

THE HIGH COURT OF MADHYA PRADESH**W.P. No. 7032-2018**

(GULAB CHAND JANGDE VS. THE STATE OF MADHYA PRADESH.)

JABALPUR**DATED : 04.11.2019**

Mr. M.K. Mishra, learned counsel for the petitioner.

Ms. Aditi Varma, learned Panel Lawyer for the respondent/ State.

The petitioner before this Court, a retired Government employee, has filed this present petition under Article 226 of the Constitution of India being aggrieved by the non-payment of gratuity and other pensionary dues.

The contention of Shri Mishra, learned Counsel for the petitioner, is that the petitioner attained the age of superannuation on 31/08/2016, however, while he was in service, a criminal case was registered against him at Crime No. 36/2016. The petitioner, after registration of the aforesaid criminal case got superannuated and subsequently, a charge-sheet against him was filed on 21.10.2016 i.e. after attaining the age of superannuation. Thus, it is submitted that as per Rules 9(6)(b) and 64 of the Pension Rules, 1976, no case for withholding of pension as also the gratuity is made out.

Learned Panel Lawyer for the respondent/ State Ms. Aditi Varma has opposed the prayer on the basis of the reply filed by the State. It is further contended that once the case is registered against a person, it is not necessary to file a charge-sheet and the pension as also the gratuity can be withheld till the criminal case is decided. It is further

submitted that the pension and gratuity can be withheld under Rule 64 of the Pension Rules, 1976.

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

Before proceeding with the merit of the case, it would be relevant to refer to Rule 9(6)(b) and rule 64 of the M.P. Civil Services (Pension) Rules, 1976 which read as under :-

Rule 9(6)(b)

“9(6)(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

(iii) In the case of civil proceedings, on the date the plaint is presented in the court.”

Rule 64

“ 64. **Provisional pension where departmental or judicial proceeding may be pending:-** (1) (a) In respect of Government servants refer to in sub-rule (4) of rule 9 the Head of the Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) Provisional gratuity shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office after adjusting dues mentioned in sub-rule (2) of rule 60, under intimation to Audit Office. Payment

of provisional pension/gratuity made under sub-rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension/gratuity finally sanctioned is less than the provisional pension/gratuity or the pension/gratuity is reduced or withheld either permanently or for a specified period.”

In light of the aforesaid, this Court finds that under rule 9 (6)(b) the judicial proceedings shall be deemed to be instituted in respect of a criminal case on the date on which cognizance has been taken by the Magistrate on the basis of report. Admittedly, in the present case no cognizance has been taken even after retirement of the petitioner, at least no such document is placed on record by the State. Therefore, it cannot be said that the judicial proceedings have been instituted against the petitioner. Thus, the criminal prosecution cannot be deemed to be initiated against the petitioner merely on filing of the charge-sheet on 21/10/2016. Rule 64 of M.P. Civil Service (Pension) Rules, 1976 provides for grant of provisional pension where departmental or judicial proceeding may be pending and also provides for a right of the Government to withhold or withdraw the pension and also for payment of provisional pension / gratuity.

In view of the same since no judicial proceeding is pending against the petitioner, the respondents are directed to release gratuity as well as full pension of the petitioner within a period of 60 days from the date of receipt of certified copy of this Order. It is made clear that in case the petitioner is convicted, the statutory provisions provides for withholding of the pension and the respondents shall be free to take action in accordance with law.

In case the amount of pension and gratuity as well as other terminal dues are not paid within 90 days, the same shall carry interest at the rate of Rs. 8.5% per annum from the date of entitlement till it is actually paid to the petitioner.

The writ petition stands allowed.

Certified copy as per rules.

(Subodh Abhyankar)
Judge

Vikram