

(2018) 02 CHH CK 0141
Chhattisgarh High Court
Case No: Writ Petition (S) No.5957 Of 2014

Krishna Kumar Sahu

APPELLANT

Vs

State Of Chhattisgarh
And Ors

RESPONDENT

Date of Decision: Feb. 7, 2018

Acts Referred:

- Chhattisgarh Civil Services (Pension) Rules, 1976 - Rule 9(4)(a), 9(4)(b), 64

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Raghavendra Pradhan, Avinash Singh, Yashwant Singh Thakur, Shyam Sundar Sahu

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. Petitioner Shri Krishna Kumar Sahu retired from the post of Accountant in Chhattisgarh State Agricultural Marketing Board on 31- 3-2010.

Prior to retirement, departmental enquiry was pending against him and on account of that, pension and gratuity have also been withheld. By

way of this writ petition, the petitioner has sought quashment of charge-sheet as well as non-disbursement of pension and gratuity and other related service benefits.

2. Learned counsel for the petitioner submits that the impugned charge- sheet is unsustainable and bad in law and no charges are made

against him, it is false and fabricated. He further submits that by virtue of third proviso (a) and (b) to Rule 9(4) of the Chhattisgarh Civil

Services (Pension) Rules, 1976 (for short, 'the Rules of 1976'), the petitioner is entitled for full pension and also for full gratuity and other retiral benefits.

3. Mr. Yashwant Singh Thakur, learned counsel appearing for respondents No.2 and 3, would submit that the petitioner is not entitled for pension and gratuity by virtue of Rule 64 of the Rules of 1976 as amended on 12-12-1990 and departmental proceeding is pending against the petitioner since 2006 which has been challenged by way of filing this writ petition on 12-11-2014 which suffers from delay and laches. There is no explanation for delay of eight years in questioning the charge-sheet. The petitioner had already joined the departmental enquiry and the departmental enquiry could not proceed as the record of case is seized by the police and is pending in the Court and despite application having been moved, no such record has been provided to respondents No.2 and 3 for conducting enquiry.

4. I have heard learned counsel for the parties and considered the rival submissions and also perused the material available on record with utmost circumspection.

5. So far as challenge to the charge-sheet is concerned, it was issued way back on 11-9-2006 and writ petition challenging the said charge-sheet was filed on 12-11-2014. There is no explanation of eight years in questioning the charge-sheet. Apart from this, correctness of charges cannot be looked into at the initial stage. The petitioner had already joined the departmental proceeding, he may file reply and that will be considered by the disciplinary authority. Therefore, on the ground of delay and laches and on the ground of petitioner having the opportunity to rebut charges and that correctness of charges cannot be looked into at this stage, the disciplinary proceeding cannot be quashed.

6. Now, coming to the question of pension, the petitioner retired from service on 31-3-2010. Third proviso (a) and (b) to Rule 9(4) of the Rules of 1976 provides as under: -

Provided also that--

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the

pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

7. Admittedly, departmental proceeding has not been completed within a period of two years, therefore, the petitioner would be entitled for the entire amount of pension which was withheld, as now, two years period had already expired.

8. Now, the question of gratuity comes in.

9. Mr. Thakur has brought to the notice of this Court that Rule 64 of the Rules of 1976 has been amended in which Rule 64 (c) has been inserted which states as under: -

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

10. The aforesaid provision clearly states that till the conclusion of departmental enquiry or judicial proceeding, the Government servant shall not be entitled for gratuity. Since departmental proceeding is pending against the petitioner, he is not entitled for gratuity as provided in Rule 64(c) of the Rules of 1976.

11. In the result, the petition is allowed in part. The petitioner is entitled for full amount of pension and arrears of pension will be paid to him within 45 days from the date of presentation of a copy of this order. However, gratuity will be payable subject to conclusion of departmental enquiry. The Board will consider the payment of other consequential benefits to the petitioner expeditiously. The Board will do well to consider and dispose of the departmental proceeding pending against the petitioner expeditiously. No order as to cost(s).