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

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

**ON THE 3<sup>rd</sup> OF JANUARY, 2024**

**WRIT PETITION No. 4279 of 2023**

**BETWEEN:-**

**SMT. ASHA JAIN W/O ABHAY KUMAR JAIN, AGED  
ABOUT 64 YEARS, OCCUPATION: RETIRED FROM WRD  
BHOPAL IH 2 NORTH TT NAGAR DISTRICT BHOPAL  
(MADHYA PRADESH)**

**.....PETITIONER**

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

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
PRINCIPAL ADDITIONAL CHIEF SECRETARY  
WATER RESOURCES DEPARTMENT VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. THE UNDER SECRETARY MP WATER RESOURCES  
DEPARTMENT VALLABH BHAWAN BHOPAL  
(MADHYA PRADESH)**
- 3. THE ENGINEER IN CHIEF OFFICE OF ENGINEER  
IN CHIEF WATER RESOURCES DEPARTMENT JAL  
SANSADHAN BHAWAN BHOPAL 462003 (MADHYA  
PRADESH)**
- 4. SUPERINTENDING ENGINEER ADMINISTRATION  
OFFICE OF ENGINEER IN CHIEF WATER  
RESOURCES DEPARTMENT JAL SANSADHAN  
BHAWAN BHOPAL 462003 (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY MS SHWETA YADAV - GOVERNMENT ADVOCATE)***

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

**ORDER**

Petitioner has filed this petition under Article 226 of the Constitution of India challenging order dated 10.01.2023 contained in Annexure-P/1.

2. By impugned order dated 10.01.2023, Under Secretary Government of Madhya Pradesh, Water Resources Department passed orders to permanently withhold the pension of petitioner as she has been convicted by judgment dated 16.09.2022 for offence under section 420 of the IPC for period of three years by 19th Additional Sessions Judge, Bhopal.

3. Learned counsel appearing for petitioner submitted that impugned order is bad in law as petitioner has preferred criminal appeal before High Court and conviction and sentence is under challenge. Sentence has already been suspended by the High Court and no final judgment has been passed, therefore, petitioner cannot be deprived of her fundamental rights of her livelihood. Opportunity of hearing was not provided to petitioner before passing of impugned order. It is submitted that pension is not a bounty but a right to petitioner, therefore, petitioner cannot be deprived of her pension without giving opportunity of hearing. Reliance is placed by the Division Bench of this Court in case of *Radha Krishna Sharma Vs. State of M.P. and Ors, passed in W.A. No.875 of 2020* on 03.08.2021 by High Court of Madhya Pradesh Bench At Gwalior, wherein it has been held that power vested in governor to partly or permanently withdraw and withhold the pension is to be exercised by literally after giving proper opportunity of hearing to person adversely affected. Partly, fully, temporarily or permanently, withdrawing and withholding the pension has serious adverse civil consequence on a pensioner, therefore, no orders could be passed without giving of opportunity of hearing to the persons affected. Relying upon the aforesaid judgment, counsel appearing for petitioner made a prayer for quashing of impugned order.

4. Learned Government Advocate appearing for respondents/State submitted that petitioner was posted as Assistant Grade-III and has been convicted for offence under Sections 420, 467, 468/34 of the IPC. She committed cheating and forgery by submitting false medical bills which has been reimbursed to her. Full fledged trial was conducted against petitioner and after affording all opportunities of hearing, petitioner was convicted by criminal Court. Since opportunity of hearing has been full filled at the trial stage, therefore, no second opportunity of hearing is required when pension is to be stopped under Rule 9(1)(a) of the Pension Rules, 1976. It is further submitted that authority before passing the order has taking into consideration the entire service records and thereafter, has passed impugned orders. It is further submitted that merely filing of appeal will not stop operation of judgment of conviction unless and until same is stayed by High Court in appeal In these circumstances, no interference is called for and hence, petition be dismissed.

5. Heard the counsel for the parties.

6. Rule 9(1) of M.P. Civil Services Pension Rules, 1976 gives power to Governor of withdrawing or withholding the pension of a retired government servant either permanently or temporarily. Pension can be withhold partly or entirely. Governor is also vested with power for recovery of pecuniary loss caused to the government. Only because government servant has been given full opportunity of hearing in a criminal case will not rule out opportunity of hearing to a government servant on question of stoppage of pension. Government servant is prosecuted for committing offences under Indian Penal Code or under Prevention of Corruption Act in criminal trial. Criminal Court does not have any opportunity to consider the question of stoppage of pension, which is

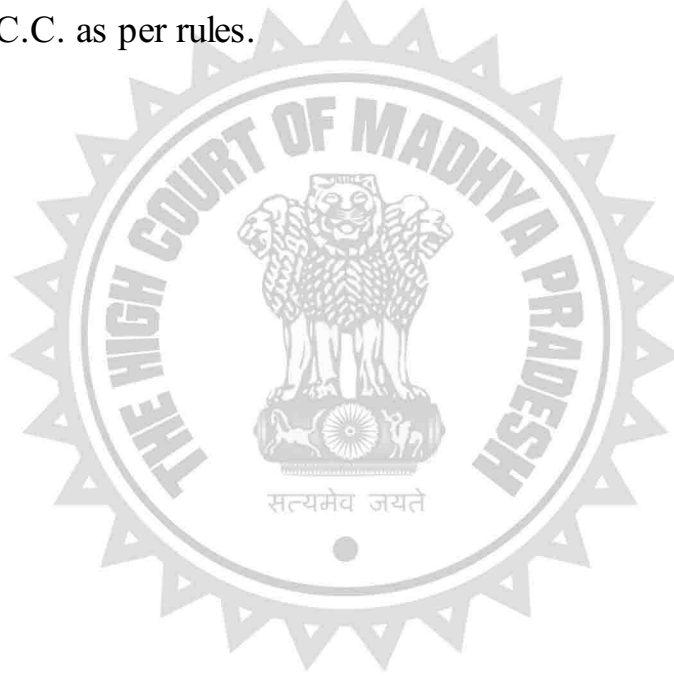
right of a government servant and same was not an issue before the criminal Court. Therefore, it cannot be said that government servant, who is convicted in a criminal trial, cannot be given second opportunity of hearing of stoppage of pension when he has been convicted after affording full opportunity of hearing.

7. In these circumstances, impugned order dated 10.01.2023 is hereby quashed. However, respondents are at liberty to pass a fresh order of withholding or withdrawing the pension permanently or temporarily, partly or fully, after affording an opportunity of hearing to the petitioner.

8. With aforesaid direction, petition is **disposed off**.

9. C.C. as per rules.

pn/vkt



**(VISHAL DHAGAT)**  
**JUDGE**