(2018) 07 MP CK 0146

In the Madhya Pradesh High Court

Case No : Writ Petition No.5219 Of 2015

Kishore Saran Patwa APPELLANT

Vs

State Of Madhya Pradesh & Others RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Constitution of India, 1950 — Article 300A
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Section 9, 9(1), 9(2), 9(3), 9(4), 9(5), 9(6)
All India Services (Discipline & Appeal) Rules, 1955 — Rule 4

Citation : (2018) 07 MP CK 0146

Hon'ble Judges : Vivek Agarwal, J

Bench : Single Bench

Advocate : Jitendra Sharma, Abhishek Mishra

Final Decision : Dismissed

Judgement

Petitioner has filed this petition being aggrieved by order dated 20th April, 2015 whereby exercising authority under the provisions of Rule 9(1) of the

M.P. Civil Services (Pension) Rules, 1976 State Government has decided to withdraw 50% of pension payable to the petitioner who was working as

District Registrar, Stamps and Registration, Distt. Bhind, for a period of five years after taking concurrence of the M.P. Public Service Commission

on such proposal.

It is petitioner's contention that it is apparent from the enquiry report that the main delinquent person is not the petitioner but his Reader Amitabh

Sharma. A finding has been recorded to this effect thatÂ Amitabh Sharma was guilty of causing such loss to the exchequer and also it is pointed out

that in the enquiry report itself it is mentioned that it is not a case of embezzlement but only a case of loss of revenue to the tune of Rs.7,24,057/-

which was subject matter of enquiry between the years 2004 to 2009.

Learned counsel for the petitioner submits that since it is not a case of embezzlement and petitioner was not responsible for such loss of revenue but it

wasÂ Amitabh Sharma who was working as Reader to the petitioner, no such order of punishment could have been passed against the petitioner,

nonetheless it is too harsh for the petitioner when he is already retired from service and is leading a retired life.

It is also submitted that authorities before passing order, Annexure P/1, has failed to take into consideration the reply to the show-cause notice which

was furnished by the petitioner vide Annexure P/6 to the State Government upon receiving copy of the enquiry report and since that reply has not

been considered by the authorities, the impugned order deserves to be set aside. It is also submitted that petitioner has already superannuated on

31.7.2012 upon attaining the age of superannuation, and therefore, the order passed against him after almost three years is too harsh and unreasonable

for a pensioner like petitioner.

Learned counsel for the petitioner has placed reliance on the judgments of the Supreme Court in the grounds of the petition though has not furnished

any copy of the citation, viz. (i) Union of India and others v. J.Ahmed, (1979) 2 SCC 286, (ii) Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and

others, (2007) 4 SCC 566 (iii) State of Jharkhand and others v. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210 to impress that there is no

misconduct on the part of the petitioner and pension is not a bounty but property, therefore, cannot be withdrawn without following due process of law.

Learned counsel for the State on the other hand submits that it was a case of causing loss to the exchequer and was in the garb of embezzlement,

therefore, FIR was lodged on 30.12.12. Prior to superannuation of the petitioner charge-sheet was issued to the petitioner on 25.10.10 and thereafter

on 16.3.2011 enquiry officer and presenting officer were appointed. Such enquiry report was produced before the Inspector General of Stamps and

Registration on 27.4.13 and out of the four charges levied against the petitioner, first two charges were found to be proved and third and fourth

charges were not found to be proved against the petitioner.Â It is submitted that on the basis of proved charges of causing loss to the public

exchequer to the tune of Rs.7,24,057/-, penalty of recovery has been issued, that too for a limited period of five years, and therefore, petitioner should

be grateful to the State that they have not withheld complete pension which they are authorized under the garb of Rule 9 of the M.P. Civil Services

(Pension) Rules, 1976.

It is also submitted by the learned Govt. Advocate that in the FIR petitioner is also a party alongwith Amitabh Sharma and thereafter a report of S.P.

was obtained as is contained in Annexure R/2 in which loss to the exchequer/ embezzlement was writ large and thereafter Joint Director, Treasury

and Accounts submitted his report on 25.3.2010 and categorically pointed out that from 1.9.2004 till the date of communication i.e. 25.3.2010 when

petitioner was working as District Registrar, Distt. Bhind, there was huge embezzlement and loss to the revenue.

It is also submitted by learned Govt. Advocate that as per the provisions contained in Rule 9 of the M.P. Civil Services (Pension) Rules, 1976 the

Governor reserves a right to himself 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. In the present case, petitioner was found guilty of grave misconduct of not being able to supervise functioning of his Reader in his capacity

as District Registrar causing huge loss to the exchequer. It is also submitted that reply of the petitioner has been considered by the authorities while

passing order, Annexure P/1, as can be seen from para 4 of the impugned order. Thus, plea of the petitioner that his reply was not considered is not

genuine.

After going through the material available on record, namely charge-sheet, petitioner's reply and enquiry report, so also representation made by the

petitioner against the enquiry report, it is apparent that enquiry officer has found charges No.1 and 2Â to be proved. Charges No.1 has direct

ramification to the fact that because of lack of supervision and negligence of the petitioner there was a loss to the public exchequer to the tune of

Rs.7,24,057/-. In view of such facts, petitioner has not been able to justify as to why he could not have checked files of his Reader or could have made a sample check so to avoid such casual atmosphere leading to the loss to the exchequer. There is no explanation to show that petitioner has

carried out any close supervision so to supervise the working of his subordinates. It is an admitted fact that District Registrar is the highest functionary

of Stamps and Registration Department in a district which is a sensitive wing of revenue for the State and if such officer fails to supervise and give

direction to his subordinates to work in accordance with the laws and such dereliction of duties caused some loss, then such negligence despite the

fact that there is no finding of embezzlement, will be covered under the provisions contained in Rule 9(1) which provides for punishment not only

being, â??guilty of grave misconduct but of negligence during the period of his serviceâ?, which could not have been rebutted by the petitioner.

Respondents have filed copy of preliminary enquiry report in which it has come on record that fabricated Challans were deposited causing loss to the

public exchequer. The exact language used is :-

Ã?ftyk iath;d dk;kZy; ds }kjk ;fn rkSth i=d la?kkfjr dj lR;kiu djk;s tkrs rks dk;kZy; esa QthZ pkyku tek dj 'kklu dks gkfu igqpkusa dh ?kVuk ?kfVr u

gksrhA --- ds laca/k esa ftyk iath;d }kjk fyf[kr esa izfrosnu izLrqr fd;k x;k gS fd iwoZ esa ;g izfd;k ugha viukbZ xbZ gS fdarq orZeku esa pkykuksa

dk lR;kiu dks""kky; ls djk;k tk jgk gS o Hkfo""; esa rkSth i=d rS;kj djkdj dks""kky; ls lR;kfir djk;k tkosxk fdarq mDr mRrj larks""kizn u gksus ls ekU; fd;k

tkus ;ksX; ugha gS rFkk foospuk vof/k esa lqfu;ksftr rjhds ls fu/kkZfjr izfdz;k dk ikyu u dj rRle; inLFk jhMjksa o ftyk iath;dksa }kjk feyhHkxr dj izkfIr

pkykuksa ij QthZ lR;kiu izfof""V vafdr dh xbZ gS ftlls 'kklu jktLo dh {kfr gqbZ gSA

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fu""d""kZ bl izdkj pkykuksa ds lR;kiu esa ik;k x;k fd dks""kky;hu izfdz;k ds izfrdwy lacaf/kr lwph esa vafdr fgrxzkfg;ksa }kjk QthZ pkyku tek djus ds

lkFk&lkFk 'kk[kk esa le; le; ij inLFk jgs jhMjksa Â¼fyidksaÂ½ }kjk pkykuksa dk dks""kky; ls lR;kiu u djkus o dqN pkykuksa dk QthZ lR;kiu dj ftyk

iath;dksa }kjk mudk voyksdu dj izfrgLrk{kj fd;s x;s gSA ftlls Li""V gS fd jhMjksa o ftyk iath;dksa dh feyhHkxr --- pkykuksa ds QthZ lR;kiu ds dkj.k e-

izdks""kky; lafgrk Hkkx 1 ds lgk;d fu;e 53Â¼5Â½ ds varxrZ vkgj.k laforj.k vf/kdkjh ds :i esa ftyk iath;d }kjk vi inh;a nkf;Roksa dk fuoZgu u fd;k tkus

ds QyLo:i 'kklu dks tkap vof/k o 2004&2009 esa miyC/k djk;s vfHkys[kksa ds vk/kkj ij :- 7-24 yk[k Â¼lkr yk[k pkSchl gtkjÂ½ dh {kfr igqWpkuk laHko gks ldk gSAÃ?

This Court is of the opinion that departmental enquiry was initiated when the petitioner was in service. Report was submitted shortly after retirement

of the petitioner and thereafter on completion of the requirements of law of furnishing a copy of the enqiury report to the petitioner and soliciting his

reply as laid down by the Honble SupremeÂ Court in the case of Union of India vs.Mohd. Ramzan Khan, AIR 1991 SC 471 a decision has been

taken on the findings recorded in the departmental enquiry. Thus procedure has been followed by the respondents/authorities, and therefore, there is

no procedural lapse in either conducting departmental enquiry or in handing over of punishment to the petitioner for his admitted involvement in the

negligence of not keeping close supervision over his subordinates leading to the loss to the public exchequer. In view of such facts, it cannot be said

that there is any violation of the language of the provisions of Rule 9(1) to 9(6) of the M.P. Civil Services (Pension) Rules, 1976.

There is no force in the argument of the petitioner that negligence does not constitute misconduct inasmuch as language of Rule 9 is clear which says

that for negligence pension can be withheld by the Governor. There is no need for the Governor to record a finding that such negligence necessarily

constitutes a misconduct. In fact, once a finding of negligence has been recorded and there is a specific finding that such negligence caused loss to the

exchequer, that itself will constitute a misconduct. As far as petitioner's contention that his representation which was made before the departmental

authorities was not considered before passing the impugned order of punishment is concerned, that is also devoid of any merits inasmuch as such

representation has been considered and such consideration is reflected from para 4 of the impugned order. In fact, Hon'ble Supreme Court in the case

of State of Punjab and others vs. Ram Singh Ex-Constable as reported in (1992) 4 SCC 54 has defined misconduct and in para 6 it has been held that

the word 'misconduct' is though not capable of precise definition, on reflection receives its connotation from the context,Â the delinquency in its

performance and itsÂ effect on the discipline and the nature of duty.Â It may involve moral turpitude,Â it must be improper or wrong behavior;Â

unlawful behaviour,Â Â willfulÂ Â inÂ character;Â Â forbiddenÂ Â act,Â Â a transgression of established and definite rule of action or CodeÂ of Conduct butÂ not mere error ofÂ Â judgment, carelessnessÂ or negligence in performance ofÂ duty; the act complained of bears forbidden

quality or character. The ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to

the scope of the statute and the public purpose it seeks to serve.

In this backdrop, enquiry report and delinquency of the petitioner is to be examined and not on emotional appeal as has been put forth by the petitioner.

Reliance of the petitioner on the decisions of the Supreme Court in the case of J.Ahmed, Inspector Prem Chand and Jitendra Kumar Srivastava

(supra) is also not of much avail inasmuch as ratio in the case of J.Ahmed (supra) is that deficiencies in personal character or personal ability do not

constitute misconduct for taking disciplinary proceedings. Negligence in performance of duty or inefficiency in discharge of duty are not acts of

â??commission or omissionâ? under Rule 4 of the All India Services (Discipline & Appeal) Rules, 1955, however in para 12 Hon'ble Supreme Court

has also held that gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary

proceedings. As per definition of misconduct in Stroud's Judicial Dictionary, ""Misconduct means, misconduct arising from ill motive; acts of negligence,

errors of judgment, or innocent mistake, do not constitute such misconduct"". Thus, it is apparent that it is not a case of negligence, errors of judgment

or innocent mistake, but gross negligence in performance of duty on the part of the petitioner. In fact when this is tested in the light of the decision of

the Supreme Court in the case of Ram Singh Ex-Constable (supra) and viewed in the light of the enquiry report filed by the respondents, the conduct

of the petitioner can be termed as a transgression of established and definite rule of actionÂ or CodeÂ of Conduct and this is much more than

negligence.

In the case of Inspector Prem Chand (supra) the issue before the Hon'ble Supreme was that on the basis of a judgment of acquittal in a case of

Prevention of Corruption Act certain observations were made as to the efficacy of investigation and conduct of the officers associated with such

investigation, on which Hon'ble Supreme Court held that initiation of disciplinary proceedings against an officer cannot take place on information which

vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the

delinquent officer. In the present case, disciplinary proceedings were initiated not on vague or indefinite information but on the basis of a properly

constituted report showing that forged and fabricated Challans were verified by the petitioner either at the instance of his Reader or his own causing

loss to the public exchequer, therefore, such charge on the basis of definite enquiry report, cannot be said to be a disciplinary proceeding initiated on

vague or indefinite information.

As far as law laid down by Hon'ble Supreme Court in the case of Jitendra Kumar Srivastava (Supra) is concerned, the ratio of this judgment is that

public servant's pension cannot be withheld during pendency of disciplinary and criminal proceedings in absence of specified rules as pension is

property under Article 300A of the Constitution. This judgment is also distinguishable inasmuch as there are rules namely Madhya Pradesh Civil

Services (Pension) Rules, 1976 which provides for method of holding an enquiry and withdrawal of pension by the sanction of Governor. Besides this,

departmental enquiry was conducted and in such departmental enquiry, petitioner was found to be guilty of two charges of causing loss to the public

exchequer on account of forged Challans deposited in the treasury and used for registration of documents. Thus, the ratio of the judgment in the case

of Jitendra Kumar Srivastava (supra) is also not available in the facts and circumstances of the present case.

In view of such facts, this Court is of the opinion that order Annexure P/1 does not suffer from any lacuna, shortcoming or arbitrariness calling for any

interference. In fact, authority of the Governor has taken into consideration all the facts and attending circumstances and has passed a reasoned order

withdrawing 50% pension for a period of five years with a view to compensate the public exchequer which has been put to loss on account of

negligence of the petitioner. Such order cannot be termed as arbitrary, illegal or contrary to any legal provision. Thus, the petition fails and is

dismissed.

