

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Single Bench : Hon'ble Shri Justice J.K.Maheshwari)

Writ Petition No. 4527/1997

Meharban Singh
-Vs-
The State of Madhya Pradesh & others

Shri Udyan Tiwari, Advocate for the petitioner.
Shri Girish Kekre, Government Advocate.

O R D E R

Jabalpur, Dated : 30.11.2017

1. This petition under Article 226/227 of the Constitution of India has been filed seeking following reliefs:-

i. That by issuance of a writ in the nature of MANDAMUS/CERTIORARI, the Hon'ble court may be pleased to quash the notice (Annexure P-17) and the letter (Annexure P-18).

ii. That by issuance of a writ in the nature of MANDAMUS, the Hon'ble court may be pleased to command the respondents to treat the petitioner in service from 1.12.1993 till the date and till his retirement with full salary and allowances together with interest thereon at the rate of 18% per annum.

iii. That by issuance of a writ in the nature of MANDAMUS, the respondents be commanded to pay to the petitioner arrears of salary for the suspension period from 13.12.78 to 20.1.92 with interest at the rate of 12% per annum.

iv. That the petitioner was entitled to receive time bound promotion in the higher pay scale after completion of 12 years of service in the first instance and after 20 years of service in the second instance. The same has not been done in the case of the petitioner, as he was

constantly kept under suspension for about 14 years. The petitioner is entitled to the said time bound promotions and the arrears of salary on that account with interest at the rate of 18% per annum.

v. In the alternative the petitioner submits that in the event of court finding on case of compulsory retirement at the instance of the respondent no.3, the gratuity, pension and other pensionary benefits should be paid to the petitioner along with G.P.F. together with interest at the rate of 18% per annum.

vi. Issue any other writ, direction or order as may be deemed fit in the circumstances of the case together with awarding of cost of these proceedings.

2. At the outset, learned counsel for the petitioner does not wish to press relief Nos. 3 and 4. He is pressing this petition only with respect to relief Nos. 1, 2 and 5 and to ask for the relief in this regard.

3. The short question involved in the present case is, the petitioner was working as Upper Division Teacher in a school run by the Municipal Council, Bina. After more than 25 years of the service, he submitted the application Annexure P-14 dated 25.8.1993 for voluntary retirement to accept with immediate effect. The said application was not immediately accepted, however, on 3.9.1993, the petitioner submitted another application that because of non acceptance of his voluntary retirement immediately, it may be treated conditional subject to the conditions as enumerated in the letter Annexure P-16 dated 3.9.1993. The Municipal Council acted upon it and passed the resolution on 27.8.1993 retiring the petitioner after service of notice of three months. On 15.9.1993 the documents were sought to prepare the pension papers. The notice was served on 4.9.1993, therefore, the date

of acceptance would be 3.12.1993. Prior to the said date on 30.11.1993, application for withdrawal of the said voluntary retirement was submitted *inter alia* contending that the departmental colleagues advised him to continue in the service and not to demit the office, accordingly, he want to withdraw his application for voluntary retirement prior to the date on which it was made effective. The said representation was not considered, thereafter a representation was submitted to the Government, which was rejected vide Annexure P-21 on 11.9.1997, however, this petition has been preferred immediate thereafter seeking the relief as aforementioned.

4. Respondent No.3 Municipal Council has filed its reply *inter alia* contending that during the service tenure various disciplinary actions were taken against the petitioner and its documents are available on record. The application for voluntary retirement was submitted on 25.8.1993 and its contents are not in dispute. It is said that the Municipal Council on 27.8.1993 accepted the application for voluntary retirement, made it effective after three months from the date of receipt of the notice sent by the Municipal Council. The said notice was received. However, on acceptance of voluntary retirement its withdrawal is having no consequence, therefore, the petitioner is not entitled to claim any relief.

5. Learned counsel appearing on behalf of the petitioner has placed reliance on the judgments of the Supreme Court in **J.N.Shrivastava Vs. Union Of India and another** reported in **(1998) 9 SCC 559** and **Balram Gupta Vs. Union of India** reported in **1987 Supp SCC 228** to contend that if the notice for voluntary retirement has been

withdrawn prior to the elapse of the notice period then the petitioner has *locus Poenitentiae* to withdraw the proposal for voluntary retirement.

6. In the present case, the application for voluntary retirement was submitted on 25.8.1993 to accept it with immediate effect, but it was not accepted. Vide resolution of the Municipal Council dated 27.8.1993, it was decided that such an application be made effective after service of three months' notice by the Council. Notice of voluntary retirement was received by the petitioner on 4.9.1993, therefore, the period of three months shall be elapsed on 3.12.1993 but prior to the said date i.e. on 30.11.1993, the petitioner withdrew the application for voluntary retirement, therefore, as per the ratio of *J.N.Srivastava* (supra) and *Balram Gupta* (supra), the plea taken by the petitioner deserves to be accepted and the order retiring the petitioner vide Annexure P-17 dated 4.9.1993 and rejection of representation by the Government vide Annexure P-21 dated 11.9.1997 are hereby quashed.

7. So far as relief regarding payment of backwages from the said date till attaining the age of superannuation by the petitioner is concerned, in this regard in the writ petition nothing is averred that the petitioner was not remained gainfully employed during such period. In absence of taking the said plea without giving chance of rebuttal to the other side in the facts of the case wherein the petitioner himself submitted an application for voluntary retirement, which was accepted by the department but prior to the date of its effect, he has withdrawn the said application, therefore, in such circumstances where the petitioner himself remained trouble shooter though in view of the said

judgments, he is entitled to claim some benefits, however, in absence of taking any plea that he was not remained gainfully employed, he is not entitled to claim backwages till attaining the age of superannuation but on account of quashment of order accepting the voluntary retirement, he would be entitled to claim all notional service benefits for such period till actually attaining the age of superannuation by him. Accordingly, relief No. 2 as claimed by the petitioner is hereby rejected.

8. So far as relief No. 5 is concerned, it is to observe here that the petitioner has not brought any Rules to the notice of this Court regarding settlement of gratuity, pension and benefits, however, if petitioner submits the Rules showing his entitlement for grant of GPF, gratuity and pension, the Municipal Council shall release all the benefits treating him retired on the actual date of attaining the age of superannuation and counting the period during which he was not taken back in service on account of withdrawal of application for voluntary retirement.

9. It is to observe here that the petitioner has already died and his family members are there, therefore, they are entitled to claim the arrears of GPF and gratuity in this regard counting the period of service till attaining the date of superannuation of the deceased. A representation will be submitted in this regard on behalf of the petitioners within one month from today and on receiving the same, the Municipal Council shall take final decision in the matter within two months and thereafter the matter be referred to the State Government for its approval which shall be done within a month. Accordingly, the complete exercise in the matter of settlement of the GPF, gratuity and

(6)

W.P. No. 4527/1997

family pension and its arrears and other service benefit be completed within a period of four months on showing the entitlement under the Rules.

10. With the aforesaid observations, this petition stands disposed of. In the facts and circumstances, parties to bear their own costs.

(J.K.Maheshwari)
Judge

PB

Digitally signed by
PRADYUMNA BARVE
Date: 2018.01.03
18:36:16 +05'30'