

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

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 5th OF JANUARY, 2023

WRIT APPEAL No. 911 of 2022

BETWEEN:-

KAMATA PRASAD SONI, S/O SHRI MAHAVEER PRASAD SONI, AGED ABOUT 66 YEARS, OCCUPATION: RETIRED FROM GOVERNMENT SERVANT AND AT PRESENT PRACTICING AS AN ADVOCATE, R/O KARAUNDIYA SOUTH, GOPALDAS ROAD, SIDHI DISTRICT (MADHYA PRADESH)

.....APPELLANT

(BY MS. ANCHAN PANDEY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH, THROUGH PRINCIPAL SECRETARY, REVENUE DEPARTMENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. UNDER SECRETARY, REVENUE DEPARTMENT, GOVERNMENT OF M.P.**
- 3. ADDITIONAL CHIEF SECRETARY AND CONVENER, PERMANENT COMMITTEE OF COUNCIL OF MINISTERS M.P.**
- 4. THE COLLECTOR DISTRICT SIDHI (MADHYA PRADESH)**
- 5. DISTRICT PENSION OFFICER, DISTRICT SIDHI (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI S.S. CHAUHAN - GOVERNMENT ADVOCATE)

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This appeal coming on for admission this day, Hon'ble Shri Justice Ravi Malimath, Chief Justice passed the following:

ORDER

Aggrieved by the order dated 05.05.2022 passed by the learned Single Judge in dismissing the Writ Petition No.10141 of 2022, the petitioner is in appeal.

2. The case of the petitioner is that he was convicted for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentenced to undergo R.I. for 3 years with a fine of Rs.10,000/-, in default S.I. for 3 months and R.I. for 3 years with a fine of Rs.10,000/-, in default S.I. for 3 months, respectively. Aggrieved by the same, he filed Criminal Appeal No.3782 of 2017 which is pending consideration. By the order dated 04.10.2017, the sentence was suspended. In the interregnum, the respondents passed an order complying the provisions of Rule 9 of the M.P. Civil Services (Pension) Rules, 1976 for withdrawing his pension in view of the fact that the criminal proceedings were pending against him. Questioning the same, the instant petition was filed.

3. The learned Single Judge while relying on the judgment of the Larger Bench of this Court in the case of Lal Sahab Bairagi vs. State of M.P. and others, reported in 2020(2) M.P.L.J. 551 dismissed the petition. Hence, this appeal.

4. The learned counsel for the appellant contends that the order passed by the learned Single Judge is erroneous and liable to be set aside. The findings recorded by the learned Single Judge that the matter is covered by the judgment of Division Bench is not correct. Various other judgments are sought to be relied upon.

5. Having considered the contentions, we do not find any merit in this appeal. The questions that were referred for consideration to the Larger Bench included the question as follows:

"3. *Whether the authority is required to issue a show cause notice prior to passing of an order in terms of Rules 8 and 9 of the Pension Rules of 1976, in cases of withdrawal of pension or part thereof on account of conviction in a criminal case?"*

The Larger Bench answered the said question as follows:-

"(iii) *It held that the authority is not required to issue notice or afford prior opportunity of representation before passing the order under Rule 8(2) of the Pension Rules of 1976, in respect of a pensioner who has been convicted in the criminal cases. However, the power of the authority to take action under the Rules would be subject to the guidelines as stated by the Supreme Court in the case of Tulsiram Patel (supra) and reiterated by this Bench in the preceding paragraphs of this judgment.*"

6. Therefore, the contention being advanced to the effect that prior hearing has to be afforded is no more *res integra*. It is covered by the judgment of a Larger Bench of this Court as referred to herein-above. The learned Single Judge has rightly applied the judgment. We do not find any error in the order passed by the learned Single Judge.

7. The writ appeal is accordingly dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE