IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT APPEAL No. 752 of 2020

GANESH RAM KAHAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Pramod Singh Tomar - Advocate for the appellant.

Shri Abhijeet Awasthi - Deputy Advocate General for the respondent - State.

JUDGEMENT

(Reserved on : 14.02.2025)

(Pronounced on : 28.02.2025)

Per*: *Hon'ble Shri Justice Vivek Jain, Judge

The present appeal has been filed being aggrieved by the order dated 01.05.2020 passed by learned Single Judge in W.P. No.11361/2016, whereby petition has been rejected.

2. Learned counsel for the appellant submits that the matter relates to pension and the case of the appellant before the learned Single Judge was that he was appointed as Peon in Janpad Sabha, Sohagpur, District Hoshangabad on 07.02.1968 and was confirmed on the post on 03.07.1971. Later on, along with the staff of Janpad Sabha, he was taken over by Janpad Panchayat, Pipariya, District Hoshangabad on 07.02.1972 and thereafter, he retired from service in

September, 2008. However, pension was not paid to him and therefore, he earlier filed a writ petition before this Court being W.P. No.4579/2009, which was disposed of with direction to decide his representation. Thereafter, the respondents allowed the pension to be paid to the petitioner, but abruptly the payment of pension has been stopped in the year 2015, which led to filing of the writ petition before the Single Bench.

3. It is contended that the payment of pension has been stopped from September, 2015 after having been paid pension for almost 8 years. It is the case of the appellant that stoppage of payment of pension amounts to penalty and such stoppage can only be made in accordance with Rule 8 and 9 of M.P. Civil Services Pension Rules and not otherwise and for which sanction of the governor is required preceded by departmental enquiry or on occurrence of contingencies as mentioned in Rule 8 and Rule 9 of Pension Rules, 1976.

4. The case has been defended by the respondents before the learned Single Judge on the averment that the petitioner was not an employee of erstwhile Janpad Sabha and his name does not find place in the list of employees taken over from erstwhile Janpad Sabha vide order dated 08.12.1972 and therefore, he is only entitled to benefit of Contributory Provident Fund Scheme as applicable to employees of Janpad Panchayat, because pension scheme is not applicable to Janpad Panchayat employees and they are covered by Contributory Provident Fund Scheme. The petitioner/appellant has already received the full payment under Contributory

Provident Fund Scheme to the tune of Rs.1,40,993/- and now nothing more remains to be paid to the petitioner/appellant as he is not entitled to pension.

5. Learned counsel for the appellant has pressed the contensions made before the learned Single Judge, while pressing his case in appeal before us. It is contended that in the service book, there is entry to the effect that the writ petitioner/appellant was taken over from erstwhile Janpad Sabha and he was absorbed in Janpad Panchayat. Therefore, the order of the writ Court is criticized stating that the appellant is entitled for pension. It is further contended that the appellant is suffering from various illnesses and he is in dire need of money. Various averments have been made and reliance on various judgments have been made that for stoppage of pension under Rules 8 and 9 of M.P. Civil Services Pension Rules, there should be sanction of the competent authority i.e. is the Governor either by the Governor himself or by the competent authority exercising executive powers of State Government in place of Governor.

6. *Per contra,* reiterating the submissions made before the learned Single Judge, it was argued by the respondents that the copy of service book placed on record is suspicious, which has already been held so by learned Single Judge. It is further argued that the pension was erroneously paid to the petitioner under mistaken interpretation of order passed by this Court in W.P. No.4579/2009, which only directed his representation to be considered, but on the contrary the authority misconstrued the order to be a mandatory order for payment of pension. Therefore, since the stoppage of pension is not by way of penalty and is not an order or action in terms of Rules 8 and 9 of M.P. Civil Services Pension Rules, 1976, therefore, no interference is warranted. The appellant cannot seek continuation of wrongful benefits conferred on him. It is also argued that the State has not recovered the amount erroneously paid to the petitioner/appellant by way of pension for 8 long years and apart from that indulgence already extended to him, no further equity can be claimed by the petitioner/appellant.

7. We have heard learned counsel for the parties at length.

8. The sheet anchor of the argument of the petitioner staking his claim to pension is that he is taken over employee of erstwhile Janpad Sabha, Sohagpur, District Hoshangabad (now Narmadapuram). It is not in dispute that the three tier Panchayats in the State are now governed by M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam 1993, prior to which there were corresponding enactment of the years 1962, 1981 and 1990. The first enactment was of the year 1962, which was known as M.P. Panchayats Act, 1962. As per the Section 147 of the M.P. Panchayats Act, 1962, the following provision was there in respect of provident fund and pension:-

> ***"147. Establishment of Provident Fund.—***
>
> *A Janpad Panchayat may in accordance with the rules made under this Act:*
>
> *(a) establish and maintain a Provident Fund on behalf of its officers and servants;*

(b) grant gratuity to any officer or servant subject to the previous approval of the prescribed authority; and

(c) grant pension to any officer or servant subject to the previous approval of the State Government."

9. It is evident that there was a provision to maintain a provident fund for which no sanction of the State was required, and to grant pension to the officers and servants of the Janpad Panchayat, for which sanction of the State Government was required. Undisputedly, the employees of Janpad Panchayat were covered under Contributory Provident Fund because no pension scheme for Janpad Panchayat employees was ever sanctioned or approved by the State Government.

10. As per Section 386 of the M.P. Panchayats Act of 1962, the following provision was made:-

*"386**. Savings as to existing permanent employees.-***

(1) Notwithstanding anything contained in this Act or any rule or bye-law made thereunder, the pay and allowances, pension and retirement benefits of all permanent officers and servants or other employees of (the Mandal Panchayat or as the case may be, the Janpad Sabha, Kendra Panchayat or Tehsil Panchayat, on the date of the Constitution of the first Zila Panchayat or, as the case may be, the first Janpad Panchayat or the Janpad Panchayat under this Act for the respective area) shall be existing pay and allowances, pension and retirement benefits.

(2) All or any of the permanent officers, servants or other employees serving under (Janpad Sabha, Kendra Panchayat or Tehsil Panchayat, as the case may be, immediately before the date of the constitution of the Janpad Panchayat or Janpad Panchayats under this Act for the respective area) may, notwithstanding anything in the terms of their appointment or their conditions of service, be required to serve in or in connection with the affairs of any Janpad Panchayat or if

suitable arrangements cannot be made for their absorption in the same Tehsil, in other Tehsils.

(3) Notwithstanding anything in sub-section (1) or (2) it shall be competent to the Collector subject to the previous sanction of the State Government to discontinue services of any officer or servant of (Mandal Panchayat, Janpad Sabha, Kendra Panchayat or Tehsil Panchayat) who in his opinion cannot be suitably absorbed in any other local body or who is not necessary or suitable to the requirement of the Zila Panchayat or the Janpad Panchayat, as the case may be, after giving such officer or servant such notice as is required to be given by the terms of his employment and every officer or servant whose services are discontinued, shall be entitled to such leave, pension, provident fund and gratuity as he would have been entitled to take or receive on being invalidated out of service as if the (Mandal Panchayat, Janpad Sabha, Kendra Panchayat or the Tehsil Panchayat) in the employment of which he was, had not ceased to exist."

11. From the above Section 386, it is clear that there is saving as to existing permanent employees that those employees, who are now being covered under M.P. Panchayats Act of 1962 and were earlier employees of Mandal Panchayat, Janpad Sabha, Kendra Panchayat or Tahsil Panchayat, etc. would continue to be paid pension, provident fund and gratuity as they were entitled with their erstwhile employer. The Janpad Sabha was not a local authority and was run by the State Government and therefore, the employees of Janpad Sabha, which were absorbed in Panchayats after 1962 were undisputedly entitled to pension as allowed to State Government employees under the Pension Rules applicable to State Government Employees. Therefore, the dispute has arisen in this case whether the petitioner is a taken over employee of erstwhile Janpad Sabha or not ? This is because undisputedly if the petitioner was not a taken over employee, then he would only be covered under the Contributory Provident Fund Scheme of Janpad Panchayat and if he is a taken over employee, then he would be entitled to pension because it is not in dispute that employees of Janpad Sabhas were entitled to pension and their pension rights would be protected upon absorption in Janpad Panchayats.

12. The saving provisions like Section 386 of the M.P. Panchayats Act of 1962 have been continued in the Succeeding Act also and in the now applicable M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam 1993, the corresponding provision is Section 131.

13. Therefore, now the question arises that whether the petitioner is a taken over employee of Janpad Sabha or not. Counsel for the petitioner has vehemently relied on copy of service book, which has been filed along with I.A. No.7942/2020 and has relied on entry therein stated to be made by Sub Divisional Officer, Janpad Sabha, Sohagpur and stated that in compliance of order No.3748 dated 08.12.1972 issued by the Collector, District Hoshangabad he is absorbed in Janpad Panchayat, Pipariya. The seal under this entry is of Sub Divisional Officer, Janpad Sabha, Sohagpur, but there is another seal beneath the signature, which is of Chief Executive Officer, Janpad Panchayat, Sohagpur and the signatures on the said other seal are of the year 1990. There are no signatures of Sub Divisional Officer of Janpad Sabha on the seal so affixed at page 4 of the service book as filed with I.A. No.7942/2020. There is another entry at page 5 of the service book mentioning that he is absorbed in

Janpad Panchayat, Pipariya under order of Collector, Hoshangabad vide order No.3748 dated 08.12.1972 and beneath this note there is seal of Sub Divisional Officer, Janpad Sabha Sohagpur, but no signatures are there.

14. The petitioner had filed copy of service book with the rejoinder to writ petition also and there is marked difference in the entries in the service book as attached to the writ petition as Annexure RJ-1 to the rejoinder filed in writ petition and that appearing at page 6 of the service book as filed in the writ appeal along with I.A. No.7942/2020. The petitioner is stated to be 81 years of age and therefore, we do not dilate further on the matter. The learned Single Judge has held that the entries seem to be suspicious and looking to the facts narrated above, we do not find any error in the said finding of the learned Single Judge, because the entries are indeed suspicious and no signatures of Sub Divisional Officer of Janpad Sabha are appearing above seal of said authority.

15. The above suspicious entries as appearing in the service book mention that the petitioner has been taken over vide order No.3748 dated 08.12.1972 issued by the Collector. The said order is duly available on record and it was filed with the reply of the respondents before the learned Single Judge as Annexure R-1. In the said order, the names of various employees are mentioned, which have been taken over from various Janpad Sabhas and in various Janpad Panchayats of the District. However, the name of the petitioner is not available in this order. The suspicious entries in service book only state that in terms of this specific order of Collector, the petitioner has been absorbed. The said order of the Collector available on record, does not mention the name of petitioner and therefore, no further proof is required to conclude that the entries are not only suspicious, but also fictitious.

16. So far as the reliance on Rules 8 and 9 of the M.P. Civil Services Pension Rules, 1976 is made, the said Rules are as under:-

> ***"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] [Substituted by Notification No. B-25-9-96-PWC-IV, dated 18-6-1996 (w.e.t. 1-1-1986).].*
>
> *(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 judgement 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 pass word 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 [Inserted by Notification No. FB-6-2(a)-80-R-II-IV, dated 1-1-1981.] - 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.]

9. Right of Governor to withhold or withdraw pension.

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed :

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] [Substituted by Notification No. B-25-9-96-PWC-IV, dated 18-6-1996 (w.e.f. 1-1-1986).];

(2) (a) The departmental proceedings [xxx] [Omitted by Notification No. FB-25-31-95-PWC-IV, dated 22-12-1995 (w.e.f. 26-1-1996).], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment :-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) [shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings : [Substituted by Notification No. FB-6-3-78-N-II-IV, dated 10-11-1978 (w.e.f. 10-11-1978).]

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceeding, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64] [Substituted by Notification No. B-6-1-77-PWC-IV, dated 26-8-1996 (w.e.f. 1-2-1977).], as the case may be, shall be sanctioned :
[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] [Inserted by Notification No. FB-6-3-78-N-II-IV dated 10-11-1978 (w.e.f. 10-11-1978)] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount, of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii)in the case of civil proceedings, on the date the plaint is presented in the Court."

17. The said rules relate to stoppage of pension on occurrence of certain contingencies like conviction of the pensioner for a criminal offence or he being found guilty in a departmental enquiry, etc. The stoppage of pension in the present case is not on account of such contingencies, but is on account of erroneous grant of pension. An error which is made can always be corrected. The petitioner cannot seek any estoppel in the matter of entitlement to pension, because he is unable to show that he was taken over from the erstwhile Janpad Sabha. Thus, he has failed to establish any legal right to receive the pension. However, looking to age of the appellant, we make it clear that pension already paid to the appellant shall not be recovered.

18. In the result, we find no error in the impugned order passed by learned Single Judge, the appeal sans merits stands **dismissed**.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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