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WP-9268-2014

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 4th OF FEBRUARY, 2025WRIT PETITION No. 9268 of 2014*NAUSAD QURESHI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Abhinav Dhanodkar - Advocate for the petitioner.

Shri Sudeep Bhargava - Dy. A.G. for respondents/State.

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ORDER

1. Petitioner has filed this present petition being aggrieved by the order dated 27.11.2014, whereby the DIG, Nimar Range, Khargone has dismissed the petitioner from service under Rule 9(2) of the M.P. Civil Services (Pension), Rules, 1976.

2. Facts of the case, in short, are as under:-

Vide order dated 6.10.2012 the petitioner was placed under suspension by Superintendent of Police, Khargone on account of his involvement in the Criminal Case No.133/2013 registered under Section 364-A of IPC at P.S. Dahod. Thereafter, the charge sheet was served upon the petitioner and enquiry officer was appointed to conduct an enquiry. The charges against the petitioner are as under:-

"(1) अपचारी उप निरीक्षक एन.एम. कुरेशी द्वारा दिनांक 5.10.12 को माननीय जे.एम.एफ.सी न्यायालय इंदौर के प्रकरण क्र 299/01 धारा 457, 380 भादवि में पेशी हेतु बिना वरिष्ठ अधिकारी से अनुमति प्राप्त किये एवं बिना सूचना दिये मेनमर्जी से रोजनामचे में खानगी डालकर



रवाना होकर और माननीय न्यायालय के समक्ष पेशी हेतु उपस्थित नहीं होकर माननीय न्यायालय के आदेश की अवहेलना कर कर्तव्य निर्वहन के प्रति लापरवाही एवं अनुशासनहीनता का प्रदर्शन कर पुलिस रेगूलेशन के पैरा 64(2) (3) (4) का उल्लंघन करना।

(2) अपचारी उप नि द्वारा दिनांक 5.10.12 को बिना वरिष्ठ अधिकारी से अनुमति प्राप्त कर मनमर्जी से जिला झाबुआ जाकर अनुशासनहीनता करना एवं संदिग्ध आचरण का प्रदर्शन करना।

(3) अपचारी उप नि को दिनांक 6.10.12 को निलंबित कर पुलिस लाइन खरगोन आमद देने का आदेश दिनांक 7.10.12 को तामिल हो जाने के बाद भी पुलिस लाइन खरगोन में आमद नहीं देकर आदेश की अवहेलना कर अनुशासनहीनता कर पुलिस रेगूलेशन के पैरा 64(4) का उल्लंघन करना।

(4) अपचार उप नि द्वारा दिनांक 5.10.12 को रवानगी डालकर गैर हाजिर होने के बाद बिमारी संबंधी रेस्ट के मेडीकल प्रमाण कर प्रस्तुत करना किन्तु रेस्ट की अवधि में अपने निवास पर तलाश की गई अवधि में उपस्थित नहीं रहकर वरिष्ठ अधिकारी को बिमारी संबंधी असत्य जानकारी देकर संदिग्ध आचरण का एवं अनुशासनहीनता का प्रदर्शन करना। इस प्रकार पुलिस रेगूलेशन के पैरा 64(4) का एवं म.प्र.सिविल सेवा (आचरण) नियम 1965 के नियम 3(1) के (एक)(दो) का उल्लंघन करना।"

The petitioner submitted a reply to the charge sheet denying the charges. Thereafter the Additional S.P., Khargone was appointed as enquiry officer and Inspector, Police Line, Khargone was appointed as Presenting Officer vide order dated 16.5.2013. During pendency of the enquiry, the petitioner attained the age of superannuation on 31.3.2014. In anticipation of retirement on 31.3.2014 his suspension order was revoked vide order dated 27.3.2014. After retirement the enquiry continued and the enquiry officer submitted enquiry report. Copy of the enquiry report was communicated to the petitioner vide letter dated 19.6.2014. The enquiry officer has found all the four charges proved against the petitioner. Petitioner submitted a reply to the enquiry report and thereafter vide final order dated 27.11.2014 the petitioner has been dismissed from service under Rule 9(2) of the M.P. Civil Services (Pension), Rules, 1976. Hence this petition before this Court.

3. Petitioner is assailing the impugned order inter-alia on the ground



that after retirement even if the departmental proceedings continues but under Rule 9(2)(a) of the M.P. Civil Services (Pension), Rules, 1976 the enquiry report is liable to be sent to the Governor with its finding and under Rule 9(1) the Governor is the competent authority to pass an order in respect of withholding or withdrawing the pension or part thereof. Therefore, after retirement neither petitioner can be terminated by the respondent-department, nor any pension can be withheld. After retirement the Governor is the competent authority only in respect of passing an order for withholding or withdrawing pension. In support of his contention, Shri Abhinav Dhanodkar, learned counsel has placed reliance on the judgment passed by this Court in *WP No.12216/2004 (A.A. Abraham Vs. State of M.P.)*. He has also placed reliance upon the judgment passed by the Apex Court in the case of *UCO Bank Vs. Rajinder Lal reported in AIR 2007 SC 2129*, wherein it has been held that an order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf.

4. After notice, the respondents have filed reply by submitting that the provision of Rule 9(2) of the M.P. Civil Services (Pension), Rules, 1976 would not apply to the petitioner as he has retired from service. In reply respondent has not stated under which provision the order of dismissal could have been passed.

5. The petitioner filed a rejoinder to the reply by submitting that a criminal case was registered against the petitioner and he was facing trial in



the Court of Addl. Sessions Judge, Dahod in Criminal Case No.181/2013, in which he has been acquitted vide judgment dated 25.5.2015. Hindi translated copy of the judgment has been filed along with the rejoinder. After acquittal the petitioner submitted an application for payment of pension but the same has not been considered.

6. I have heard learned counsel for the parties and perused the record.

7. Rule 9(1) & 9(2) of the M.P. Civil Services (Pension), Rules, 1976 are reproduced below:-

"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];

(2) (a) The departmental proceedings [xxx], 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 :

(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]."

8. Rule 9(1) says that the Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and also ordering recovery from pension if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Therefore, in view of Rule 9(1) if any government employee has been found guilty in a judicial proceeding and any departmental proceeding of a grave misconduct or negligence, the only punishment which can be imposed by the Governor is withholding or withdrawing the pension or part thereof, permanently or for a specified period. Therefore, there is no provision of imposition of punishment of dismissal from service even by the Governor.

9. So far as Rule 9(2)(a) is concerned, that only gives right to the disciplinary authority to continue with the departmental proceedings, if instituted while the government servant was in service and after final retirement of the government servant, the enquiry shall be deemed to be a proceedings under this rule and shall continue and concluded by the authority, by which they were commenced, in the same manner as if the



Government servant had continued in service. As per the proviso, 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. Therefore, after conclusion of the enquiry, the authority ought to have sent this report to the Governor for passing appropriate order under Rule 9(1), instead of passing any order of punishment.

10. Therefore, in view of the above, order of dismissal from service is unsustainable and is hereby set aside.

11. As per Rule 9(2) of the M.P. Civil Services (Pension), Rules, 1976 the authority who initiated the enquiry, is directed to send this enquiry report to the Governor for passing an appropriate order.

12. Accordingly, the writ petition stands disposed of.

(VIVEK RUSIA)
JUDGE