner immediately before the death or retirement from the service, as the case may be, shall be the competent authority to withhold or withdraw any part of family pension.”

11. While interpreting scope and ambit of Rule 8 of the Pension Rules, Full Bench of this Court in the case of **Lal Sahab Bairagi (supra)** has held that while invoking rule 8(2) of the Pension Rules, no opportunity of hearing is required to be given. However, power of the authority to take action under the Pension Rules would be subject to the guidelines as stated by the Supreme Court in the case of **Union of India and another Vs. Tulsiram Patel and others, AIR 1985 SC 1416.**
12. Here in instance case, opportunity of hearing was provided to the petitioner and thereafter, considering the nature of allegation involved, integrity, moral turpitude, authority reached to the conclusion which does not required to be dislodged under the limited scope of judicial review by issuance of writ which is discretionary in nature. Even otherwise, order has been passed in the name of Governor and whole Cabinet has considered this aspect and thereafter passed the impugned order and incidentally show cause notice was issued to the petitioner before reaching to the conclusion. Therefore, no ground exists in favour of the petitioner seeking interference in the

writ jurisdiction. Earlier Full Bench in the case of **Laxmi Narayan Hayaran Vs. State of M.P. 2004(4) MPLJ (FB) 555** held that no prior hearing is required before the passing the order under rule 8(2) of the Pension Rules, consequent upon the conviction.

- 13.** Perusal of the impugned order dated 13-10-2020 indicates that due consideration over the facts and circumstances as well as nature of allegations were made and thereafter authorities reached to the conclusion. Once the respondents considered all pros and cons and duly vetted the reasons for arriving to such conclusion therefore, interference declines and petition being sans merits and is hereby **dismissed.**

(Anand Pathak)
Judge