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

**BEFORE
HON'BLE SHRI JUSTICE VINAY SARAF
ON THE 21st OF NOVEMBER, 2023**

WRIT PETITION No. 3936 of 2023

BETWEEN:-

**DINESH CHANDRA SONI S/O SHRI GOKUL PRASAD
SON, AGED ABOUT 72 YEARS, OCCUPATION: RETIRED
FROM WRD BHOPAL R/O 61 A BANJARI HOUSING
SOCIETY KOLLAR ROAD DISTRICT BHOPAL MP
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI OM SHANKAR PANDEY-ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
ADDITIONAL CHIEF SECRETARY WATER
RESOURCES DEPARTMENT VALLABH BHAWAN
DISTRICT BHOPAL M.P. (MADHYA PRADESH)**
- 2. THE UNDER SECRETARY M.P.WATER
RESOURCES DEPARTMENT DISTRICT-BHOPAL
(MADHYA PRADESH)**
- 3. ENGINEER IN CHIEF M.P.WATER RESOURCE
DEPARTMENT JAL SANSADHAN BHAWAN
(MADHYA PRADESH)**
- 4. SUPERINTENT ENGINEER ADMINISTRATION
WATER RESOURCE DEPARTMENT JAL
SANSADHAN BHAWAN (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANAND SHUKLA- PANEL LAWYER)

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

ORDER

With the consent of parties, the matter is heard finally.

2. The grievance of the petitioner is that the respondent has issued an order on 10.01.2023, Annexure P-1 whereby the pension of the petitioner has been estopped permanently upon the allegation that the petitioner has been convicted by the Sessions Court, Bhopal in Sessions Trial No.40036/2012 arising out of Crime No.224/2011 under Sections 420 and 471 of the IPC and sentenced to undergo RI for three years with fine of Rs.1,000/- and sentenced to undergo RI for five years with fine of Rs.2000/- respectively.

3. It is submitted on behalf of the petitioner that before issuance of the impugned order, no opportunity of hearing was provided and no departmental enquiry was conducted on the basis of judgment of conviction and straightway an order has been passed under Rule 9(1) of the M.P. Civil Services (Pension) Rules, 1976 (for short, 'the Pension Rules, 1976'). It is also submitted that the petitioner has been superannuated on 30.11.2011 from the date of post of Assistant Grade I and fully dependent upon the pension. It is further submitted by the petitioner that according to Rule 69(1)(b), the provisional pension ought to have been fixed and the petitioner should be paid provisional pension, gratuity with other benefits as the petitioner has preferred the criminal appeal before the High Court of M.P. wherein vide order dated 18.10.2022, his jail sentence has been suspended. According to the petitioner, the appeal is in continuation of the original proceedings and therefore, it cannot be said that criminal proceedings have attained finality. The petitioner placed heavy reliance upon the judgement passed by the Division Bench in *W.A.No.875/2020* in the matter of *Radha Krishna Sharma Vs. State of M.P. & Ors.* decided on 3.8.2021 whereby the similar issue was under consideration and the Division Bench after considering the provisions of the Pension Rules, 1976 quashed the order of withdrawing of pension.

4. Learned counsel for the petitioner also relied upon the judgment of Apex Court reported in *AIR 1983 SC 1184 (Devki Nandan Prasad Vs. State of Bihar & Ors.)*, the judgment passed in the matter of *State of Jharkhand & Ors. Vs. Jitendra Kumar Shrivastava & Anr. in Civil Appeal No.6776/2013* on 14.8.2013 by the Apex Court, the order passed in *W.P.No.20032/2020 (Kanhaiyalal Damde Vs. State of M.P. & Ors.)* on 5.7.2022 by the coordinate Bench and in *W.P.No.18341/2023 (Badelal Pathak Vs. State of M.P. & Ors)* on 5.9.2023 by the coordinate Bench.

5. *Per contra*, learned Panel Lawyer for the respondent/State submits that petitioner's pension has been estopped by the respondent/authority after considering the matter by the Council of Ministers as the petitioner was found guilty in the criminal trial arising out of cheating and forgery committed by the petitioner while discharging the duties in the respondent's department and the said act of petitioner is directly connected with the duties of the petitioner and therefore, the pension has been rightly withdrawn. It is submitted on behalf of the respondent that Rule 9 of the Pension Rules, 1976 empowers to withhold or withdraw the pension in full or in part and there is no provision to provide any opportunity of hearing before passing the order. Learned Panel Lawyer has supported the impugned order and prays for dismissal of this petition.

6. The core issue is that whether before passing the impugned order any opportunity of hearing ought to have been granted to the petitioner or not. The similar issue was dealt with by the Division Bench in the matter of *Radha Krishna Sharma (Supra)* wherein the Division Bench after considering the judgment of the Hon. Apex Court has held that the principles of natural justice (*audi alterem partem*) are applicable and as the pension is valuable right for a

retired employee, the opportunity of hearing should be granted. The relevant paragraph of the said order reads thus:

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 alteram 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 7 WA.875.2020 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 8 WA.875.2020 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 9 WA.875.2020 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 10 WA.875.2020 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 11 WA.875.2020 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. Ganeswarab (*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 alteram 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.

7. The controversy has already been decided by the Division Bench in the aforesaid judgment and the Apex Court has also held in the matter of ***Jitendra Kumar Shrivastava (supra)*** that the right of the retired employee to receive pension is property and by a mere executive order, the State had no power to withhold the same. The Apex Court in the matter of ***Devki Nandan (supra)*** had held that the right to receive pension was recognized as right of property and respondents by executive order cannot withhold the pension without opportunity of hearing.

8. Similar view was taken by the coordinate Bench in the matter of ***Kanhaiyalal Damde (supra)*** whereby the petitioner was found entitled for grant of provisional pension according to the provisions of Rule 64 of the

Pension Rules, 1976 in the absence of order passed under Rule 8 of the Pension Rules, 1976.

9. In the matter of *Badelal Pathak (supra)*, the coordinate Bench has considered this issue in detail and after considering the relevant provisions, the coordinate Bench affirmed the order of withholding the pension but ordered to pay other amount like GIS, GPF, leave encashment etc. to the petitioner in the absence of any order of forfeiture. The order passed in the matter *Radha Krishna Sharma (supra)* was not brought to the knowledge of the coordinate Bench at the time of passing the said order.

10. After considering the facts and circumstances of the case and the aforesaid judgments as well as the provisions of Pension Rules, it is apparent that the petitioner was superannuated on 30.11.2011 and was getting the full pension. However, the petitioner was convicted by the Sessions Court vide judgment dated 16.9.2022 along with other delinquent employees therefore, the impugned order was passed to withhold the pension permanently. It is not the case of the respondent that before passing the order Annexure P-1, any opportunity of hearing was granted to the petitioner. Thus in view of the law laid down by the Division Bench in the matter of *Radha Krishna Sharma (supra)*, the present petition is allowed and the impugned order of withdrawing the pension of the petitioner permanently in entirety under Rule 9 of the Pension Rules, 1976 dated 10.1.2023 is quashed. However, the liberty is granted to the respondent/competent authority to consider and pass a fresh order after following the due process of law as explained in the case of *Radha Krishna Sharma(supra)*.

11. The petition is accordingly **allowed** without any order as to

costs.

P/-

**(VINAY SARAF)
JUDGE**

