

(2005) 01 MP CK 0120
In the Madhya Pradesh High Court

Sunherilal Sahariya

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Citation : (2005) 107 FLR 93

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—Earlier this petition was filed before M.P. State Administrative Tribunal, Indore as Original Application No. 1612/2000. After abolition of the Tribunal, it has been transferred to High Court.

2. Petitioner has filed this petition challenging the impugned order dated 21.3.2000 (Annexure A/10). By the said order 25% amount of the pension of the petitioner has been forfeited permanently under Rule 9 of M.P. Civil Services (Pension) Rules, 1976 (here-in alter referred to as Pension Rules).

3. Petitioner, who was an employee of Co-operative Department, was working as Accounts Officer. Thereafter, he was sent on deputation to M.P. State Co-operative Consumer Federation. He was there from 14.6.1986 to 10.8.1987 and during that tenure, he committed gross irregularities and caused a loss of Rs. 3,10,922/- to the Federation. Petitioner was suspended and his headquarters was fixed at Tila Mandla.

4. On 21.9.1987, a departmental enquiry was instituted against the petitioner and six charges were levelled against him with regard to irregularities committed by him and misappropriation of the amount, when he was posted on deputation. He replied the said charges and denied all the charges. Thereafter, vide order dated 13.1.1988 Deputy Registrar, Accounts, Bilaspur was appointed as Enquiry Officer. He conducted the enquiry and additional charge-sheet was also issued to the petitioner and thereafter submitted an enquiry report. Petitioner was absent

during the enquiry proceedings and ex-parte enquiry was conducted against him. Enquiry Officer found all the charges proved. Thereafter, a show cause notice was issued to the petitioner on 21.1.1994 alongwith the enquiry report. Petitioner submitted his reply. Thereafter, vide order dated 30.6.1994 disciplinary authority found that the enquiry report was not proper. There were irregularities in the enquiry. Hence, he returned the proceedings to the Enquiry Officer for conducting the re-enquiry in the matter.

5. During the pendency of the enquiry, applicant retired from service with effect from 31.7.1994. After the remand of the enquiry proceedings by the disciplinary authority, again the enquiry was conducted and thereafter enquiry report was submitted by the Enquiry Officer. On 7.2.1997, show cause notice was issued against the petitioner alongwith second enquiry report. He filed his reply and thereafter impugned order of punishment dated 21.3.2000 (Annexure A/10) has been passed forfeiting 25% amount of the pension from the total pension of the petitioner under Rule 9 of the Pension Rules because petitioner was retired from service.

6. Learned Counsel for the petitioner has submitted that the enquiry proceedings are arbitrary and illegal. After the retirement of the petitioner, enquiry proceedings cannot be continued and it is also argued by the learned Counsel for the petitioner that petitioner was on deputation. Hence, his parent department had no authority to conduct enquiry. The pension of the petitioner cannot be forfeited because there was no pecuniary loss caused by the petitioner to the respondents.

7. Learned Counsel for the respondents has submitted that the Government has a right to forfeit the pension of the petitioner as per the provisions of M.P. Civil Services (Pension) Rules, 1976 and pension is subject to good conduct of a Government servant. In forfeiting pension, sanction from the State Cabinet has been obtained.. Relevant proceedings have also been filed alongwith the return.

8. It is clear from the Rule 9 of the Pension Rules that if an enquiry has been initiated when the Government servant was in service, it can continue after the retirement of the employee. Hence, there is no ground in the arguments of the learned Counsel for the petitioner that the departmental enquiry cannot be continued after the retirement of the petitioner. With regard to contention that the pension cannot be Withheld by the authority, it has specifically been mentioned in the relevant Pension Rules that Governor has a right to withhold the pension, if he has been found guilty of serious misconduct.

9. Hon"ble Supreme Court in Union of India and Another Vs. P.D. Yadav, has specifically held after analyzing various judgments of Hon"ble Supreme Court i.e. M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, and Union of India (UOI) and Others Vs. Brig. P.K. Dutta (Retd.), that:

No doubt, pension is not a bounty but is the earning of a person after

satisfactory completion of qualifying service and if not otherwise disentitled.

The Hon"ble Supreme Court in M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, has held as under:

The pension has been provided under these regulations. It is not disputed by the learned Counsel that the pension was granted to the appellant under the said regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds. A show cause notice was issued to the appellant. His reply was considered and thereafter the President passed the order forfeiting the pension and death-cum-retirement gratuity. We see no infirmity in the order. The appeal is, therefore, dismissed.

10. On the basis of the above principles of law and the facts and circumstances of the case, the petitioner was found guilty of serious misconduct. There was loss due to the negligence of the petitioner and other irregularities. Misconduct has been proved in the departmental enquiry. Hence, it cannot be said that the petitioner has completed his service satisfactorily. In above view of the matter, in my opinion, the impugned order of forfeiture of 25% amount of pension of the petitioner does not suffer from any infirmity.

11. Consequently, there is no merit in the petition. It is dismissed without any order as to cost.