

Madhya Pradesh High Court

Dhirendra Kumar Dubey vs The State Of Madhya Pradesh Thr on 8 October, 2021

Author: Sushrut Arvind Dharmadhikari

(1)

W.P. No. 823/2016

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.823/2016
Dhirendra Kumar Dubey
Vs.
The State of M.P. & Others

Coram:
Hon. Shri Justice S.A.Dharmadhikari

Shri Anil Mishra, Advocate for the petitioner.
Shri G.K.Agrawal, G.A. for the
respondents/State.

ORDER

PASSED ON THIS 8th DAY OF OCTOBER, 2021 This petition, under Article 226, of the Constitution of India has been filed being aggrieved of the order dated 17/12/2015 (Annexure P/1) passed by respondent no.3, whereby services of the petitioner have been terminated on account of conviction in Criminal Case No. 07/2013 vide judgment dated 27/5/2015 for the offences punishable under sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and 120B of the IPC and sentence of 1 year's R.I. with fine of Rs.1000/- with default stipulation for each offence.

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2. Brief facts leading to filing of this case are explicated thus:

(i) Initially petitioner was appointed in the revenue department and ultimately, got promoted to the post of Naib Tahsildar. He was posted at Dhar.

(ii) On 31/1/2014, Challan was filed against the petitioner before the concerned Court in respect of aforesaid criminal case, due to which, petitioner was put under suspension vide order dated 21/1/2015 (Annexure P/2) under Rule 9(1) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules of 1966").

(iii) Vide order dated 10/2/2015 (Annexure P/5), date of superannuation of the petitioner was intimated as 31/10/2015.

(iv) Thereafter, on 18/5/2015, petitioner was transferred from Dhar to Gwalior vide order (Annexure P/3), where name of petitioner finds place at S.No.6. However, as he was under suspension, he could not be relieved to join at Gwalior.

(v) Subsequently, vide judgment dated 27/5/2015 (Supra), petitioner was convicted for the offences punishable under sections 7, 13(1)(d) and 13(2) of the Act of 1988 read with S.120B of the IPC and sentenced, as indicated above. Being aggrieved, petitioner filed an appeal before the Indore Bench of this Court, which was W.P. No. 823/2016 registered as Cr.A. No.696/2015. The same is still pending adjudication and vide order dated 15/6/2015, custodial sentences of the petitioner have been suspended.

(vi) During pendency of the aforesaid criminal appeal, vide order dated 17/12/2015 (Annexure P/1), services of the petitioner have been dismissed withholding his retiral dues, assailing which, this petition has been filed.

3. Learned counsel for the petitioner submitted that the entire action of the respondents in dismissing the services of the petitioner after his superannuation and withholding of retiral dues is illegal and arbitrary. It is submitted that Rule 9(1) of the M.P. Civil Services (Pension) Rules, 1976 (for brevity "the Rules of 1976") empowers and gives right only to His Excellency the Governor to withhold and withdraw the pension permanently. No order with regard to dismissal can be passed under the Rules of 1976. It is further submitted that since the petitioner superannuated on 31/10/2015, by no stretch of imagination his services could have been terminated vide order dated 17/12/2015 (Annexure P/1), much less under the Rules of 1976. Even otherwise, before issuing such termination order, no show-cause notice was ever served upon the petitioner. He further submitted that the appeal is still pending consideration, therefore conviction W.P. No. 823/2016 by the trial Court cannot be treated to have attained finality and the impugned order based thereupon cannot be sustained in the eyes of law. Accordingly, it is prayed that the impugned order may be set aside and retiral dues may be directed to be released in favour of the petitioner.

4. Per contra, return has been filed by the State mentioning therein that in his entire service career, the petitioner served at District Dhar. The service record of the petitioner is also with the Office at Dhar. Petitioner superannuated from Dhar and the criminal case was also registered at Dhar. The criminal appeal is pending at Indore Bench of this Court. This petition has been filed before this Court on the sole ground that the petitioner resides in Gwalior. However, no cause of action arose within the territorial jurisdiction of this Court. Therefore, this Court does not have the territorial jurisdiction to entertain this petition and the petition deserves to be dismissed on this count alone.

It is further stated that statutory appeal is provided for against the order of termination to the Governor of M.P. and without exhausting such alternative remedy, petitioner has directly approached this Court and, therefore, the petition is liable to be rejected on this count as well.

It is further contended that the impugned order dated W.P. No. 823/2016 17/12/2015 (Annexure P/1) was passed terminating the services of the petitioner since he was convicted vide judgment dated 27/5/2015 and, therefore, as per Rule 19 of the Rules of 1966, the services of the petitioner were bound to be terminated on the date of conviction. It is submitted that the impugned order dated 17/12/2015 is only a formal order of communication, as the same could not be issued before retirement because various administrative sanctions were not received then and the same were received at a later stage after the petitioner stood superannuated. Therefore, there is no procedural flaw in terminating the services of the petitioner and the petition deserves to be dismissed at the threshold.

5. Heard, learned counsel for the parties.

6. The objection with regard to territorial jurisdiction does not weigh with this Court, inasmuch as it is well settled that for a retired employee convenience is to prosecute his case at the place where he belongs to and is getting pension (Shanti Devi alias Shanti Mishra Vs. Union of India, ((2020)10 SCC 766). In the instant case, the petitioner has settled after retirement at Gwalior and if restored, would be receiving pension at Gwalior itself. As such, submission of learned Government Advocate on the principle of forum conveniens has no substance.

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7. Admittedly, the petitioner was superannuated on 31/10/2015 and the impugned order of termination of service has been passed on 17/12/2015 (Annexure P/1) i.e. after superannuation of the petitioner. A bare perusal of the said order reveals that major penalty of dismissal from service has been imposed upon the petitioner finding him guilty of misconduct under Sub-Rules (1) and (3) of Rule 3 of the M.P.Civil Services (Conduct) Rules, 1965 owing to his conviction under sections 7, 13(1)(d) and 13(2) of the Act of 1988, as indicated above. Although the order does not explicitly details the provision under which such major penalty has been imposed, yet the same is purportedly under Rule 10 read with Rule 19 of the Rules of 1966. Rule 10 encapsulates the minor and major penalties, which may for good and sufficient reason, be imposed upon a Government servant. Rule 19 provides for special procedure in certain cases laying down that where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit. The power to impose any of these penalties is not conferred by Rule 10 or 19, but is available under the general law of master and servant including the doctrine of pleasure embodied in our Constitution in its modified form. However, in the instant case, the master and servant relation ceased W.P. No. 823/2016 to exist on the date of superannuation of the petitioner and, as such, the respondents completely exceeded their jurisdiction in invoking the provisions of said Rules. For this reason itself, the availability of alternative remedy, if any, would not operate as a bar (M.P. State Agro Industries Development Corporation Limited Vs. Jahan Khan, ILR ((2007) M.P. 1282 (SC), referred to).

8. Although Rule 9 of the Rules of 1976 provides for right of Governor to withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if in any departmental or

judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, yet, it cannot be lost sight of that criminal appeal is pending consideration before the Indore Bench of this Court and as such the judgment of conviction and sentence passed by the trial Court has yet not attained finality and the same, therefore, cannot be read in isolation as judicial proceedings are continued. The Apex Court in the case of Garikapatti Veerya Vs. N.Subbiah Choudhary (AIR 1957 SC 540), as well as, in the judgment passed by the Allahabad High Court in the case of Shyamsunder Lal Vs. Shaqunchand (AIR 1967 Allahabad 214), it has been held that appeal is a continuation of suit. Further, under Rule 9(4) of the Rules of 1976, protection has been granted to a retired employee on W.P. No. 823/2016 reaching the age of superannuation or otherwise, against whom any departmental or judicial proceedings are instituted, or where the departmental proceedings are continued under sub-rule (2) that a provisional pension and death-cum-retirement gratuity as provided in rule 64, shall be sanctioned.

9. As such, the impugned order (Annexure P/1) being completely without jurisdiction, cannot be sustained and is, accordingly, set aside. Respondents are directed to pay the retiral dues including pension, gratuity etc. to the petitioner in accordance with the Rules of 1976.

The petition, accordingly, stands allowed to the extent indicated above.

There shall be no order as to costs.

(S.A.Dharmadhikari) Judge (and) ANAND SHRIVASTAV A 2021.10.08 18:23:28 +05'30'