

(2017) 05 MP CK 0025
In the Madhya Pradesh High Court
Case No : 14749 of 2015

Smt Gurusharan Kaur

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

[Madhya Pradesh Civil Services \(Commutation of Pension\) Rules, 1996](#), Rule 10, Rule 10(1)

Citation : (2017) 05 MP CK 0025

Hon'ble Judges : Subodh Abhyankar

Bench : Single Bench

Advocate : Ram Kumar Shrivastava, Surbhi Nigam

Final Decision : Dismissed

Judgement

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. In the present case the petitioner is aggrieved by the non-restoration of his pension after the commuted value of his pension stands already recovered in the past around 17 years.
3. In brief the facts of the case are that the petitioner is a retired Head Master (UDT), who was appointed on 27.07.1972 and after completion of 26 years of service, he took voluntary retirement on 27.07.1998 at the age of 45 years. The contention of the petitioner is that at the time of his retirement, he surrendered his one third pension as commutation and his pension was fixed at Rs.2,532/- per month and out of that one third pension i.e. Rs.844/- was commuted by him. It is further pleaded by the petitioner that as per the Pension Rules, he was paid a sum of Rs. 1,42,804/- as commuted value of his pension. The contention of the petitioner is that as per Rule 10 of the Madhya Pradesh Civil Services (Commutation of Pension) Rules, 1996, the commuted part of his pension would be restored after attaining the age of 70 years. The contention of the petitioner is

that the aforesaid Rule is applicable to persons who retire after completing the age of 60 years. Rule 10 of the Madhya Pradesh Civil Services (Commutation of Pension) Rules, 1996, reads as under:-

"VERNACULAR MATTER OMITTED"

4. It is further submitted that the aforesaid Rule is not applicable to the persons who have opted for voluntary retirement and in the petitioner's case, he had opted for voluntary retirement at the time when his age was 45 years and there remained 15 years of service.. The contention of the petitioner is that the respondents have illegally applied Rule 10 in the case of the petitioner and by applying the aforesaid Rule, they want to recover one-third part of his pension upto the age of 70 years, thereby they want to recover one-third pension of the petitioner from 27.07.1998 which is the date of voluntary retirement of the petitioner when he was forty five years of age till the age of seventy years and the same cannot be permitted under law.

5. In support of his contention, the petitioner has also relied upon the notification issued by the State Government which refers to revised Rule 10(1) of Madhya Pradesh Civil Services (Commutation of Pension) Rules dated 05.02.2013 which reads as under:-

"VERNACULAR MATTER OMITTED"

6. By referring to the aforesaid notification, the petitioner has submitted that the same is not applicable in case of the petitioner as he took voluntary retirement on 27.07.1998 when his age was 45 years., thus the petitioner is left remediless, hence this petition.

7. In return the respondent Accountant General has submitted that they are not involved in the dispute and they have already paid the pension.

8. The other respondents have submitted that the petitioner has already received his dues and the deducted monthly amount from the pension of the petitioner would continue upto the year 2023 as the commuted amount is being repaid along with the interest and the petitioner after receiving the entire commuted amount cannot question the commuted value of Rs.1,42,804/- and that no further recovery can be made from his pension.

9. The respondents have also submitted that the petitioner has not challenged Rule 10 of the Madhya Pradesh Civil Services (Commutation of Pension) Rules, 1996 (for short the Rules of 1996) and since the petitioner has already received the benefit of aforesaid Rule, he is not entitled to any relief.

10. Heard the learned counsel for the parties and perused the record.

11. It is an admitted fact that the petitioner had opted for commutation of his pension at the time of his voluntary retirement at the age of 45 years on 27.07.1998. At that time, the petitioner opted for the same on his own volition and now after a period of around 17 years, suddenly he has realised that he is

put to great financial loss because of his decision owing to Rule 10 of the Rules of 1996 which he has chosen not to challenge.

12. In the circumstances, despite having sympathy with the petitioner, in the absence of any challenge to Rule 10 of the Rules of 1996, in the exercise of its jurisdiction under Article 226 of the Constitution, the relief as sought by the petitioner cannot be granted to him on humanitarian basis in violation of the said rule.

13. Resultantly, the petition fails and is hereby dismissed.

14. No costs.