

(2024) 02 CHH CK 0006

Chhattisgarh High Court

Case No: Writ Petition (S) No. 1627 Of 2017

R.R. Dubey

APPELLANT

Vs

Chhattisgarh State Power
Holding Company Limited

RESPONDENT

Date of Decision: Feb. 6, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226, 311, 311(2)
- Chhattisgarh Civil Services (Pension) Rules, 1976 - Rule 8, 8(1)(b), 8(2), 8(3), 9(1), 9(4)
- Prevention of Corruption Act, 1988 - Section 13(1)(e), 13(2)
- Indian Penal Code, 1860 - Section 193, 196

Hon'ble Judges: Deepak Kumar Tiwari, J

Bench: Single Bench

Advocate: Manoj Paranjpe, Bharat Sharma, Varun Sharma

Final Decision: Dismissed

Judgement

1. 1. This Writ Petition has been filed challenging the order dated 16.01.2017 (Annexure-P/1) passed by respondent No.2, whereby, provisional

pension granted to the petitioner was directed to be withheld under Rule 9 (1) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short

â€œPension Rules, 1976â€).

2. Facts of the case are that the petitioner was appointed as Engineer under the Department of respondents on 25.02.1971. He submitted his joining on

the post of Assistant Engineer on 13.04.1973 and thereafter he promoted to the post of Executive Engineer on 30.06.1980. On 29.03.2000, an offence

was registered against the petitioner under Section 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and under Section

193 and 196 of the Indian Penal Code. On 31.12.2005, the petitioner was retired from the post of Chief Engineer. On 26.02.2006, the charge-sheet was filed against the petitioner for the aforesaid offences, on account of which, he was subjected to trial in Special Case No.1/2006 before the Court of First Additional Sessions Judge and Special Judge, Lokayukt, Jabalpur (MP).

3. During the aforesaid period, the respondents had initiated departmental enquiry and directed to fix the provisional pension till conclusion of the proceedings vide order dated 02.03.2006 (Annexure-P/3). On 10.03.2011, the petitioner was exonerated from the charges on 10.03.2011 (Annexure-P/4) in the departmental enquiry. After passing of exoneration order, the petitioner had preferred representation for finalization of pension. Thereafter, on 05.05.2011, the General Manager (HR), CSPHCL has passed an order that suspension period of the petitioner shall be treated to be spent on duty for all purposes. However, his pension was not finalized. Thereafter, the petitioner preferred Writ Petition No.1186/2011 before this Court for finalization of retiral dues seeking following reliefs:-

â€œ(i) for grant of stagnation allowance with interest from 13.03.2005.

(ii) for revision of pay scale with interest from 01.12.2005.

(iii) for payment of gratuity as per latest provision with interest of 18 % per annum.

(iv) for computation of final pension with revision and its arrears with interest.

(v) Interest through out in all the above heads.â€

4. During the pendency of aforesaid writ petition, on 27.07.2016, the petitioner was convicted for the offence under Section 13 (1) (e) & 13 (2) of the Prevention of Corruption Act, 1988 and under Section 193 and 196 of the Indian Penal Code and was sentenced to undergo RI for 3 years, with default stipulations. Against the said conviction and sentence, the petitioner preferred an appeal before the High Court of Madhya Pradesh at Jabalpur bearing CRA No.2100/2016, whereby, the concerned Court vide order dated 16.08.2016 (Annexure-P/2) suspended the execution of sentence and directed to release him on bail. Thereafter, on 16.01.2017 the impugned order (Annexure-P/1) has been passed by the respondents withholding provisional pension of the petitioner permanently.

5. Learned counsel for the petitioner submits that prior to passing of the impugned order on the basis of conviction, neither any opportunity of hearing was afforded to the petitioner nor any show cause notice was issued to him. He would submit that the impugned order dated 16.01.2017 has been passed only on account of petitioner's conviction on the charges of corruption in a mechanical manner and without application of mind, inasmuch as, the issue with regard to suspension of pension either in whole or in part should have been decided after affording opportunity of hearing to the petitioner. He places reliance on judgment passed by the Full Bench of High Court of Madhya Pradesh, Jabalpur in the matter of Ram Sewak Mishra Vs. State of MP & anr 2017 (4) MPLJ (FB) 428 on 18.07.2017 in Writ Petition No.1353/2011; in the matter of Ramadhar Singh Vs. State of CG 2014 (3) MPHT 36 (CG) passed by High Court of MP in Writ Appeal No.441/2010, decided on 04.03.2014; in the matter of Gendram Sahu Vs. State of CG and ors passed by this Court on 05.03.2018 in WPS No.1745/2018; in the matter of Rameshwar Yadav Vs. Union of India & anr 1989 Supp (2) SCC 565 to submit that the charge-sheet was filed subsequent to the retirement of the petitioner and at the relevant time no criminal case was pending against him, therefore, the impugned order is bad in law. He also places reliance in the matter of State of CG Vs. Dr. S. D. Dwivedi decided by this Court on 20.06.2018 in WA No.468/2018; and in the matter of N.P. Shrivastava Vs. MP State Electricity Board and anr decided by High Court of MP on 15.05.2018 in WP No.8887/2012 to submit that show cause notice was required to be issued to the petitioner before withholding his pension. In view of above, he prays to allow the writ petition and to quash the impugned order and also to pass suitable direction in favour of the petitioner.

6. On the other hand, learned counsel for the respondents submits that the the case laws relied upon by the counsel for the petitioner, have no longer being good law and same are of no help to the petitioner. He submits that Larger Bench of five Judges of Madhya Pradesh High Court in the matter of Lal Sahab Bairagi Vs. State of MP 2020 (2) MPLJ 551 categorically held that the judgment rendered by the Full Bench in Ram Sewak Vs. State of

MP (supra) does not lay down the correct law, while the earlier Full Bench decision in Laxmi Narayan Haryan Vs. State of MP 2004 SCC Online

MP 356 : ILR 2004 MP 1012 lays down the correct law. He also submits that the Full Bench after considering relevant case laws including Union of

India Vs. Tulsiram Partel AIR 1985 SC 1486 : (1985) 3 SCC 398 categorically held that the authority is not required to issue notice or afford prior

opportunity of representation before passing the order under Rule 8 (2) of the Pension Rules of 1976, in respect of a pensioner who has been

convicted in the criminal case. He would further submit that on the date of retirement, the departmental enquiry was already pending against the

petitioner, consequent to which, provisional pension was granted to him. He referred to Rule 9 (4) of the CG Rules, 1976 to submit that the relevant

Rule only states about pendency of judicial proceeding or departmental enquiry against the government servant and provisional pension, however,

merely filing of a charge-sheet in criminal case would not create bar for withholding the pension. He submits that the petitioner was convicted under

the charges of corruption, therefore, the impugned order was passed in accordance with Rules. He submits that this is petition without any merit and

same deserves to be dismissed.

7. Heard learned counsel for the parties and perused the material available on record with utmost circumspection.

8. This Court deems it appropriate to refer to Rule 8 of the Pension Rules, 1976 which reads thus:-

â€œ8. Pension subject to future good conduct.-

(1)(a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or

for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct :

Provided that, no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the

pensioner, to make an appointment to the post held by him immediately before his retirement from service:

Provided further that, where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time.]

(2) Where a pensioner is convicted of a serious crime by a Court of law, action under clause (b) of sub-rule (1), shall be taken in the light of the judgment of the Court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima-facie guilty of grave misconduct, it shall before passing an order under sub-rule (1):-

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to

be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days,

as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).â€

9. The larger Bench of High Court of Madhya Pradesh in the matter of Lal Sahab Bairagi Vs. State of MP (Supra) observed that after conviction of

the pensioner, if the competent authority withhold the pension in whole or in a part thereof, no notice is required to be issued. In the said case,

interpretation of Rule 8(2) of the Pension Rules, 1976 came for consideration, whereby, it has been held that the principles of natural justice are

specifically and expressly excluded and have no application to the cases falling under Rule 8 (2) of the 1976 Rules in view of opening words of Rule 8

(3) of the Rules of 1976. This Court deems it appropriate to reproduce the relevant portion of the aforesaid judgment which reads:-

â€œ12. In view of the clear and unambiguous language of the provisions of Rule 8(3) of the Rules of 1976, which incidentally was

neither considered nor brought to the notice of the Full Bench in the case of Ram Sewak Mishra vs. State of M.P. and another (supra),

it is held that the principles of natural justice cannot be read into Rule 8(2) of the Rules of 1976, as they are statutorily and expressly

excluded by the opening words of Rule 8(3) of the Rules of 1976.

13. The principles of natural justice or holding of an enquiry is neither a universal principle of justice nor inflexible dogma. The

principles of natural justice are not incapable of exclusion in a given situation. For example, Article 311(2) of the Constitution, which

essentially embodies the concept of natural justice, itself contemplates that there may be situations which warrant or permit the non-

applicability of the principles underlying Article 311(2) of the Constitution. Reference may be made to the second proviso to Article

311 of the Constitution. The Supreme Court in *Union of India vs Tulsiram Patel*, AIR 1985 SC 1416 = (1985) 3 SCC 398 had in terms

of Article 311 ruled that not only, can the principles of natural justice be modified but in exceptional cases they can even be excluded.

14. The Rule 8(2) enables the authority to exercise power under Rule 8(1)(b) upon conviction of serious crime in the light of the

Judgment of the criminal Court. While doing so, it must consider whether his conduct, which has led to his conviction was such as

warrants the withholding/withdrawing of pension. For that purpose it will have to peruse the judgment of the criminal court and

consider all the facts and circumstances of the case. This, however, has to be done by it ex parte and by itself and without hearing the

concerned pensioner reason of the exclusionary effect of the starting words of Rule 8(3) upon exercise of powers under Rule 8(2) of

the 1976 Rules.

15. In view of the law laid down by the Supreme Court in the case of *Tulsiram* (supra), which is fully applicable to the present case as

well, the authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail withdrawal or

withholding of pension. This can be done in the light of the judgment of the Court relating to such conviction. No direction for taking

action in the judgment of the criminal Court is necessary or required for taking action under Rule 8(2) of the Rules of 1976. This

authoritative judgment of the Supreme Court was completely overlooked by the learned Single Bench while deciding *Dau Ram*

Maheshwar case (supra) on the basis of decision of Chhatisgarh High Court. The majority view in Ram Sewak Mishra (supra) wrongly

did not apply the decision of Tulsi Ram Patel (supra) to the Rules of 1976. On the other hand the earlier Full Bench in Laxmi Narayan

Hayaran v. State of M.P. reported in 2004 (4) MPLJ 555 F.B. after considering the relevant case law including Tulsi Ram Patel (supra),

correctly held that no prior hearing is required before passing an order under Rule 8(2) of 1976 Rules consequent upon conviction.

16. The upshot of the whole discussion is that the decision of the Single Bench as well as the Full Bench in Ram Sewak v. State of M.P.

(supra) does not lay down the correct law, while the earlier Full Bench decision in Laxmi Narayan Hayaran v. State of M.P. (supra) lays

down the correct law.

17. The answer to the questions referred to this Larger Bench is given accordingly by clearly stating that:-

(i) The principles of natural justice are specifically and expressly excluded and have no application to the cases falling under Rule 8(2) of

1976 Rules in view of the opening words of Rule 8(3) of the Rules of 1976, therefore, when an action is taken against the pensioner under

Rule 8(2) of the Rules of 1976, no notice is required to be issued to the pensioner nor can he insist upon prior opportunity of representation

on the strength of the principles of Natural Justice.

(ii) The decision of the Full Bench in the case of Ram Sewak Mishra (supra) and the decision in the case of Dau Ram Maheshwar (supra)

are hereby over-ruled.

(iii) It is held that the authority is not required to issue notice or afford prior opportunity of representation before passing the order under

Rule 8(2) of the Pension Rules of 1976, in respect of a pensioner who has been convicted in the criminal cases. However, the power of the

authority to take action under the Rules would be subject to the guidelines as stated by the Supreme Court in the case of Tulsiram Patel

(supra) and reiterated by this Bench in the preceding paragraphs of this judgment.â€

10. Having regard to the aforesaid, it is explicit that the issue is no longer res integra that for withholding of the pension after a conviction no notice is required and no opportunity of hearing can be insisted upon.

11. Further, the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. This proposition was held in the matter of As A.K. Kraipak vs. Union of India AIR 1970 SC 150 : (1969) 2 SCC 262.

12. Further, it is well settled law that if a statutory provision specifically excludes the application of rules of natural justice, the Court cannot ignore the mandate of the legislature.

13. In the matter of State of Kerala Vs. K. Chandra (2022) 12 SCC 104 observation has been made regarding the pendency of appeal against the convicted person to the effect that the pendency of appeal cannot disentitle the State from withholding Death-cum-Retirement Gratuity (DCRG) or pension considering that it is a hiatus period within which certain arrangements have to be made which would be dependent on the outcome of the appeal. Following was materially observed in Paras 40 and 42 of the aforesaid judgment, which reads thus:-

“40. We also believe that it is a very restrictive view to disburse DCRG on account of the proceedings against a pensioner coming

to an end, even where a conviction has arisen. This is especially so where the convicted person has availed of the remedy of appeal. An

appeal is a continuation of the proceedings in trial and would be, thus, a continuation of judicial proceedings. For example, if no appeal

had been filed, can it be said that despite conviction in the criminal case, the State is without authority of forfeiting the DCRG or

pension for that matter? If it is not so, as we believe, then the pendency of the appeal cannot disentitle the State from withholding the

DCRG, considering that it is a hiatus period within which certain arrangements have to be made which would be dependent on the

outcome of the appeal.

42. We have aforesaid also clarified that there is no question of any other departmental proceedings arising independently against the respondents, as the conclusion of the criminal proceedings would entitle the State to pass appropriate orders based solely on the result of the aforesaid proceedings.â€

14. Following the principles laid down in the above cases and having regard to the discussion referred to above, it is quite vivid that pendency of an appeal would not create a bar to withhold pensionary benefits either in whole or in a part. Thus, the impugned order does not suffer from any illegality or infirmity warranting interference of this Court under Article 226 of the Constitution of India.

15. Consequently, the petition fails and is hereby dismissed.

16. However, if the petitioner is ultimately acquitted in the criminal appeal, he may take recourse to the legal remedy in accordance with law.

17. No order as to cost(s).