

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 8th OF FEBRUARY, 2023

WRIT PETITION No. 23330 of 2022

BETWEEN:-

AMAR SINGH BAGDI S/O LATE SHRI KISHORILAL
BAGDI, AGED ABOUT 64 YEARS, OCCUPATION:
UNEMPLOYEE TEHSIL BARELI GRAM DIGVARH,
DISTRICT REWA (MADHYA PRADESH)

.....PETITIONER

(BY SMT. ANCHAN PANDEY - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH
SECRETARY REVENUE DEPARTMENT VALLABH
BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)
2. THE COLLECTOR RAISEN DISTRICT RAISEN
(MADHYA PRADESH)
3. THE CHIEF EXECUTIVE OFFICER JANPAD
PANCHAYAT BADI DISTRICT RAISEN (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI ATUL DWIVEDI - PANEL LAWYER)

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

ORDER

This writ petition under Article 226 of the Constitution of India is filed on
the ground that petitioner who was posted as Assistant Grade-II was involved
in a criminal case pertaining to Prevention of Corruption Act was convicted by
the Court vide judgment dated 28.09.2018 with 3 years of rigorous

imprisonment and fine of Rs.1,000/-. Thereafter, petitioner was given a show cause notice and several opportunities of hearing were given. Thereafter, invoking provisions of Article 311(2)(a) of the Constitution of India, recording a finding that no departmental enquiry is necessary, order of punishment of dismissal from service was passed by the Collector, Raisen. In this backdrop, prayer is made to set aside the order of punishment dated 04.02.2019 (Annexure P-1) and, thereafter, grant him provisional pension, leave encashment and gratuity from the date of dismissal i.e. 04.02.2019.

2. Smt. Anchan Pandey has placed reliance on three judgments. One by a coordinate Bench of this Court in case of **Kanhaiyalal Damde Vs. State of Madhya Pradesh and others** (W.P. No.20032/2020, decided on 05.07.2022), wherein coordinate Bench has directed the authorities to consider the case of the petitioner for grant of provisional pension under Rule 64 of the Madhya Pradesh Civil Services (Pension) Rules, 1976.

3. Similarly, reliance is placed on the judgment of the Supreme Court in **Shankar Dass Vs. Union of India and another**, AIR 1985 SC 772 and reliance is also placed on a decision of a coordinate Bench of this Court in **Neelkanth Kahate Vs. The State of Madhya Pradesh and others** (W.P. No.20681 of 2022, decided on 14.11.2022), whereby coordinate Bench has remitted the petitioner to avail the remedy of statutory appeal under Rule 23 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

4. As far as decision of a coordinate Bench in case of **Kanhaiyalal Damde** (supra) is concerned, aspect of dismissal on account of conviction and its impact vis-a-vis Rule 9 of the Pension Rules, which permits the authority to withdraw the pension, inasmuch as, pension is subject to the future good

conduct, has not been considered. Therefore, applying the ratio of the said case, will be inappropriate, inasmuch as, it has not taken into consideration all the facts necessary for directing the authorities to grant provisional pension in terms of Rule 64 of the Madhya Pradesh Civil Services (Pension) Rules, 1976.

5. Judgment of Hon'ble Supreme Court in case of **Shankar Dass** (supra) is considered by a coordinate Bench in case of **Neelkanth Kahate** (supra) and taking recourse to the said decision, since there is statutory appeal available against the order of dismissal, petitioner is relegated to avail the said remedy.

6. In above terms, this writ petition is disposed of.

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(VIVEK AGARWAL)
JUDGE