
(2016) 03 MP CK 0038
In the Madhya Pradesh High Court
Case No : WP 3310 of 2011(S).

Mahima Chand Gangwar

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 8(1)(b), 8(2)(b)

Citation : (2016) 2 MPLJ 403

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Arvind Shrivastava, Advocate, for the Appellant; Smt. D.K. Bohre, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J. - The core issue involved in this case is whether the respondents are justified in depriving the petitioner from pension because of his conviction under Section 324/34 of IPC.

2. The petitioner, now septuagenarian, has filed this petition seeking benefit of pension and retiral dues. The petitioner has fought a long drawn battle in the corridors of the Court. This matter has a chequered history.

3. The petitioner was working as Upper Division Teacher in Government High School, Sulganganj, District Raisen. He was implicated in a criminal case based on an incident dated 17.05.1996. The petitioner was placed under suspension because of said criminal case w.e.f. 21.05.1996. The petitioner has retired on attaining the age of superannuation on 31.01.1997. The suspension period was not regularised even after his retirement. The petitioner continued to get the subsistence allowance even after his retirement. The said criminal case ended in conviction of petitioner. The trial Court by judgment dated 18.10.1997 directed that petitioner will undergo imprisonment for a period of two years for the offence punishable under Section 324 of IPC.

4. Shri Arvind Shrivastava, learned counsel for the petitioner submits that the petitioner preferred a Criminal Appeal No.2234/1997 against the said judgment of the trial Court. During pendency of this case, this Court vide judgment dated 20.02.2014 decided the appeal whereby the conviction is upheld. However, this Court reduced the sentence awarded to the petitioner to the extent he has already undergone the same.

5. The petitioner relied on a document dated 05.10.2001 (Annexure-P/4) to contend that no disciplinary proceeding was ever initiated against the petitioner. The respondents initially started payment of provisional pension to the petitioner. However, the same was subsequently stopped. The petitioner feeling aggrieved by this action approached the State Administrative Tribunal by filing Original Application No.372/2002. By way of interim order dated 28.10.2002, the respondents were directed to pay interim pension as per rules. On abolition of the Tribunal, the said original application was transferred to this Court and was re-registered as Writ Petition No.26547/2003. It is urged that initially provisional pension was started but later on, without affording any opportunity of hearing, the said benefit was abruptly stopped. Writ Petition No.26547/2003 was disposed of by this Court on 08.09.2006 by directing the respondents to finalise the pending claim of the petitioner in relation to payment of pension by taking into account the fact that the petitioner stood convicted for the offence punishable under Section 324/34 of IPC.

6. The petitioner feeling aggrieved with this order, preferred Writ Appeal No.899/2006 which was decided on 09.10.2007. The Division Bench of this Court opined that the competent authority must take a decision regard being had to the language employed under Rule 8(1) and 8(2) of the Pension rules. The said authorities should ascribe cogent reason keeping in view the language employed in Rules and by objectively analysing the Rules. It was left on the discretion of the authorities to judge whether conviction can be called grave and what would be appropriate amount. The respondents were directed to take a decision within a period of two months.

7. In turn, the District Education Officer, Raisen passed the order dated 29.12.2007 and held that the petitioner is not entitled to receive pension. This order was challenged by the petitioner by filing Writ Petition No.1176/2009 which was decided on 25.11.2009. This Court held that the matter is pending since 1997, more than twelve years have passed and hence Joint Director shall decide the claim of the petitioner within a period of one month. It was directed that the said authority shall decide the claim after taking note of observations made in Writ Appeal No.899/2006 and Writ Petition No.1176/2009.

8. The respondents passed the order dated 12.08.2010 (Annexure-P/10) and held that the petitioner is not entitled to get pension in view of Rule 8 of the Pension Rules. The petitioner was only entitled to get provisional pension which has already been paid to him. This order is called in question in the present petition.

9. Shri Arvind Shrivastava, learned counsel for the petitioner submits that even in this order dated 12.08.2010 (Annexure-P/10), the respondents have not assigned any reason as to why the petitioner is not entitled to get pension as per Rule 8 of the Pension Rules. He submits that the judgment dated 20.02.2014 passed in Criminal Appeal No.2234/1997 makes it clear that the petitioner has not committed any serious offence. It was a dispute between the private parties which has resulted into conviction of the petitioner. It does not have any adverse effect on the society. He submits that stoppage of complete pension is totally unwarranted and uncalled for.

10. Smt. D.K. Bohre, learned Government Advocate supported the impugned order. She relied on various paragraphs of the impugned order and the averments of the return.

11. The parties confined their argument to the extent indicated above.

12. I have bestowed my anxious consideration on the rival contentions and perused the record.

13. Before dealing with the rival contentions, it is apt to quote relevant portion of Rule 8 of the M.P. Civil Services (Pension) Rules, 1976, which reads 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 petitioner is convicted of a serious crime or is found guilty of grave misconduct:

2. xxx xxx xxx

3. xxx xxx xxx

4. xxx xxx xxx

5. xxx xxx xxx

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);

[Emphasis supplied]

14. In the earlier rounds, this Court has specifically directed the respondents to examine the entitlement of the petitioner on the anvil of Rule 8(1)(b) and 8(2) (b). This Court in no uncertain terms made it clear that whether petitioner is convicted of a serious crime needs to be considered by the respondents. The impugned order dated 12.08.2010 does not deal with this aspect. In other

words, there is no iota of discussion in the said order as to whether petitioner was convicted of a serious crime. It is unfortunate that despite repeated orders of this Court, the respondents have not chosen to decide the said aspect. The action of the respondents is liable to be deprecated. Basically it is the prerogative of the competent authority to decide whether the employee is convicted of a serious crime. The competent authority should not have shirked from its responsibility to decide the said aspect.

15. As noted, the petitioner has fought a long drawn battle for his claim. Thus, in order to do complete justice, I am not inclined to remand the matter back for undertaking the aforesaid exercise by the respondents. Normally, I would have set aside the order dated 12.08.2010 and would have remitted the matter back for deciding the said aspect. However, since repeated directions of this nature in the earlier round of litigations could not fetch any result, I deem it apposite to do complete justice in this matter. This Court has the power under Article 226 of the Constitution to do complete justice in the peculiar facts and circumstances of a case. The relevant portion of recent judgment of this Court in *Little Angels Shiksha Samiti v. State of M.P. and others*, 2015 (3) JLJ 137, wherein this point has been considered, reads as under:

"44. While dealing with a writ petition under Article 226 of the Constitution, this Court is exercising plenary jurisdiction. In *AIR 1966 SC 81 (Dwarka nath v. Income-tax Officer, Special Circle, D Ward, Kanpur and another)*, K. Subba Rao, J. speaking for the bench opined as under:-

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the express "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirement of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

45. In 1985 (Supp) SCC 476 (*I.T.C. Ltd. and Ors. v. State of Karnataka and Others*), the Apex Court opined as under :-

Having found that basically and essentially the fee was unjustified on the theory

of quid pro quo, the High Court was entitled to give positive directions in the manner the money should be spent.

The directions were within the competence of the High Court while dealing with grievances made under Article 226 to ensure that appropriate statutory authorities acted according to law after properly ascertaining the facts and for the purpose of rendering full justice to the parties.

The Court can mould its directions in order to give relief in a particular situation. Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. The new attitude is towards positive affirmative actions, directing people or authorities concerned that "thou shall don't" in this manner. While it is true that if a law is bad, the Court must strike it down. But if the law by and large and in its true perspective of a social purpose if implemented in a particular manner could be valid, then the court can and should ensure that implementation should be done in such particular manner and give directions to that effect.

46. In (1995) 6 SCC 749 (B.C. Chaturvedi v. Union of India), the Apex Court opined that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material. The High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. Power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like High Court. The Apex Court considered the judgments of Dwarika Nath and B.C. Chaturvedi (supra) again in (Badri Nath v. Govt. of T.N.) reported in 2000 (8) SCC 395 and opined as under:-

88. We may, however, point out that it is not as if there are no exceptions to this general principle. The occasions where the Court issued a writ of certiorari and quashed an Order and had also issued a mandamus at the same time the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In Comptroller and Auditor General of India v. K.S. Jagannathan, such a power on the part of this Court was accepted by a three-Judge Bench. Madon, J. referred to the observations of Subba Rao, J. (as he then was) in Dwarika Nath v. ITO wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to "reach justice wherever found necessary" and "to mould the reliefs to meet peculiar and complicated requirements of this country". Justice Madon also referred to Rochester Corpn. v. R., R. v. Revising Barrister for the Borough of Hanley, Padfield v. Minister of Agriculture Fisheries and Food and to a passage from Halsbury's Laws of England, 4th Edn. Vol. I, p. 59. Finally Madon, J. observed: (SCC pp. 692-93, para 20).

20. There is thus no doubt that the High Courts in India exercising their

jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

47. The Division Bench of Calcutta High Court presided by the Hon'ble Chief Justice Shri S.S. Nijjar and Justice Pinaki Chandra Ghose (as their Lordships then were) in Association for Protection of Democratic Rights v. The State of West Bengal and Ors (A.S.T. No.205/2007) followed the aforesaid judgments of Supreme Court and opined that the High Court in exercise of power under Article 226 of the Constitution can do complete justice between the parties."

[Emphasis supplied]

16. Rule 8 of the M.P. Civil Services (Pension) Rules, 1976 makes it obligatory for the respondents to decide whether the employee is convicted in a serious crime. In Rameshwar Yadav v. Union of India and another, 1989 Supp (2) SCC 565, the Apex Court held that the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed, the hardship on the dependents or the person etc. The orders in this regard cannot be mechanically issued for the suspension of entire amount of pension. In the case of Rameshwar Yadav (supra), the employee was involved in a murder case and was convicted for the offence punishable under Section 302 of IPC and awarded imprisonment for life. Under Regulations 119 applicable therein, the competent authority withheld the pension. The Apex Court criticized the order and held that the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or part of pension should be suspended. Thus, out of complete pension of Rs. 108 per mensem, the Apex Court confined the pension to the extent of Rs. 100 per mesem. Needless to mention that the offence punishable under Section 302 is more grave than the offence punishable under Section 324 of IPC. Yet in that case the Apex Court directed for release of 92.5% pension.

17. In the opinion of this Court, the offence punishable under Section 324 does not involve any moral turpitude. If the judgment of the trial Court is examined, it

is clear that private dispute resulted into a criminal case. There was no impact of the said crime on the society or public at large. In *State of Madhya Pradesh and others v. Hazarilal*, (2008) 3 SCC 273, the employee was convicted under Section 323/34 of IPC for assaulting a person. The department by invoking Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, terminated his service. The Apex Court held that the employee was not convicted for any act of moral turpitude. He was not punished for any heinous offence. Hence the punishment of removal from service was held to be disproportionate. In my view, the stoppage of full pension amounts to inflicting punishment of financial death sentence.

18. In the peculiar facts and circumstances of this case, in my opinion, the petitioner cannot be deprived from the benefit of pension and retiral dues because of his conviction under Section 324/34 of IPC. In the aforementioned background, it cannot be said that petitioner was convicted of a serious crime. The respondents have clearly erred in depriving the petitioner from the fruits of the retiral dues. Thus, in the peculiar facts and circumstances of the case, the impugned order dated 12.08.2010 (Annexure-P/10) is set aside. The respondents are directed to pay pension and other retiral dues to the petitioner from the date of his retirement. The respondents will be at liberty to deduct the amount of subsistence allowance and provisional pension which has already been paid to the petitioner after his retirement. The petitioner's pension and retiral dues be calculated and paid to him within three months from the date of production of copy of this order, failing which it will carry 12% interest on the delayed payment till the date of realization.

19. Petition is allowed.