
(2013) 08 MP CK 0378

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4157 of 2013 (s)

Devendra Kumar Kamthan

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 08 MP CK 0378

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Alok Sharma, for the Appellant; Praveen Newaskar, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—In this writ petition filed under Article 226 of the Constitution the petitioner has prayed for a declaration that Annexure P/1 is illegal and therefore, the same be set aside. A mandamus is prayed for against the respondent No. 3 to release the amount of gratuity which is deposited in the savings account of the petitioner with market interest. The grievance of the petitioner is that he retired on attaining the age of superannuation on 31.03.2013. The competent authority released 90% provisional pension and gratuity to the petitioner. The said amount has been transferred by the District Treasury, Morena to savings account of the petitioner in the bank. The grievance of the petitioner is that after releasing the amount it was not permissible on the part of the department to instruct the bank not to release the said amount. Learned counsel for the petitioner submits that once amount is released, the respondents have no authority for directing stoppage of payment of said amount. It is contended that till date of retirement the charge sheet was not served on the petitioner. The charge sheet is served after two days of his handing over the charge and retirement from service.

2. Per Contra, Shri Newaskar relied on the relevant rules and submits that gratuity cannot be released. He submits that on the date of retirement the

charge sheet was already issued. Madhya Pradesh Civil Services (Classification Control and Appeal) Rules, 1966 deals with issuance of charge sheet and relevant date is the date on which charge sheet is issued. Since charge sheet is issued when the petitioner was in employment, it is immaterial whether it is served on the petitioner after two days. It is further contended in para 5.7 of the reply that the department reached to the conclusion that petitioner is not entitled to receive gratuity by virtue of Rule 64 of Madhya Pradesh Civil Services (Pension) Rules, 1976.

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

4. Rule 64 of the Pension Rules was amended by the notification dated 12th December, 1990. During the course of argument, learned counsel for the petitioner fairly produced this notification. Rule 64(C) reads as under:-

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under Rule 16 of the Madhya Pradesh Civil Services (Classification Control and Appeal) Rules, 1966, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 10 of the said rules, the payment of provisional gratuity to the extent of 90% of the gratuities admissible under the rules shall also be authorised to be paid to the Government servant.

5. In the present case charge sheet dated 30.03.2013 issued against the petitioner is a charge sheet issued under Rule 14 of MPCs (CCA) Rules. Thus, the disciplinary proceedings are initiated for imposition of major penalty. Thus, there is a bar in the Rule aforesaid for payment of gratuity until conclusion of the departmental proceedings. Thus, I find no illegality in the action of the respondents in withholding the gratuity by issuing appropriate instructions to the bank. There is no estoppel against law. Thus even if amount was earlier released by the Treasury and it is withheld before realization, petitioner cannot plead any estoppel. The action of the department is strictly inconsonance with Rule 64(1) (c) aforesaid. Thus, no fault can be found in the said action. By the impugned order Annexure P/1 the respondents have only directed the bank not to release the amount of gratuity. There is no illegality in the order. I find no reason to entertain this petition. Petition is meritless and is hereby dismissed.