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

**BEFORE  
HON'BLE SHRI JUSTICE MANINDER S. BHATTI**

**ON THE 6<sup>th</sup> OF NOVEMBER, 2023**

**WRIT PETITION No. 26282 of 2022**

**BETWEEN:-**

**PRADEEP KUMAR CHAUDHARY S/O SHRI NATHUJI  
CHAUDHARY, AGED ABOUT 64 YEARS, OCCUPATION:  
RETIRED R/O CHOUKSEY BEHIND COLLECTORATE  
DISTRICT CHHINDWARA M.P. (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI OMSHANKAR PANDEY - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
SECRETARY HORTICULTURE DEPARTMENT  
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. THE DIRECTOR HORTICULTURE DEPARTMENT  
6TH FLOOR VINDHYACHAL BHAWAN BHOPAL  
(MADHYA PRADESH)**
- 3. THE JOINT DIRECTOR JABALPUR SANJAY  
NAGAR ADHARTAL JABALPUR (MADHYA  
PRADESH)**
- 4. THE PENSION OFFICER SEONI DISTRICT SEONI  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KAMALNATH NAYAK - PANEL LAWYER)***

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

**ORDER**

With the consent of both the parties, heard finally.

2. This petition has been filed by the petitioner while praying for a

direction to the respondents to grant entire pension with gratuity, GIS, FCF and other benefits to the petitioner w.e.f. 30/06/2020.

3. The facts in nutshell reveal that the petitioner herein was retired from the post of Assistant Director, Horticulture, Seoni on 30/06/2020. The petitioner herein was confronted with a criminal case which was registered under the provision of Prevention of Corruption Act and later on, prosecution ensued in conviction of the petitioner. The judgment of conviction has been assailed by the petitioner by filing an appeal before this Court and this Court has been pleased to suspend the sentence vide order dated 26/05/2020 in Criminal Case No.2549/2020.

4. It is contended by the counsel that only on account of pendency of the Criminal Appeal, the aforesaid retiral dues are not being conferred to the petitioner. It is contended by the counsel that as the sentence has been suspended, the conviction has not attained finality and therefore as an appeal is in continuation of the original proceedings, the respondents are required to disburse the retiral dues of the petitioner. Learned counsel submits that this Court vide order dated 05/07/2022 passed in **WP No.20032/2020 (Kanhaiyalal Damde Vs. State of Madhya Pradesh and Ors.)** while dealing with an identical issue, has directed the respondents therein to pay provisional pension to the petitioner therein from the date of superannuation in terms of Rule 64 of M.P. Civil Services (Pension) Rules, 1976. Therefore, it is contended by the counsel that the petitioner is entitled for the same relief as well. Learned counsel has also placed reliance on the decision of the Apex Court in the case of **Shankar Das Vs. Union of India and Anr.** reported in **1985 AIR 772** and it is contended by the counsel that the powers under Article 311(2) of the Constitution of India are required to be exercised by the

Government fairly, justly and reasonably even where an employee was convicted under the Criminal charge. Learned counsel also placed reliance on the decision of Division Bench of this Court in **WA No.875/2020 (Radha Krishna Sharma Vs. State of M.P. & Ors.)**.

5. It is also contended by the counsel that even an order under Section 9 of M.P. Civil Services (Pension) Rules, 1976 cannot be passed without opportunity of hearing to the employee concerned. It is further contended by the counsel that the Coordinate Bench of this Court vide order dated 05/09/2023 in **WP No.18341/2023 (Badelal Pathak Vs. The State of M.P. and Ors.)** has concluded that the amount of GIS, GPF, Leave Encashment since are personal property of an employee, the same do not stand forfeited on account of conviction of an employee, thus, submits that the said dues directed to be paid to the petitioner.

6. Per contra, learned counsel for the respondent submits that the present petition deserves to be dismissed. It is contended by the counsel that a detailed return has been filed by the respondents and the said return has not been controverted by the petitioner by filing any rejoinder. Learned counsel for the respondents submits that the present petitioner was prosecuted on account of a trap case as the petitioner was found guilty of taking gratification of Rs.1,50,000/-. The petitioner herein was caught red handed and accordingly, a case under the aforesaid provision was registered against the petitioner. The petitioner has been convicted by the Special Judge, PC Act Seoni. The petitioner though has preferred an appeal before this Court against the order of conviction but only sentence has been suspended and not the conviction.

7. It is also contended by the counsel that the petitioner cannot place

reliance on the order passed by this Court in Kanhaiyalal Damde (Supra), as in that case, the employee concerned was placed under suspension on 02/04/2016 and was superannuated on 30/04/2016 but was later on convicted on 31/10/2019. Whereas in the present case the petitioner was suspended in the year 2015 and convicted on 05/03/2020 and the order of superannuation was to be given effect from 30/06/2020, thus, in the case of Kanhaiyalal Damde (Supra), the petitioner was convicted after completing his whole service after 3 1/2 years of his superannuation. Thus the said case is distinguishable on facts. Learned counsel for the respondent has placed reliance on the decision of this Court in **WP No.21859/2023 (Mani Shankar Pyasi Vs. The State of M.P. and Ors.)** dated 29/08/2023 and it is contended by the counsel that on identical set of facts, the petition seeking benefit of provisional pension has already been dismissed, hence, no interference is warranted.

8. Parties have not pressed or argued any other point.

9. Heard rival submissions of the parties and perused the record.

10. In the present case the petitioner herein was working as Assistant Director and while in service as a result of trap case, a criminal case under the provision of Prevention of Corruption Act, was registered against the petitioner. The said case was resulted into a judgment of conviction and sentence dated 05/03/2020 by which the petitioner was sentenced to an imprisonment of 4 years. The judgment of conviction was challenged by filing a Criminal Appeal vide CRA No.2549/2020 before this Court and this Court vide order dated 26/05/2020, suspended the sentence of the petitioner. The effective date of the superannuation of the petitioner was 30/06/2020, therefore, in the present case, during the service tenure, a trap case against the petitioner was registered much before attaining the age of superannuation. The petitioner was convicted vide

judgment dated 05/03/2020, therefore, the reliance on the decision of this Court in the case of Kanhaiyalal (Supra) is misconceived. In the case of Kanhaiyalal (Supra), the employee therein was already superannuated on 30/04/2016. The employee was convicted vide judgment dated 31/10/2019 and the representation of the petitioner therein was decided by the respondents therein on 21/11/2016 and in terms of the said decision dated 21/11/2016, the petitioner therein was found entitled for the benefit of provisional pension. Thus the facts of the present case are clearly distinguishable. Therefore, in the present case the petitioner cannot take recourse to the provisions of Rule 64(1)(b) M.P. Civil Services (Pension) Rules, 1976, as the same pertains to the pendency of judicial proceedings.

11. In the present case, the present petitioner has already been convicted and the conviction of the petitioner has not been stayed, therefore, the petitioner is not entitled for any relief in terms of Rule 64 (1) of M.P. Civil Services (Pension) Rules, 1976. The claim of the petitioner as regards gratuity in the light of the order passed by this Court in **WP NO.18341/2023 (Badelal Pathak Vs. The State of Madhya Pradesh)**, is also misconceived. This Court in the case of Badelal Pathak (Supra) has held that the other amount like GIS, FCF or Leave Encashment, if any are there, the said grievance can be considered by the respondents in accordance with law.

12. Therefore, the present petition stands disposed of with a direction that the claim of the petitioner so far the amount under GIS, FCF and Leave Encashment etc. are concerned, the said claim shall be considered by the respondents by passing a well reasoned and speaking order within a period of 90 days from the date of production of certified copy of this order.

13. The petitioner shall also be at liberty to approach the respondents again if ultimately the petitioner is acquitted by the Appellate Court.

14. Accordingly, the present petition stands disposed of.

**(MANINDER S. BHATTI)**  
**JUDGE**

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