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**(2012) 10 MP CK 0127**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 21844 of 2011 (S)**

Vaidhyanath Shukla

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 09-10-2012**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B, 201, 467, 468, 471  
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

**Citation : (2012) 10 MP CK 0127**

**Hon'ble Judges : K.K. Trivedi, J**

**Bench : Single Bench**

**Advocate : Ajeet Singh, for the Appellant; Samdarshi Tiwari, learned Govt. Advocate, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Hon"ble Shri Justice K.K. Trivedi, J.—The grievance of the petitioner is that he was placed under suspension by an order dated 6.2.2007, owing to filing of a challan in the Court of Special Judge, Rewa, for commission of offences under Sections 467, 468, 471, 201 and 120B of the Indian Penal Code. The petitioner was to attain the age of superannuation, therefore, the said suspension order was revoked on 29.4.2008. The petitioner superannuated from the services on 30.4.2008. The pension case of the petitioner was prepared, but only a provisional pension was paid to him. In the Criminal case, the petitioner was convicted for commission of the aforesaid act read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Against the conviction, the petitioner has preferred a Criminal Appeal before this Court, which has been entertained and the sentence of conviction is suspended by this Court. However, the moment information was given that the petitioner is convicted, the provisional pension was stopped. A representation is made by the petitioner, but since the pension has not been restored, therefore, this writ petition is required to be filed. The notices have been issued to the respondents and a return has been filed indicating information was sent that on relevant date directing that the

petitioner will not be paid the provisional pension owing to his conviction. This information is also sent to the higher authorities and, therefore, it is contended that the petitioner is not entitled to payment of provisional pension on account of his conviction.

2. This Court on earlier occasion has directed payment of anticipatory pension to the petitioner or to show cause. Learned Govt. Advocate has pointed out that Rule 64 of the M.P. Civil Services (Pension) Rules, 1976 (hereinafter referred to as Rules), specifically contemplates that on account of any criminal prosecution till the proceedings were pending, the petitioner was entitled to payment of provisional pension. However, such a payment is permissible only till a conviction is ordered in such pending judicial proceedings. It is contended that because of the provisions of sub-clause (b) of sub-rule (1) of Rule 64 of the Rules, the petitioner would not be entitled to payment of provisional pension owing to his conviction by the competent Court.

3. Heard learned counsel for the parties at length and perused the record.

4. It is not in dispute that the petitioner is convicted by a competent Court in the criminal prosecution. It is also not in dispute that the petitioner has filed a Criminal Appeal against the said order which is pending before this Court and the sentence of conviction has been suspended by this Court. However, merely because the execution of sentence of conviction is suspended by this Court, it cannot be said that the conviction itself has been suspended. This particular aspect has been considered by the Apex Court in Rama Narang Vs. Ramesh Narang and Others, and State of Tamil Nadu Vs. A. Jaganathan, and Deputy Director Education Vs. S. Nagoor Meera [ 1995(2) SLJ SC 89] and it is held that mere suspension of sentence of conviction is not to be termed as suspension of the conviction as well. However, that power is vested in the Court in given circumstances and such conviction can also be suspended if the case is made out. The order of suspension of sentence specifically directs suspension of the execution of jail sentence of the petitioner in this writ petition. Therefore, it cannot be said that the Division Bench of this Court has suspended the conviction of the petitioner as well. Resultantly, in terms of the provisions of Rule 64 (1)(b) of the Rules, the petitioner would not be entitled to payment of provisional pension. Such a claim made by the petitioner cannot be granted. The writ petition fails and is, hereby, dismissed. There shall be no order as to costs.