

HIGH COURT OF MADHYA PRADESH JABALPUR

LARGER BENCH

Writ Petition No.16549 of 2016

Lal Sahab Bairagi
S/o. Late Madhavdas Bairagi,
Aged about 74 years, Retired
Chief Municipal Officer,
Majhouli, District Jabalpur,
M.P., R/o. Ward No.7, Sihora,
District Jabalpur, M.P.

...Petitioner

v/s.

1. State of Madhya Pradesh through
Secretary, Nagriya Vikas Avam
Paryavaran Vibhag, Mantralaya,
Vallabh Bhawan, Bhopal, M.P.
2. Deputy Secretary, Nagriya Vikas
Avam Paryavaran Vibhag,
Mantralaya, Vallabh Bhawan,
Bhopal, M.P.
3. Deputy Director,
Nagriya Vikas Avam Paryavaran
Vibhag, Mantralaya, Vallabh
Bhawan, Bhopal, M.P.
4. Chief Executive Officer,
Nagar Palika Parishad, Majhouli,
District Jabalpur, M.P.

..Respondents

Shri Vipin Yadav, Advocate, for the petitioner.

Shri Rajendra Tiwari, Advocate General with Shri Shashank Shekhar, Additional Advocate General for the respondent-State.

Present:

HON'BLE CHIEF JUSTICE S.K. SETH,
HON'BLE SHRI JUSTICE R.S.JHA,
HON'BLE SMT. JUSTICE NANDITA DUBEY,
HON'BLE SHRI JUSTICE RAJEEV KUMAR DUBEY,
HON'BLE SHRI JUSTICE SANJAY DWIVEDI JJ.

O R D E R

(Delivered on 15th May, 2019)

Per Seth C.J.

1. This reference to the Full Bench arises on the following facts.

2. Petitioner was posted as a Chief Municipal Officer, Majholi. He was prosecuted and convicted by the Special Judge (PC Act) for offences punishable under Section 409, 120B of the IPC and Section 13(i)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. The learned trial Judge found him guilty,

therefore convicted and sentenced him to undergo period of sentence awarded. Against the conviction and sentence, petitioner preferred a Criminal Appeal and this Court has suspended the jail sentence awarded to the petitioner. After retirement, by order dated 8.8.2016, State Government forfeited pension of the petitioner.

3. Petitioner challenged the order dated 8.8.2016 in this Court and contended that the said order is unsustainable in law as no opportunity of hearing was afforded to him before passing the order dated 8.8.2016. In support of the contention, reliance was placed on the full Bench decision in the case of **Ram Sewak Mishra Vs. State of Madhya Pradesh** reported in 2017 (4) MPLJ 482 wherein the majority approved the decision of the learned single judge in **Dau Ram Maheshwar Vs. State of Madhya Pradesh** reported in 2017 (1) MPLJ 640.

4. The Division Bench before which the above writ petition came up for hearing, doubted the correctness of the majority view taken in **Ram Sewak Mishra** (supra) and by order dated 26.11.2019 referred the matter for consideration of the larger

Bench. That is how the matter has come up for hearing before us.

5. The following questions have been referred to this Larger Bench:-

"1. Whether in view of the specific exclusion of the procedure for providing hearing incorporated in Rule 8(3) of the Pension Rules of 1976, in respect of the cases falling under Rule 8(2), the same can be insisted upon in the light of the Full Bench decision in the case of **Ram Sewak Mishra** (supra) ?

2. Whether the Full Bench judgment in the case of **Ram Sewak Mishra** (supra) deserves to be re-examined and reconsidered in view of the words "in a case not falling under Sub-rule 2" clearly and specifically incorporated in Rule 8(3) of the Pension Rules of 1976 ?

3. Whether the authority is required to issue a show cause notice prior to passing of an order in terms of Rules 8 and 9 of the Pension Rules of 1976, in cases of withdrawal of pension or part thereof on account of conviction in a criminal case?"

6. It is well settled that payment of pension to a pensioner is regulated by the provisions of M.P. Civil Services (Pension) Rules, 1976, and that the same has been made statutorily subject to future good conduct of the pensioner. The provisions of Rule 8 of the M.P. Civil Services (Pension) Rules, 1976, is reproduced herein below for ready reference :-

"8. Pension subject to future good

conduct. - (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:

Provided that no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the pensioner, to

make an appointment to the post held by him immediately before his retirement from service:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time].

(2) Where a pensioner is convicted of a serious crime by a Court of law, action under clause (b) of sub-rule (1) shall be taken in the light of the judgment of the Court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is *prima facie* guilty of grave misconduct, it shall before passing an order under sub-rule (1) -

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him

and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the Governor, the State Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1); passed by any authority other than the Governor, shall lie to the Governor and the Governor shall in consultation with the State Public Service Commission pass such order on the appeal as he deems fit.

Explanation. - In this rule,-

- (a) the expression "serious crime" includes a crime involving an offence under the Official Secrets Act 1923 (No. 19 of 1923);
- (b) the expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information such as is mentioned in Section 5 of the Official Secrets Act, while holding office under the government so as to prejudicially affect the interests of the general public, or the security of the country.

[Note - The Provisions of this rule shall also be applicable to family pension payable under Rules 47 and 48. The authority competent to make an appointment to the post held by the deceased Government servant/ pensioner immediately before the death or retirement from the service, as the case may be, shall be the competent authority to withhold

or withdraw any part of family pension."

7. From the perusal of Rule 8 as reproduced here in above, it is clear that pension sanctioning authority may by an order in writing withhold or withdraw a pension or part thereof if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. The pension can be withheld or withdrawn permanently or for a specified period. Rule 8(2) deals with cases of pensioner who has been convicted in a Criminal Case while Rule 8(3) deals with cases of pensioner found guilty of grave misconduct.

8. From a perusal of the provisions of Rule 8(3) of the Rules of 1976, it is clear that the said provision prescribes that where an authority considers a pensioner prima facie guilty of grave misconduct, it shall, before passing an order under Sub-rule (1) of Rule 8 of the Rules of 1976, serve upon the pensioner a notice specifying the action proposed to be taken against him; the ground on which the action is proposed to be taken; call upon him to submit a representation within 15 days or any further time that

is extended by the authority, take into consideration the representation filed by the pensioner and thereafter pass an order.

9. It is, however, apparent from a bare perusal of the first few words of Rule 8(3) of the Rules of 1976, that the aforesaid procedure prescribed for passing orders against the pensioner in cases where he is prima facie guilty of grave misconduct, has no applicability to cases falling under Rule 8(2) of the Rules of 1976 which deals with the action to be taken against a pensioner convicted by a Criminal Court. The starting words of Rule 8(3) of the Rules of 1976, "*In a case not falling under sub-rule (2)*", make it abundantly clear and state in no uncertain terms, that the provisions of Rule 8(3) of the Rules of 1976, shall apply only to those cases that do not fall under Sub-rule (2) of Rule 8 of the Rules of 1976.

10. A perusal of Rule 8 of the Rules of 1976, makes it further clear that the category of cases that fall under Rule 8(2) of the Rules of 1976, are those cases in which action has been taken in the light of the judgment of the Court where the pensioner is convicted of a

serious crime by a Court of law and that while taking such action, the elaborate procedure prescribed under Rule 8(3) of the Rules of 1976, would not apply as the same has been expressly excluded by the opening words of Rule 8(3) of the Rules of 1976. Rule 8(2) of the Rules of 1976, does not contemplate giving of an opportunity of hearing when the pension is withheld or withdrawn on account of conviction of a serious crime.

11. The aforesaid aspect and interpretation of the Rules is apparent from a bare perusal and reading of the Rules. The language of Rule 8(3) of the Rules of 1976, is simple, unambiguous and clear and leads to no other interpretation, meaning or conclusion.

12. In view of the clear and unambiguous language of the provisions of Rule 8(3) of the Rules of 1976, which incidentally was neither considered nor brought to the notice of the Full Bench in the case of **Ram Sewak Mishra vs. State of M.P. and another (supra)**, it is held that the principles of natural justice cannot be read into Rule 8(2) of the Rules of 1976, as they are statutorily and expressly excluded by the opening words of Rule 8(3) of the Rules of 1976.

13. The principles of natural justice or holding of an enquiry is neither a universal principle of justice nor inflexible dogma. The principles of natural justice are not incapable of exclusion in a given situation. For example, Article 311(2) of the Constitution, which essentially embodies the concept of natural justice, itself contemplates that there may be situations which warrant or permit the non-applicability of the principles underlying Article 311(2) of the Constitution. Reference may be made to the second proviso to Article 311 of the Constitution. The Supreme Court in **Union of India vs Tulsiram Patel AIR 1985 SC 1416 = (1985)3 SCC 398** had in terms of Art 311 ruled that not only, can the principles of natural justice be modified but in exceptional cases they can even be excluded.

14. The Rule 8(2) enables the authority to exercise power under Rule 8(1)(b) upon conviction of serious crime in the light of the Judgment of the criminal court. While doing so, it must consider whether his conduct which has led to his conviction was such as warrants the withholding/withdrawing of pension. For

that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case. This, however, has to be done by it ex parte and by itself and without hearing the concerned pensioner reason of the exclusionary effect of the starting words of Rule 8(3) upon exercise of powers under Rule 8(2) of the 1976 Rules.

15. In view of the law laid down by the Supreme Court in the case of **Tulsiram** (supra), which is fully applicable to the present case as well, the authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail withdrawal or withholding of pension. This can be done in the light of the judgment of the Court relating to such conviction. No direction for taking action in the judgment of the criminal Court is necessary or required for taking action under Rule 8(2) of the Rules of 1976. This authoritative judgment of the Supreme Court was completely overlooked by the learned Single Bench while deciding **Dau Ram Maheshwar** case (supra) on the basis of decision of Chhatisgarh High Court. The majority view in **Ram Sewak**

Mishra (supra) wrongly did not apply the decision of **Tulsi Ram Patel** (supra) to the Rules of 1976. On the other hand the earlier Full Bench in **Laxmi Narayan Hayaran v. State of M.P.** reported in 2004(4) MPLJ 555 after considering the relevant case law including **Tulsi Ram Patel** (supra), correctly held that no prior hearing is required before passing an order under Rule 8(2) of 1976 Rules consequent upon conviction.

16. The upshot of the whole discussion is that the decision of the Single Bench as well as the Full Bench in **Ram Sewak v. State of M.P.** (supra) does not lay down the correct law, while the earlier Full Bench decision in **Laxmi Narayan Hayaran v. State of M.P.** (supra) lays down the correct law.

17. The answer to the questions referred to this Larger Bench is given accordingly by clearly stating that:-

(i) The principles of natural justice are specifically and expressly excluded and have no application to the cases falling under Rule 8(2) of 1976 Rules in view of the opening words of Rule 8(3) of the Rules of 1976, therefore, when an action is taken against the

pensioner under Rule 8(2) of the Rules of 1976, no notice is required to be issued to the pensioner nor can he insists upon prior opportunity of representation on the strength of the principles of Natural Justice.

(ii) The decision of the Full Bench in the case of **Ram Sewak Mishra** (supra) and the decision in the case of **Dau Ram Maheshwar** (supra) are hereby overruled.

(iii) It is held that the authority is not required to issue notice or afford prior opportunity of representation before passing the order under Rule 8(2) of the Pension Rules of 1976, in respect of a pensioner who has been convicted in the criminal cases. However, the power of the authority to take action under the Rules would be subject to the guidelines as stated by the Supreme Court in the case of **Tulsiram Patel** (supra) and reiterated by this Bench in the preceding paragraphs of this judgment.

18. The Reference made to the Larger Bench is answered accordingly. The petition may now be placed before the appropriate Bench

as per Rules and Roster, for further orders.

(S.K.Seth)
Chief Justice

(R.S.Jha)
Judge

(Smt. Nandita Dubey)
Judge

(Rajeev Kumar Dubey)
Judge

(Sanjay Dwivedi)
Judge

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