

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

**BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI**

**ON THE 10<sup>th</sup> OF FEBRUARY, 2023**

**WRIT PETITION No. 17844 of 2020**

**BETWEEN:-**

**BHUVANSINGH WASKEL S/O GOPALSINGH, AGED ABOUT 64 YEARS, OCCUPATION: RETIRED JOINT COMMISSIONER CO OPERATIVE R/O 246, SECTOR-R MAHALAXMI NAGAR INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(SHRI ANAND AGRAWAL-ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY COOPERATIVE DEPARTMENT, MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. STATE OF M.P., THROUGH PRINCIPAL SECRETARY FINANCE DEPARTMENT DEPARTMENT, MANTRALAYA VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 3. COMMISSIONER AND REGISTRAR CO OPERATIVE SOCIETIES MADHYA PRADESH VINDHACHAL BHAWAN, GROUND FLOOR, BHOPAL (MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI AAKASH SHARMA-GOVERNMENT ADVOCATE)**

*This petition coming on for admission this day, the court passed the following:*

**ORDER**

Heard finally with the consent of both the parties.

The petitioner has filed this petition under Article 226 of the Constitution

of India, challenging the order dated 24.01.2018 (Annexure P-1) by which the petitioner has been refused to grant the benefit of gratuity and leave encashment on account of pendency of criminal case/departmental enquiry against him.

The brief facts of the case are that the petitioner was serving as Joint Commissioner and on attaining the age of superannuation on 31.01.2016, has approached this Court with a grievance that though the pension has been released but gratuity and leave encashment and other retiral benefits have been with held for no rhyme and reason. He had made several representations but of no avail. This Court in WP No.5522/2017, vide order date 01.09.2017, disposed of the matter with liberty to submit a representation which shall be decided by the authorities in the matter of release of gratuity, leave encashment and other benefits. Thereafter, in compliance thereof, order dated 24.01.2018 was passed whereby the representation of the petitioner was rejected on the ground that only after completion of the departmental enquiry and orders, which have been passed in respect of his suspension and out come of the criminal case, the decision would be taken.

Learned counsel for the petitioner submitted that the petitioner has not committed any misconduct and the matter pertains to the auction done by the banks, therefore, the petitioner cannot be held liable. The departmental enquiry was initiated in May, 2016 after the retirement of the petitioner. The criminal cases were registered while petitioner was in service. Hence, this petition has been filed by the petitioner.

On the other hand, learned counsel for the State submitted that in the present case, the charge-sheet was served upon the petitioner on 26.06.2015 and the petitioner attained the age of superannuation on 31.01.2016, therefore, departmental enquiry against the petitioner is at present pending. However, the

petitioner is being paid through the amount of FBF, GIS etc. According to Rule 64 (c) of the MP Civil Services Pension Rules, 1976 (Rules of 1976 for short) no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. In view of aforesaid, the petition deserves to be dismissed.

Learned counsel for the petitioner submitted that the petitioner was convicted in criminal case vide judgment dated 21.12.2012. Being aggrieved, the petitioner had filed Criminal Appeal No. 373/2020 before this Court the Principal Seat at Jabalpur and the sentence has been suspended. Therefore, during the pendency of appeal also, gratuity and leave encashment cannot be retained. Criminal appeal is still pending consideration, therefore, conviction by the trial Court cannot be treated as final and the impugned order passed cannot sustain in the eye of law. Therefore, it is prayed that retiral dues may be directed to be released in the favour of the petitioner.

Admittedly, the petitioner was superannuated on 31.01.2016. Criminal case was registered against the petitioner on 31.12.2012. and he has been acquitted as also departmental enquiry is pending

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 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.*

In view of the aforesaid, impugned order dated 24.01.2018 being completely without jurisdiction cannot be sustained and is accordingly, set aside.

Respondents are directed to pay the retirement dues i.e. gratuity and leave encashment, as per the rules of 1976 to the petitioner forthwith as expeditiously as possible, within three months from the date of receipt of the certified copy of this order.

Accordingly, this petition is **allowed** to the extent indicated hereinabove.

VD



**(S. A. DHARMADHIKARI)**  
**JUDGE**