

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon. Mr. S. c. Sharma, J

WRIT PETITION NO. 3075/2010

Bhujbal Singh Bhadoria
Vs.

The State of M.P. & another

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[J U D G M E N T]
(24/9/2010)

The petitioner before this court aged 71 years, a retired Government Servant has filed this present petition being aggrieved by the order dated 27/1/10 passed by the Excise Commissioner, Gwalior directing re-enquiry in the matter of departmental enquiry. The contention of the petitioner is that he was an employee of the State Government and has attained the age of superannuation on 29/4/97. The petitioner has further stated that at the time of superannuation he was serving as a Distt. Excise Officer and while he was in service a charge sheet was issued on 12/7/96 under Rule 14 of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966. Petitioner has further stated that a reply was submitted to the charge sheet and

thereafter the department took a decision to appoint an enquiry officer. Enquiry officer after conducting a detailed and exhaustive departmental enquiry has submitted a report on 22/11/07 and the same is also on record as Annexure P4, wherein the enquiry officer has exonerated the petitioner of the charges levelled against him. The petitioner has further stated that the disciplinary authority without issuing any show cause notice at any point of time disagreeing with the findings of the enquiry officer, took a decision to hold re-enquiry in the matter by passing an order dated 23/11/07. The petitioner has further stated that such an order directing de-novo enquiry could not have been passed. However, again a de-novo enquiry was held and the petitioner was exonerated by the second enquiry officer also vide enquiry report dated 12/8/09. The petitioners contention is that though the second enquiry was impermissible, however, the second enquiry officer has also exonerated the petitioner of the alleged misconduct. The petitioners has further stated before this court that the disciplinary authority not being satisfied by the second enquiry has directed the disciplinary

authority to hold a third enquiry (re-enquiry) by passing an order dated 22/1/10. The aforesaid order is under challenge before this court. Learned counsel for the petitioner has relied upon a judgment delivered by this court in the case of B S Jaiswal Vs. State of M.P. And ors., (WP No. 7061/2003) wherein this court in similar circumstances has held the action of the disciplinary authority as bad in law. It has been held in the aforesaid case that before disagreeing with the findings arrived at by the enquiry officer, the dissenting note has to be furnished to the delinquent government servant. Learned counsel for the petitioner has also argued before this court that the disciplinary authority at the best can remit the case for further enquiry to the enquiry officer. However, it cannot direct the de-novo enquiry as has been done in the facts and circumstances of the present case, keeping in view the provisions as contained in S. 15 of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966. He has lastly relied upon the judgment delivered in the case of State of M.P. Vs. R. S. Ogale reported in 2006 (1) MPLJ 412 and his contention is

that no order of punishment can be passed in the present case as the petitioner has attained the age of superannuation on 29/4/97, after 2 years of his retirement, keeping in view the law laid down by the Division Bench of this Court. Reply has been filed in the matter and the stand of the respondent state is that the petition has become infructuous as the third enquiry has also been concluded in the matter. The respondents have also enclosed an order as contained in Annexure R/1 passed by the enquiry officer wherein the charges against the petitioner for signing a licence contrary to statutory provisions has been established by the enquiry officer. Respondents have not filed a detailed reply. However, have reserved their right to file a detailed reply.

Heard learned counsel for the parties at length and perused the record.

The matter is being disposed of at the motion stage with the consent of the parties.

In the present case it is an admitted fact that the age of petitioner is about 71 years and he is a retd. Distt. Excise Officer. He was charge sheet on 12/7/96 while in service

and has attained the age of superannuation on 29/4/97. The first enquiry report was submitted on 22/11/07 and the same reveals that the petitioner was exonerated by the enquiry officer. Disciplinary authority not being satisfied with the enquiry report has directed the enquiry officer to conduct re-enquiry (Punah Jaanch) and in the second enquiry has also the petitioner has been exonerated by the Inquiry Officer vide report dated 12/8/09. Disciplinary authority again not being satisfied by the report of the enquiry officer has directed the enquiry officer to again re-inquire the matter (Punah Jaanch) and the matter has been re-enquired by the enquiry officer. Rule 15 of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 reads as under :

15. Action on the inquiry report.- (1) The disciplinary authority if it is not itself the inquiry authority may, for reasons to be recorded by it in writing, remit the case to the inquiry authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.

(2) The disciplinary authority

shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty but in doing so it shall record reasons in writing :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

The aforesaid statutory provisions of law empowers the disciplinary authority for the reasons to be recorded in writing to remit the case to enquiry officer for further enquiry. In the present case the matter has not been remitted for further enquiry. In fact, it is a case where the matter has been remitted twice by the disciplinary authority for de-novo enquiry, which is impermissible in law keeping in

view the statutory provisions as contained in S. 15 of the Rule of 1966 also keeping in view the peculiar facts and circumstances of the case.

Not only this the Division Bench of this Court while dealing with a matter relating to disciplinary proceedings in respect of retd. Government Servant has held that in case an order of punishment is not passed within a period of 2 years in case of a retd. Government Servant from the date of institution of the departmental enquiry no such order for withholding of pension or for withholding gratuity / other punishment can be passed and pension withheld if any would be restored. The Division Bench of this court in para 9, 10, 11 and 12 has held as under :

9. Shri Yadav, learned counsel for the petitioners is right in his submission that the initiation of the departmental proceedings having been made prior to the retirement of the original respondent on 31/8/1985, the initiation of the departmental proceedings by the Disciplinary Authority was deemed to be a proceeding for recovery under sub-rule (2)(a) of Rule 9 of the Rules of 1976, and could be completed as if the respondent had continued in service even after his retirement and that the

Tribunal should have left it open for the Disciplinary Authority to submit the report to the Governor for passing the order for recovery under Rule 9 of the Rules of 1976. But we find that in clause (b) of the third proviso of sub-rule (4) of Rule 9 it is stipulated that if departmental proceedings are not completed within a period of 2 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. A reading of sub-rule (4) of Rule 9 of the Rules of 1976 makes it clear that the said Rule applies to a case of a Government servant who had 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). The said sub-rule (4) provides that in any of these cases the pension will be withheld, but only a provisional pension and death cum retirement gratuity as provided in Rule 64, as the case may be, shall be sanctioned.

10. In the present case the original respondent retired on attaining the age of superannuation on 31/8/1985 and his pension including gratuity was withheld by the authorities under the aforesaid Rule 9 of the Rules of 1976 and the original respondent was paid, however, a provisional pension in accordance with the said sub-rule (4) of Rule 9 of the Rules of 1976. Any proceeding under Rule 9 of the Rules

of 1976 for recovery of loss from pension can be instituted only on or after the retirement of a Government servant and by virtue of sub-rule (2) of Rule 9, the proceedings against the original respondent could be deemed to have been instituted on the date of his retirement ie., on 31/8/1985. Clause (b) of the third proviso of the said sub-rule (4) of Rule 9 of the Rules of 1976, makes it amply clear that if the departmental proceedings are not completed within a period of 2 years from the date of institution, the entire amount of pension so withheld shall stand restored on the expiration of the period of 2 years. Thus, the pension that has been withheld in the case of the original respondent stood restored on the expiration of 2 years from the date of institution of the departmental proceedings and no further order on the completion of such 2 years could be passed by the Governor for recovery of the loss of Rs.4,10,071.84 from the original respondent. Thus, even if we hold that the departmental proceedings initiated by the Conservator of Forest did not stand vitiated and the findings in the said departmental proceedings by the Disciplinary Authority could be placed before the Governor, it will not be possible for the Governor to pass any final order for recovery of the loss of Rs.4,10,071.84 from the original respondent in view of clause (b) of the third proviso to sub-rule (4) of Rule 9 of the Rules of 1976.

11. Shri Yadav, learned Counsel for the petitioners, however, submitted that a statutory fiction has been created in clause (c) of the third proviso to Rule 9 to the effect that if in the departmental proceedings, final order is passed to withhold or withdraw the pension or any recovery is ordered, such order shall be deemed to take effect from the institution of the departmental proceedings and the amount of pension withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43. But in our opinion this is a provision providing for the legal consequences of a final order passed under Rule 9 of the Rules of 1976 and it makes it clear that once a final order is passed to withhold or withdraw the pension or to recover any amount of loss, the amount of pension withheld is to be adjusted in terms of the final order subject to limit specified in sub-rule (5) of Rule 43. It does not in any qualify or alter the limitation of 2 years for completion of the departmental proceedings from the date of institution in a case where the Government servant has retired.

12. Shri D. K. Dixit, learned Counsel for the respondents vehemently submitted that since the original respondent was entitled to restoration of his entire pension including gratuity withheld on expiry of 2 years from the date of institution of the departmental proceedings under clause (b) of the third proviso of sub-rule (4) of Rule 9

of the Rules of 1976, the respondents should be granted interest at a reasonable rate on the amount of pension withheld calculated from the date of completion of such 2 years from the date of such institution of the departmental proceedings. We can not grant this relief to the respondents in this present writ petition as the present writ petition has been filed not by the respondent, but by the petitioners against the order passed by the Tribunal but we leave it open for the respondent to make the claim regarding interest in an appropriate forum in accordance with law.

Keeping in view the aforesaid judgment delivered by the Division Bench of this Court as well as keeping in view the fact that the petitioner was exonerated twice by the enquiry officers vide report dated 22/11/07 and 12/8/09 and also keeping in view the fact that no show cause notice was issued at any point of time by the disciplinary authority disagreeing with the enquiry report, the impugned order dated 27/1/10 is accordingly quashed. The disciplinary proceedings pending against the petitioner are also quashed and the respondents are directed to release the gratuity of the petitioner and to finalise the pension case of the petitioner

also within a period of 3 months from the date of receipt of the certified copy of this order. In the present case the petitioner has attained the age of superannuation on 29/4/97 and keeping in view the provisions of M P Civil Services (Pension Rules) 1976, the respondents were required to pass a final order in the matter of disciplinary proceedings pending against the petitioner within 2 years from the date of retirement meaning thereby the respondents were required to pass a final order prior to 12/7/98, ie., within 2 years from the date of issuance of charge sheet. The respondents have not passed any order prior to 12/7/98 and, therefore, the action of the respondents in withholding the gratuity and pension after 12/7/98 is certainly bad in law. Resultantly the petitioner shall also be entitled for interest @ 9.5% p.a. in respect of the gratuity claim as well as in respect of arrears of pension as the rate of interest in respect of provident fund amount has been enhanced by the State Government to 9.5% p.a., as informed by the learned Government Advocate. The entire exercise of releasing the admissible amount to the petitioner shall be concluded along

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with interest within 6 months from the date of receipt of the certified copy of this order.

With the aforesaid this petition stands allowed. No order as to costs.

(S. C. Sharma)
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