

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

Indore dated :10.01.2019

Shri L.C. Patne, learned counsel for the petitioner.

Shri Aditya Garg, learned Govt. Advocate for the respondents/State.

Heard learned counsel for the petitioner on the question of admission.

The petitioner has filed the present petition challenging the order dated 6/02/2018, passed by the respondent no.2, whereby rejecting the claim of the petitioner for grant of gratuity and leave encashment.

2. The petitioner, while he was working on the post of Assistant Grade-II in the office of the Sub Divisional Officer (Revenue), Dewas, he was placed under suspension. Thereafter, a regular departmental enquiry under Rule 14 of Madhya Pradesh Civil Service (Classification, Control & Appeal) Rules, 1966(herein after referred to as ... “the Rules of 1966”) was also initiated against him alleging receipt of illegal gratification by him. Thereafter, the matter was referred to the Lokayukt, Ujjain and a criminal case has also been registered against him by the Lokayukt, Ujjain which is still under investigation and no challan has been filed against the petitioner in the competent court of law. As investigation in the aforesaid criminal case is pending, no progress has been made in the departmental enquiry initiated against the petitioner. The petitioner stood retired from the service of respondent no.1 department from the post of Assistant Grade – II w.e.f. 31/07/2017 as is evident from the order dated

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

20/07/2017(Annexure-P/3), passed by the respondent no.2.

3. The petitioner further submits that in terms of the provisions of Rule 9 read with Rule 64 of Madhya Pradesh Civil Service (Pension) Rules, 1976, the petitioner is entitled to be granted provisional pension at the rate of 90% and provisional gratuity at the rate of 50% despite pendency of departmental enquiry against him at the time of his retirement.

4. The petitioner has not been paid any amount towards his retiral dues including GPF, FBF, GIS, Leave encashment, gratuity etc. on account pendency of the departmental enquiry against him, which is in violation of the pension rules as well as the M.P. Civil Service(Leave) Rules and scheme of Grant of FBF and GIS issued by the State Government from time to time. He further submits that the case of the petitioner is squarely covered by the judgment passed by this Court in the case of **Banshilal Shrivastava Vs. The State of M.P. & Ors.**, passed in **W.P. No.917/2011(S)** decided on **7/12/2011**. The petitioner, therefore, submitted a number of representations from time to time after his retirement. However, the said representations were rejected by the respondent no.2 vide order dated 6/02/2018. Being aggrieved by that order, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submits that the order impugned is illegal and arbitrary. He submits that the respondent no.2 has rejected the claim of the petitioner

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

mechanically without assigning any reason. He further submits that as per Rule 64 of Madhya Pradesh Civil Service (Pension) Rules, 1976, the petitioner is entitled to get provisional gratuity at the rate of 50% and other retiral dues as has already been held by this Court in the case of **Banshilal Shrivastava(supra)**. He further submits that there is no statutory provision of law which empowers the respondents to withhold the aforesaid retiral dues payable to the petitioner upon his retirement merely on account of pendency of the departmental enquiry against him. In such circumstances, he submits that the petition deserves to be allowed.

6. The respondents have filed their reply and in the said reply, the respondents have stated that the petitioner has been paid 90% provisional pension vide letter dated 7/11/2017, FBF and GIS vide order dated 7/04/2017 as per pension rules, GPF the recommendation is sent to AGMP Gwalior dated 7/03/2018 and leave encashment vide order dated 18/06/2018. It is further been submitted that the petitioner had retired on attaining the age of superannuation on 31/07/2017 and the payment of the retiral dues was under process and the same is paid except the gratuity amount. The retiral dues has been paid to the petitioner prior to filing of the writ petition. The petitioner was suspended vide order dated 21/07/2016 and this order was never challenged by him before any authority and had attained finality. He was paid the substance allowance @ 75% of salary for one year

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

till retirement. It is further submitted that a criminal case under the provision of Prevention of Corruption Act, 1998 is pending against the petitioner.

7. It is further submitted that as per Rule 64 of the M.P. Civil Services (Pension) Rules, 1996, 90% of the Provisional Pension has already been granted vide order dated 7/11/2017 to the petitioner and as per Rule 64 (i) (c), no gratuity can be paid to the government servant until the conclusion of the departmental and judicial proceedings and issuance of final order. That, as in the present case, a criminal case is pending against the petitioner, therefor, the Collector has rightly rejected his claim vide order dated 6/02/2018.

8. Heard learned counsel for the parties and perused the record.

9. In the present case, the petitioner, while he was working on the post of Assistant Grade-II in the office of the Sub Divisional Officer (Revenue), Dewas, he was placed under suspension. Thereafter, a regular departmental enquiry was initiated against him. On the same charges, a criminal case has also been registered against him by the Lokayukt, Ujjain which is still under investigation. During the pendency of these proceedings, the petitioner stood retired from the service of respondent no.1 department from the post of Assistant Grade – II w.e.f. 31/07/2017 as is evident from the order dated 20/07/2017(Annexure-P/3), passed by the respondent no.2. After his retirement, the petitioner is entitled

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

to get provisional pension @ 90% and provisional gratuity @ 50% despite pendency of departmental enquiry against him at the time of his retirement as per provisions of Rule 9 read with Rule 64 of Madhya Pradesh Civil Service (Pension) Rules, 1976. That, inspite of his retirement, the said amount has not been paid to the petitioner, therefore, the petitioner has submitted the representation which was rejected by the Collector vide order dated 6/02/2018 in the light of the provisions of Rule 64 of the pension rules. Being aggrieved by that order, the petitioner has filed the present petition.

10. The respondents in their reply have stated that the petitioner has granted the benefit of 90% provisional pension on the amount of FBF and GIS and other retiral dues except gratuity.

11. This Court, while considering the provisions of Rule 9 read with Rule 64 of the Madhya Pradesh Civil Service (Pension) Rules, 1976 in Para – 5 and 6 of the judgment of **Banshilal Shrivastava(supra)** has held as under :-

5. Section 64 of M.P. Civil Services (Pension) Rules, 1976 reads as under :-

64. Provisional pension where departmental or judicial proceeding may be pending. - (1) (a) In respect of Government servants refer to in sub-rule (4) of Rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date ,of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.
(b) The provisional pension shall be drawn on

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) Provisional gratuity shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office after adjusting dues mentioned in sub-rule [(2)] of Rule 60, under intimation to Audi Office. Payment of provisional pension/gratuity made under sub-rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension/gratuity finally sanctioned is less than the provisional pension/gratuity or the pension/gratuity is reduced or withheld either permanently or for a specified period.

6. The aforesaid statutory provisions of law empowers the head of the department to authorise provisional pension not exceeding the maximum pension and 50% of the gratuity taking into consideration the gravity of charges levelled against the government servant and in the present case such order has not been passed by the head of the department keeping in view the provisions as contained in rule 9 read with rule 64 of M.P. Civil Services (Pension) Rules, 1976. Resultantly, the head of the department is directed to pass an appropriate order in the matter in respect of provisional pension and gratuity as provided under Rule 64 read with rule 9 of Rules of 1976 within 30 days from the date of receipt of certified copy of this order.

12. The present case is also squarely covered by the judgment passed by this Court in the case of **Banshilal Shrivastava(supra)**.

13. Resultantly, this writ petition is allowed. The impugned order dated 6/02/2018 is, hereby, set aside. The respondents

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.5936/2018

(Ramesh Chandra Chouhan Vs. The State of M.P. & Ors.)

are directed to pay the amount of gratuity as provided under Rule 64 read with Rule 9 of the Madhya Pradesh Civil Service (Pension) Rules. 1976 within 30 days from the date of receipt of certified copy of this order.

**(Ms. Vandana Kasrekar)
Judge**

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