

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****DIVISION BENCH:****JUSTICE SHEEL NAGU****&****JUSTICE ANAND PATHAK**

WA.875.2020**Radha Krishna Sharma****Vs.****State of M.P. & Ors**

Shri Siddharth Sharma, learned counsel for appellant.

Shri MPS Raghuvanshi, learned Additional Advocate General, for respondent/State.

Heard & Reserved on : 14.06.2021**Order pronounced on : 03.08.2021 (through Video Conferencing)**

Whether Approved For Reporting : Yes**Law laid down:**

1. Before withholding/withdrawing pension, partly or fully, permanently or temporarily, owing to conviction in a criminal case, the Governor under

Rule 9(1) of M.P. Civil Services (Pension) Rules, 1976 is obliged to afford reasonable opportunity of being heard to the pensioner.

- 1.1 The aforesaid hearing is required on the aspect as to whether withholding/withdrawing should be partial or full and also whether it should be permanently or temporarily. (**Please see: State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta & other connected matter AIR 1973 SC 834 Para 20 and Rameshwar Yadav Vs. Union of India & another 1989 Supp (2) SCC 565 Para 4**)

Significant Paras: 7, 8 and 9

ORDER

Sheel Nagu, J.

1. This intra Court Appeal u/S. 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, assails the final order dated 01.07.2020 in W.P.8940/2020 passed by learned Single Judge while exercising writ jurisdiction u/Art.226 of the Constitution dismissing the petition in question by which challenge was made to the order dated 19.03.2020 issued u/Rule 9(1) of M.P. Civil Services (Pension) Rules, 1976 (“Pension Rules” for brevity) vide P-1 withdrawing 100% pension of petitioner who had retired from the post of Revenue Inspector on attaining the age of superannuation on 31.05.2016.

1.1 The challenge to the order of withdrawing of pension was primarily based on the ground of violation of principle of natural justice (*audi alterm partem*).

2. Learned Single Judge held that in absence of any prejudice established by petitioner, the non-issuance of show-cause notice prior to withdrawal of pension cannot *per se* assist the petitioner in the absence of establishing prejudice, for which

reliance was placed on **Natwar Singh Vs. Director of Enforcement [(2010) 13 SCC 255] & State Vs. N.S. Gnaneswarab [(2013) 3 SCC 594]**.

2.1 Learned Single Judge has also relied upon the Apex Court decision in the case of **K.C. Sareen Vs. CBI [(2001) 6 SCC 584]** wherein the tendency of the superior courts to suspend conviction in cases involving moral turpitude was criticized.

3. Before embarking upon adjudication, it would be apt to delineate the basic facts which are as follow:

Dates	Events
2014	: Registration of offence u/S.7 r/w 31(1)(d) and 13(2) of Prevention of Corruption Act against the petitioner who was holding the post of Revenue Inspector.
31.05.2016	: Petitioner superannuates from the post of Revenue Inspector
01.06.2016	: Charge-sheet filed by prosecution in the court of competent criminal jurisdiction u/S.7 r/w 31(1)(d) and 13(2) of Prevention of Corruption Act
30.06.2019	: Petitioner is convicted u/S.7 to suffer four years' RI and u/Ss.31(1)(d) and 13(2) to suffer five years' RI respectively under Prevention of Corruption Act along with fine.
21.11.2019	: High Court in Criminal Appeal 3254/2019 suspends the sentence and grants bail to the petitioner during pendency of this criminal appeal which continues to be pending till date.
19.03.2020	: Impugned order withdrawing entire pension u/R.9 M.P Civil

		Services Pension Rules, 1976 is passed.
June, 2020	:	WP.8940/2020 (s) is filed by the petitioner assailing the order dated 19.03.2020.
01.07.2020	:	The Writ Court dismisses WP.8940/2020 (s) on merits.
02.09.2020	:	Present Writ Appeal filed.

4. Before analyzing contentions of rival parties, it would be apt to reproduce relevant provision of Rule 9 of M.P Civil Services Pension Rules, 1976:

“9. Right of Governor to withhold or withdraw pension. -

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time];

(2) (a) The departmental proceedings [xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment :-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings :

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceeding, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64], as the case may be, shall be sanctioned :

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as if for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount, of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(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

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

The question for consideration:

5. The question which begs for an answer herein is as to :
- “Whether in the absence of any express statutory enabling provision in Rule 9 of Pension Rules mandating affording of reasonable opportunity of being heard, can pension be withdrawn in entirety without following the principle of *audi alterm partem* due to criminal trial ending in conviction ?”**
6. The aforesaid provision, especially Rule 9(1) of M.P Civil Services (Pension) Rules, 1976, which has been invoked to pass the impugned order herein can be broken down into various parts which constitute it's basic ingredients, as follows:-
- (a) The Governor alone is vested with power of withdrawing/withholding pension of a retired government servant;
 - (b) The withholding/withdrawing can be of the entire pension or part thereof;
 - (c) This withdrawing/withholding of pension can be permanently or for a limited period;
 - (d) The power is further vested with the Governor of ordering recovery from pension of whole or part of the pecuniary loss caused to the government;
 - (e) The aforesaid powers of withdrawing/withholding pension or recovering loss from pension can be exercised only after conduction of departmental enquiry or judicial proceedings;
 - (f) It is further necessary that this departmental enquiry or judicial proceedings must find the pensioner guilty of grave misconduct or negligence for any act committed during the period of his service including

service rendered during re-employment.

6.1 The aforesaid breakup of Rule 9(1) reveals that so far as withdrawing/withholding of pension after conduction of departmental enquiry is concerned, it goes without saying that the delinquent pensioner is afforded reasonable opportunity of being heard during conduction of departmental enquiry. However if the withdrawing/withholding of pension is based upon the pensioner having been found guilty in judicial proceedings (as is the case herein) then the Rule does not in express term provide for any further opportunity of being heard before the Governor withdraws/withholds his pension. The oblivious reason is that requirement of rules of natural justice are fulfilled during criminal trial.

7. In the instant case, petitioner was tried for an offence of demanding and accepting bribe and was found guilty and thus convicted and sentenced to five years' RI. In such a situation, since the offence involves moral turpitude and petitioner-pensioner was found guilty of grave misconduct in judicial proceedings (criminal trial), it ostensibly appears that prerequisites for invoking power of the Governor to withdraw/withhold the pension u/Rule 9(1) of Pension Rules are satisfied.

7.1 However, the power of the Governor to withdraw/withhold pension u/R.9(1) includes to partly or fully withdraw/withhold pension and further on permanent or temporary basis. Meaning thereby, that the Governor in a case of pensioner who is found guilty of grave misconduct in judicial proceedings has to apply her/his mind to contemplate on the relevant factors of gravity of offence, whether the Trial Court imposed maximum or minimum punishment prescribed in law, expected hardships and whether there are any extenuating circumstances which may lead to success in the appeal filed against the conviction and sentence. After considering these factors (which are illustrative but not exhaustive), the Governor has to then decide whether

to withdraw/withhold pension entirely or partly and further whether this withdrawing/withholding would be temporary or permanent.

7.2 The aforesaid discretion available to the Governor is an exercise which ought not to be done unilaterally and therefore should be bilateral in nature involving the delinquent pensioner which is only possible when an opportunity of being heard is afforded.

7.3 The affording of such opportunity to the delinquent pensioner is not a mere formality since pensioner can very well assist the Governor by bringing to her/his knowledge various extenuating circumstances which may or may not be made available to the Governor by functionaries of the State.

7.4 The affording of this opportunity at the aforesaid stage is all the more necessary since the ultimate result of the exercise of withdrawing/withholding pension partly or fully, temporarily or permanently vitally affects the right to livelihood of the pensioner, which is directly related to the right to life.

8. Pertinently, pension is not a bounty but right available to pensioner in the evening of his life and is a reward for the services rendered to the State. Any reduction/withdrawing/withholding of pension, partly or fully, temporarily or permanently in the evening of life causes serious adverse civil consequences to the pensioner. It is well known that majority of pensioners do not have any independent source of income except pension.

8.1 Therefore, withdrawing/withholding pension, partly or fully, permanently or temporarily, is a decision which cannot be taken without hearing the pensioner who is intended to be adversely affected.

9. It is pertinent to point out that the trial Court while convicting petitioner awarded sentence of four years and five years R.I. for offences punishable u/Ss. 3

and 7 respectively for which the Prevention of Corruption Act prescribes maximum punishment of seven years and ten years respectively. Thus, non-awarding of maximum prescribed sentence can be a relevant factor to decide whether not to withdraw the entire pension but instead only part of it and for a limited period. This is only an illustration of one of the relevant factors over which the Governor has to apply her/his mind. Thus summary enquiry conducted by the Governor u/Rule 9(1) of Pension Rules shall become illusory if the delinquent pensioner is not allowed to have her/his say which is only possible when reasonable opportunity of being heard is afforded by issuance of show cause notice.

9.1 It is trite law that any decision taken which causes civil consequences of adverse nature ought to be preceded by affording reasonable opportunity of being heard or else such decision renders itself to be abhorrent to the basic fundamentals of the rule of law.

10. This principle applies even where statute does not in express terms provide for affording of reasonable opportunity of hearing. Some of the relevant verdicts of the Apex Court on the said point are extracted below:

In State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta & other connected matter AIR 1973 SC 834, their Lordships of the Supreme Court have held as under:-

“20. The question for our consideration now is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies. See: Province of Bombay v. Kusaldas S. Advani, 1950 SCR 621 at p. 725 = (AIR 1950 SC 222) and Board of Higher School & Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta, 1962 Supp (3) SCR 36 (AIR 1962 SC 1110). With the proliferation of administrative decisions in the welfare State it is now further recognized by Courts both in England and in this country, (especially after the decision of House of Lords in 1964 AC 40) that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights

or interests and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See State of Orissa v. Dr. (Miss) Binapani Dei, (1967) 2 SCR 625 = (AIR 1967 SC 1269) and In re H.K. (An Infant), (1967 2 1 AIR 1973 SC 834 5 QBD 617.”

In Rameshwar Yadav Vs. Union of India & another 1989 Supp (2) SCC 565, their Lordships of the Supreme Court while dealing with the question of withholding pension have held that the competent authority shall apply its mind to the question as to whether the pension should be suspended or not. Relevant paragraph of the said judgment is reproduced below for ready reference and convenience:-

“4. These provisions require the competent authority to apply its mind to the question as to whether the pension should be suspended in whole or in part. While determining this question the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed and other allied matters. The officer has also to consider the hardship on the dependants of the person, if the payment of pension is suspended. In the instant case, the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of the entire amount of pension for the period of imprisonment of the petitioner.”

11. In view of above discussion, this Court is in respectful disagreement with the view of learned Single Judge that no prejudice is caused to the petitioner in the instant case by non-affording of any opportunity prior to withdrawal of pension. As stated above, pension is the primary source of livelihood of a pensioner which if withdrawn, partly or fully, permanently or temporarily, leads to civil consequences of extremely adverse nature, as it restricts right of pensioner and the persons dependent upon him to live a life of dignity.

12. In the conspectus of above discussion and interpretation of the provision of Rule 9(1) of M.P Civil Services Pension Rules, 1976, this Court is of the considered view that petitioner/pensioner was entitled to opportunity of being heard prior to issuance of impugned order vide P-1, withdrawing pension *in toto*.

13. The decision of Apex Court in the case of **K.C. Sareen (supra)** lays down

that in offences involving moral turpitude especially offences under the Prevention of Corruption Act, even if sentence is suspended, the conviction ought not to be suspended since it is against the principle of probity. In other two judgments **Natwar Singh (supra) & N.S. Gnanesarab (supra)**, the principle laid down is that the all important factor of prejudice is necessary to be established to successfully raise the ground of violation of principle of natural justice (*audi alterm partem*). These verdicts further do not assist the State since this Court has already held supra that withholding/withdrawing of pension, partly or fully, permanently or temporarily causes serious adverse consequences to a pensioner.

14. Consequently, the present appeal is allowed in the following terms:

1. The impugned order passed by learned Single Judge dated 01.07.2020 passed in W.P.8940/2020 is set aside.
2. Impugned order of withdrawing of pension of petitioner in entirety under Rule 9 M.P Civil Services Pension Rules, 1976 passed by respondent No.2 dated 19.03.2020 stands quashed.
3. The Competent Authority is at liberty to pass fresh order if so advised after following due process of law as explained above.
4. Till any final order is passed the petitioner-pensioner shall be entitled to provisional pension as per Rule 64 of Pension Rules.

No cost.

(Sheel Nagu)
Judge
(03/08/2021)

(Anand Pathak)
Judge
(03/08/2021)