(2016) 10 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 16045 of 2006(S)

Ugrasen Prasad Tiwari APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 3(1)(n), Rule 65, Rule 65

Citation : (2017) 1 MPLJ 661

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri Rajkumar Tripathi, Learned Counsel, for the Petitioner; Shri Manoj Kushwaha, Learned P.L, for the Respondents/State

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution challenges the order dated 22.04.2006 (Annexure-P/9), whereby the respondents have decided to recover an amount of Rs.7,386/- from the gratuity of the petitioner.

2. Brief facts as narrated by the petitioner are that he was working as Lab. Technician in Government Engineering College, Rewa. In the year 1992, for a short period, the petitioner was given charge of Swami Vivekanand Hostel of Government Engineering College, Rewa. At the time of taking the charge of the said hostel, he was not given charge list of the items, which were in possession/ charge of earlier incumbent.

3. The respondent department alleged that the petitioner has not handed over certain items and, therefore, a notice was issued to the petitioner. The petitioner filed his reply on 23.01.1992. Petitioner prayed that the charge list at the time of handing over the charge may be given to him which contains signature of both the Officers who were involved in the process of handing over the charge.

4. Shri Tripathi, learned counsel for the petitioner submits that the said charge

list was never handed over to the petitioner. The petitioner was served with letter dated 10.02.1995 (Annexure-P/3). In this letter the details of deficiency of items were mentioned and petitioner was called upon to return the same. The petitioner denied the allegations and contended that if such material was handed over to him at the time of taking over the charge, the said list may be provided to him.

5. The respondents constituted a committee of certain Officers to enquire into the aforesaid aspect of deficiency of material. Reliance is placed on Annexure-P/6 to contend that prima facie it was found that the petitioner was not in the charge of said material. The petitioner then filed W.P. No.177/2004 which was disposed of by this Court on 13.04.2004. This Court directed the respondent No.1 to nominate a senior officer to look into the aforesaid facet and record a finding whether there was any warranting circumstances requiring such recovery and whether same has been done in accordance with law.

6. Thereafter, a Contempt Petition No.4524/2005 was filed by the petitioner in which time was extended by this Court on 03.12.2005. The respondents ultimately passed the impugned order dated 22.04.2006 and decided to recover an amount of Rs.7,386/-. This order is attacked on the ground that (i) the petitioner never admitted that the deficiency is arising out of his fault; (ii) the amount can be treated to be "ascertainable" under Rule 65 of the M.P. Civil Services (Pension) Rules, 1976. It is ascertained after following due process; (iii) it is urged that the amount in question does not fall within the ambit of "Government Dues". To buttress this contention, Shri Tripathi relied on 2010 (4) MPLJ 345 (M.P. Civil Services (Pension) Rules, Rule 9(b)(2) v. Ramesh Chandra Gupta).

7. Per contra , Shri Kushwaha, learned P.L. for the respondents/State supported the order by taking assistance from the return. It is submitted that to interfere and ascertain the Government dues, a Committee was constituted by the respondents. The Committee submitted its report on 18.04.2006 (Annexure-R/1). The impugned order is founded upon the report of the said Committee. It is further urged that the petitioner has not obtained No Objection Certificate from different departments of the College. He did not participate in the inquiry. The Committee, after due application of mind, gave finding pursuant to which the amount in question needs to be recovered. Shri Kushwaha submits that no interference is required in the present case.

8. No other point is pressed by the learned counsel for the parties.

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

10. Before dealing with rival contentions of the parties, it is apposite to quote Rule 65 of the Pension Rules, 1976 which reads as under:

"65. Recovery and adjustment of Government dues. - (1) It shall be the duty of every retiring government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable.-

(a) an equivalent cash deposit may be taken from him; or

(b) out of gratuity payable to him, his nominee or legal heir an amount equal to that recoverable on account of ascertainable Government dues shall be deducted.

Explanation. - 1. The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961"

[Emphasis Supplied]

11. Legally speaking, Rule 65 of the Pension Rules and Explanation 1 appended to it makes it obligatory for retiring Government servant to clear "all Government dues" before the date of his retirement. It gives parallel power to the Government to recover such amounts which are "ascertainable Government dues". The Explanation-I makes it clear that ascertainable Government dues includes certain dues which are mentioned in the later part of the Explanation-I. The word "includes" has a definite connotation. In (1971) 3 SCC 550 (C.I.T., Andhra Pradesh v. M/s. Taj Mahal Hotel, Secunderabad), the Apex Court opined that the word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "Statute". When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "includes" is also susceptible of other constructions. In (2008) 5 SCC 449 (Ramanlal Bhailal Patel and others v. State of Gujarat), the Apex Court opined that where a definition uses the word "includes", as contrasted from "means", the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory meaning. In my view, the Statute by using the word "includes" added and explained certain dues in addition to "all Government dues" mentioned in Rule 65(1) of the Pension Rules.

12. Apart from this, "Pension" is defined in Rule 2(n) of the Rules, which reads as under:-

"(n) "Pension" includes gratuity except when it is used in contradistinction to gratuity".

A conjoint reading of Rule 2(n) with Rule 65 will make it clear that the Legislature in its wisdom has decided to confine the action of deducting the amount from gratuity under Rule 65 of Pension Rules. In my view, in Rule 65, the gratuity is used in contradistinction to pension. Thus, by invoking Rule 65 the deduction can be made from gratuity only.

13. As analysed above, Rule 65 can be invoked for deduction of all "Government Dues" which are "ascertainable Government dues". However, the word "ascertainable" has a definite meaning. The final amount can be ascertained when it is based on certain factual foundation. Such ascertainment cannot be based on whims and fancies. Putting it differently, the basis of "ascertainable dues" must be discernible. The amount can be arrived at by following "due process". The Gwalior Bench in 2010 (4) MPLJ 345 (Ramesh Chandra Gupta) (supra), has held that only such amount can be recovered which falls within the ambit of "dues" as per Rule 65 of the Pension Rules.

14. In the present case, the core issue is whether respondents have ascertained the dues by following "due process". It is seen that the petitioner since beginning has categorically taken a stand that the deficient material was never handed over to him. In other words, the stand of the petitioner is that while taking the charge, the petitioner was not given certain materials which were allegedly found short when charge was taken back from the petitioner. To buttress this, petitioner prayed that the charge list on the strength of which materials were given to him may be supplied to him in order to enable him to examine whether any such deficient material was ever handed over to him or not. The respondents have not taken any pains to provide that relevant material to the petitioner. Thus, it cannot be said that the alleged deficient material was lost during the period, the petitioner was in charge. Apart from this, the inquiry report submitted by the respondents is a report prepared behind the back of the petitioner. There is no material on record to show that the petitioner was asked to participate in the inquiry. In the report also, there is no mention about the fact that the alleged deficient material was given to the petitioner while taking over the charge. Thus in my view, the respondents have derived the amount in an erroneous manner and, therefore, it does not fall within the ambit of "ascertainable dues". Such dues can be ascertained by following a transparent and fair procedure. In the present case, the respondents have not followed the said procedure. Thus the recovery of Rs.7,386/- cannot sustain judicial scrutiny. Resultantly, the impugned order to the extent the said recovery is made, is set aside. The whole recovered amount mentioned in Para 7(ii) of the petition shall be refunded to the petitioner within 60 days from the date of production of copy of this order, failing which it will carry 12% interest till the date of realization.

15. Resultantly, the order dated 22.04.2006 (Annexure-P/9) is set aside. Petition is allowed.

