

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No.18426 of 2022

SMT. SHEELA RAJPUT

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 17847 of 2022

RAM BABU KATIYAR (DIED) THROUGHT LRS BHUNESHWAR DEVI

@ BHAWNA KATIYAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Om Shankar Pandey - Advocate for the petitioners.

Ms. Varidhi Pathak - Panel Lawyer for the respondents - State.

ORDER

(Reserved on : 11.07.2025)

(Pronounced on : 07.08.2025)

The present matters have been filed by the widows of deceased employees, who expired after suffering conviction under Prevention of Corruption Act 1988, and criminal appeal against conviction are pending.

2. In W.P. No.18426/2022, the pension stoppage order is Annexure P-1 dated 21.06.2005, whereby the pension has been stopped payable to deceased husband of the petitioner upon being convicted for offence under Sections 13(1)(d) and 13(2) of Prevention of Corruption Act and sentence to five years R.I. with fine and default stipulations as well as under Sections 466 and 120-B

of I.P.C. He expired during pendency of Criminal Appeal No.59/2002. The petitioner has moved an application for impleading herself in the pending criminal appeal in terms of Section 394(2) of Cr.P.C. The said appeal is still pending.

3. The petitioner in W.P. No.17847/2022 is widow of deceased employee, who was facing trial under Sections 7, 13(1)(d) & 13(2) of Prevention of Corruption Act and sentenced to four years R.I. with fine and with default stipulations. He has been convicted by the Criminal Court vide judgment dated 30.05.2019. The departmental enquiry was also pending against the petitioner and in the Departmental proceedings he has been punished with withholding one increment without cumulative effect and in terms of Rule 8(1)(b) of M.P. Civil Services Pension Rules, the entire pension has been withheld permanently which is vide impugned order Annexure P-1. The punishment of withholding one increment is ordered to be executed only if he is acquitted in pending criminal appeal before this Court. The petitioner was granted suspension of sentence in Cr.A. No.4761/2019 and he has expired during the pendency of the appeal and in this case, the petitioner has not filed any application before this Court in terms of Section 394(2) of Cr.P.C.

4. The counsel for the petitioners submits that the petitioners were working in Government service. On allegation that there was demand and acceptance of certain bribe, they were prosecuted and have been convicted under the Prevention of Corruption Act. It is the case of the petitioners that the

deceased employees attained the age of superannuation during pendency of trial, and they were getting anticipatory pension upto conviction and upon conviction, impugned orders have been passed, thereby permanently withdrawing 100% pension.

5. Counsel for the petitioner has argued that the order withdrawing pension could not have been passed without providing opportunity of hearing to the petitioner and in this regard, reliance is placed on judgment of Full Bench of this Court in the case of ***Ram Sewak Mishra Vs. State of M.P. and others reported as (2017) 4 MPLJ428***, wherein Full Bench has held that even for a person convicted in a criminal trial, before passing any order of stoppage of pension, granting opportunity of hearing is mandatory, therefore, it is contended that without providing opportunity of hearing the order impugned could not have been passed.

6. It is further argued by counsel for the petitioner that even if it is taken to be the correct law that opportunity of hearing is not acquired to be granted to a convicted person, even then as per Rule 8(1)(b) of Pension Rules, 1976, the pension sanctioning authority has discretion to withhold or withdraw pension or part thereof if the pensioner is convicted after serious crime or is found guilty of grave misconduct, but withholding 100% pension permanently cannot be automatic.

7. Counsel for the petitioner submits that though the petitioner has been convicted of offence under Section 7 and 13 of Prevention of Corruption Act

but still the competent authority was under obligation to consider that what is the exact quantum of pension, which was required to be withheld upon such conviction because Rule 8(1) (b) is only an enabling provision and does not mandate withdrawal of 100% pension in each and every case. Therefore, as maximum sentence under Prevention of Corruption Act, 1988 had not been awarded to the petitioner. Therefore, the respondents could always have granted some pension to the petitioner because the Criminal/Sessions Court while convicting the petitioner did not find the entire offence proved against the petitioner and did not find the petitioner guilty of the alleged offence to the fullest, otherwise maximum sentence might have been awarded against the petitioner.

8. It is further argued that pension is property of the employee and it is with a purpose of granting subsistence to an employee in his old age. If pension is stopped at drop of hat without passing any reasoned order, only on the ground of conviction in criminal case, then it would amount to arbitrary and irrational order without any reasoning. In other words, it is contended that the order should contain reasoning that why 100% pension is being stopped. On these grounds, the order is said to be perverse.

9. Another alternative argument was raised that since criminal appeal is pending against conviction and the petitioner has been granted suspension of sentence and appeal is continuation of trial, therefore it has to be inferred that

the petitioner is still an under-trial and therefore, anticipatory pension should be awarded.

10. *Per contra*, learned counsel for the State has vehemently objected the petition on the ground that the petitioner has been convicted of serious offence under Prevention of Corruption Act and therefore, no grounds are made out to show any sympathy to the petitioner who is found guilty of major misconduct of demand and acceptance of bribe in connection with his official duties.

11. Heard.

12. Upon hearing learned counsel for rival parties, so far as the question of grant of opportunity is concerned, the said ground is taken up first. The judgment of Full Bench of this Court in the case of ***Ram Sewak Mishra (supra)*** has subsequently been held not be a good law by a larger Bench comprising of five Judges of this Court in case of ***Lal Sahab Bairagi Vs. State of M.P. and others reported in (2020) 2 MPLJ 551***. Therefore, the ground that the petitioner ought to have been given opportunity of hearing, deserves to be discarded in view of the special Bench judgment of this Court rendered by five Judges in case of ***Lal Sahab Bairagi (supra)***. Learned counsel for the petitioner has cited a number of judgments passed by Coordinate Benches and of the Division Benches of this Court, whereby pension stoppage orders have been quashed relying on the judgment in case of ***Ram Sewak Mishra (supra)***. However, all these judgments have been passed at the time when either the

Special 5 Judges Bench had not rendered the subsequent view or even if these judgments are later to the Special Bench judgment, then the judgment of Special Bench was not pointed out before the Coordinate or Division Benches of this Court, therefore, the said judgments which have been passed without taking into consideration the five Judges Special Bench judgment of this Court in case of *Lal Sahab Bairagi (supra)* cannot be said to be binding precedent and are *per incuriam*.

13. The other ground vehemently raised by learned counsel for the petitioner was that the order needs to be reasoned order. It was contended that Rule 8(1)(b) is only enabling provision and there cannot be automatic stoppage of 100% pension in every case of conviction and therefore, even if the pensioner is not to be heard, even then the State should pass a reasoned and speaking order before proceeding to withdraw/withhold 100% pension permanently because the nature of conviction has to be seen and more so, when maximum sentence has not been awarded by the Criminal Court.

14. Before proceeding to appreciate the aforesaid contentions, Rule 8 & 9 of Pension Rules of 1976 are required to be considered which are as under:

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] [Substituted by Notification No. B-25-9-96-PWC-IV, dated 18-6-1996 (w.e.t. 1-1-1986)].

(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 [Inserted by Notification No. FB-6-2(a)-80-R-II-IV, dated 1-1-1981.] - 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.]

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] [Substituted by Notification No. B-25-9-96-PWC-IV, dated 18-6-1996 (w.e.f. 1-1-1986).];

(2)(a) The departmental proceedings [xxx] [Omitted by Notification No. FB-25-31-95-PWC-IV, dated 22-12-1995 (w.e.f. 26-1-1996).], 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 : [Substituted by Notification No. FB-6-3-78-N-II-IV, dated 10-11-1978 (w.e.f. 10-11-1978).]*

(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] [Substituted by Notification No. B-6-1-77-PWC-IV, dated 26-8-1996 (w.e.f. 1-2-1977).], 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] [Inserted by Notification No. FB-6-3-78-N-II-IV dated 10-11-1978 (w.e.f. 10-11-1978)]:

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it 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.*

15. As per Rule 8, pension is subject to future good conduct and for withdrawal of pension under Rule 8, the pension sanctioning authority is

competent in cases where there is conviction of pensioner for serious of crime in criminal case. In the present case, the order has been passed under Rule 8(1)(b) of the Pension Rule.

16. Counsel for the petitioner had argued that the order has to be reasoned one because nature of conviction has to been seen by authority. It was argued that maximum sentence has not been awarded so it has to be inferred that the Criminal Court did not find the petitioner guilty of the offence to the fullest.

17. The sentencing considerations are different and awarding of maximum sentence or lesser than maximum sentence does not depend on the degree to which the offence has been found proved. It may be consideration in some cases but generally the sentencing principles depend on various mitigating and aggravating circumstances upon which sentence to a convicted person is awarded, which cannot be exhaustively summarized but some of the factors that are mitigating and aggravating circumstances are as under:

- (i) parity to similar offences committed by other offenders in similar circumstances;
- (ii) just punishment for offence;
- (iii) deterrence;
- (iv) community protection;
- (v) rehabilitation of offender;
- (vi) denunciation of offender or offending conduct;
- (vii) current sentencing practices;
- (viii) whether the crime was motivated by hatred or prejudice;

- (ix) impact of offence on victim;
- (x) loss, injury or damage resulting from the offence;
- (xi) offender's previous antecedents;
- (xii) consequences of the offence;
- (xiii) age of the offender;
- (xiv) social status of the offender;
- (xv) social circumstances under which offender lived;
- (xvi) the age of victim;
- (xvii) proportionality to the gravity of offending behavior.

18. The aforesaid circumstances are some of the circumstances under which the sentence may be awarded to the offender and it cannot be said that for the mere reason that maximum sentence has not been awarded, that the Court did not find the offence to be proved to the hilt and to the maximum degree.

19. Unless the Criminal Court records the findings to that effect or it can be discerned from the said judgment that the Court has not found the offence to be proved to the fullest, nothing can be presumed by this Court. No material has been placed before this Court to indicate that the Court in its substantive judgment of conviction has not found the offence to be proved to the fullest. The petitioner was convicted in his ripe old age, and that may have been one of the considerations in not awarding maximum sentence.

20. The authority could have been called upon to indicate the reasons for stopping 100% pension permanently only if it was a case where such reasons

had been necessary to be given. In the opinion of this Court, as the petitioner has been convicted for offence under Prevention of Corruption Act committed during course of official duty, it is the most grievance and serious offence, so far as the employer is concerned.

21. The discretion has been given to the competent authority because in every case mechanically pension has not to be stopped. There are cases where the pensioner may be found guilty in a criminal case under minor offences like Section 323, 324, 294, 506 IPC between neighbours or there may be domestic quarrels between brothers leading to minor offences, or certain offences committed on spur of moment where the outcome may not have been grievous, or there had been any other circumstances in which the offence does not lead to presumption of moral turpitude of the offender or the offence may have been committed not during course of official duties, or even if committed during course of discharge of official duties, it may not have amounted to moral turpitude.

22. However, the offence of demand and acceptance of bribe is the most serious crime which a public servant can commit, so far as as his relation with the employer is concerned. The degree of seriousness of offence depends upon the relationship between the employer and the pensioner. If the pensioner is found guilty of having demanded and accepted bribe or committed any offence under Prevention of Corruption Act during course of discharge of official duties and he was demanding or accepting bribe in course of discharge of

duties to which he had been placed in a position of confidence by the employer, then in the opinion of this Court, there can be no more grave serious crime to justify stoppage of 100% pension permanently. It is not a crime conducted during course of private activities of the public servant as a private person in his private life. It is the crime committed during the course of discharge of official duties and that too, of demand and acceptance of bribe which has been duly proved before the Criminal Court after rigorous session trial. Therefore, this Court is not impressed with the argument of learned counsel for the petitioner that the authority ought to have given reasons for stoppage of 100% pension permanently.

23. Therefore, it is held that in case of conviction under Prevention of Corruption Act, it being the most grievous offence that can be committed by a public servant during the course of discharge of official duty, no reasons are required to be given before withdrawing 100% pension permanently. If the conviction had been before retirement, it would have led to termination of services in terms of Rule-19 of M.P. Civil Services (CCA) Rules 1966 and resultant forfeiture of pension. However, in other cases it may be required to give reasons that how the authority arrived at a particular quantum and period of stoppage, more particularly in the cases where the crime is committed by the public servant/pensioner as a private person connected with his activity in his private life and the consequential offence is not serious offence.

24. The other argument was raised that the petitioner since has filed appeal against conviction and he has been granted benefit of bail, therefore, he should be given anticipatory pension. Said argument is also misplaced because it is settled in law that criminal appeal is not continuation of trial, as held by Division Bench of this Court in the case of ***Ram Ratan Tiwari Vs. State of M.P. reported in(2002) 5 MPHT 11.*** Therefore, the contention that criminal appeal is continuation of trial and pending appeal it has to be inferred that the criminal trial is pending, is utterly misconceived argument being made by the petitioner.

25. Similar view in the matter of stoppage of 100% pension upon conviction has also been taken by a Coordinate Bench of this Court in ***WP No.18733/2004 (Meghram Vs. State of M.P. and others decided on 22/01/2025)*** as well as by another Coordinate Bench in ***WP No.20198/2020 (Sudhir Kumar Hundet Vs. MPMKVVCL decided on 03/01/2024)*** wherein the Coordinate Bench has held as under :-

14. The Rule 8(2) enables the authority to exercise power under Rule 8(1)(b) upon conviction of serious crime in the light of the Judgment of the criminal court. While doing so, it must consider whether his conduct which has led to his conviction was such as warrants the withholding/withdrawing of pension. For that purpose it will have to peruse then judgment of the criminal court and consider all the facts and circumstances of the case. This, however, has to be done by it ex parte and by itself and without hearing the concerned pensioner rea- son of the exclusionary effect of the starting words of Rule 8(3) upon exercise of powers un- per Rule 8(2) of the 1976 Rules.

15. In view of the law laid down by the Supreme Court in the case of Tulsiram (supra), which is fully applicable to the present case as

*well, the authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail withdrawal or withholding of pension. This can be done in the light of the judgment of the Court relating to such conviction. No direction for taking action in the judgment of the criminal Court is necessary or required for taking action under Rule 8(2) of the Rules of 1976. This authoritative judgment of the Supreme Court was completely overlooked by the learned Single Bench while deciding Dau Ram Maheshwar case (supra) on the basis of decision of Chhattisgarh High Court. The majority view in Ram Sewak Mishra (supra) wrongly did not apply the decision of Tulsi Ram Patel (supra) to the Rules of 1976. On the other hand the earlier Full Bench in **Laxmi Narayan Hayaran Vs. State of M.P. reported in 2004(4) MPLJ 555** after considering the relevant case law including Tulsi Ram Patel (supra), correctly held that no prior hearing is required before passing an order under Rule 8(2) of 1976 Rules consequent upon conviction.*

26. In view of the aforesaid, the petitioners cannot claim the payment of provisional pension also during pendency of criminal appeal.

27. The petitioners would be at liberty to seek restoration of pension in case the deceased employee is acquitted in pending appeal and in case of W.P. No.17847/2022 the petitioner is given liberty to file appropriate application in criminal appeal in terms of under Section 394(2) Cr.P.C. and thereafter, upon contesting the criminal appeal if the employee is acquitted, then to seek restoration of pension.

28. Resultantly, petition fails and is **dismissed** with the aforesaid liberty.

(VIVEK JAIN)
JUDGE