

(2011) 06 MP CK 0013

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Appeal No. 311 of 2011

State of M.P. and Others

APPELLANT

Vs

Puran Lal Nihar

RESPONDENT

Date of Decision: June 22, 2011

Acts Referred:

- Madhya Pradesh Civil Services (Pension) Rules, 1976 - Rule 3(5), 9, 9(2), 9(4)

Citation: (2011) 2 JLJ 254 : (2011) 3 MPJR 251

Hon'ble Judges: S.N Aggarwal, J; Brij Kishore Dubey, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.N. Aggarwal, J.

1. This appeal raises an important question of law; Whether the disciplinary proceedings initiated by the government against a government employee after his retirement automatically comes to an end in case the enquiry is not concluded within two years of its inception. The earlier Division Bench of this Court in the case of State of M.P. Vs.R.L. Ogale 2006 (1) M.P.L.J.412 has taken a view that if the departmental proceedings initiated by the government are not concluded within two years of its inception, the Governor can not pass any final order for recovery of pecuniary loss caused to the department by the delinquent government employee and this view was taken by the earlier Division Bench in view of Clause (b) of third proviso to Sub-rule (4) of Rule 9 of M.P. Civil Services (Pension) Rules, 1976.

2. Shri Vivek Khedkar, learned Government Advocate appearing on behalf of the Appellants has argued that the earlier Division Bench judgment of this Court in R.N. Ogale's case (supra) is per incuriam to the provisions contained in Clause (c) of the third proviso to Sub-rule (4) of Rule 9 of M.P. Civil Services (Pension) Rules, 1976

(hereinafter to be referred as the Rules of 1976). The contention of Shri Vivek Khedkar, Government Advocate is that Rule 9 of the Rules of 1976 lays down a comprehensive scheme for payment of pension to a government employee, against whom disciplinary proceedings were initiated either before his retirement or after his retirement and, therefore, according to him in view of the provisions contained in Clause (c) of the third proviso to Sub-rule (4) of Rule 9 of the Rules of 1976, the enquiry instituted against a delinquent retired government employee is not vitiated even if it is not completed within two years. The submission is that in case the disciplinary proceedings are not concluded within two years of its inception, then consequence for the same is provided in Clause (b) of third proviso to Sub-rule (4) of Rule 9 of the Rules of 1976, according to which the pensioner becomes entitled to release of entire withheld pension if enquiry is not concluded within two years of its inception, however, in view of the provisions contained in Clause (c) of third proviso to sub rule (4) of Rule 9 of the Rules of 1976, the enquiry against a delinquent employee can still continue even if it is not concluded within two years of its inception and in case upon conclusion of enquiry, the delinquent retired employee is found guilty of misconduct, then findings of enquiry are to be placed before the Governor for passing of final order relating to pension of the retired employee.

3. The Respondent in present case had retired from the services of the Appellants on attaining the age of superannuation w.e.f. 31st July 2000. At the time of his retirement, he was holding the post of Executive Engineer. A charge sheet was issued to him on 13th September 2002 levelling certain charges against him. The Appellants being the disciplinary authority of the Respondent vide their order dated 28th September 2006 imposed punishment against the Respondent of stoppage of 20% pension permanently under Rule 9 of M.P. Civil Services (Pension) Rules, 1976. The said order of the Appellants dated 28th September 2006 was challenged by the Respondent in Writ Petition No. 4193/07 (S) and the challenge was accepted by the Writ Court vide impugned judgment dated 21st October 2010 relying upon a Division Bench judgment of this Court in R.N. Ogale's case (supra).

4. The arguments of learned Government Advocate appearing on behalf of the Appellants is that the earlier Division Bench judgment of this Court in R.N. Ogale's case (supra) is per incuriam to the provisions contained in Clause (c) of third proviso to Sub-rule (4) of Rule 9 of Rules of 1976 and, therefore, according to him, the said earlier Division Bench judgment should not bind the decision of the present case.

5. We have given our anxious thought to the arguments advanced by the counsel for the parties but with due difference to the earlier Division Bench, we say that we are not in agreement with the ratio of the said judgment for the reasons to follow herein after.

6. Para 10 of the earlier Division Bench judgment in R.N. Ogale's case (supra) is relevant and is extracted hereinbelow:

In the present case, the original Respondent retired on attaining the age of superannuation on 31-8-1985 and his pension including gratuity was withheld by the authorities under the aforesaid Rule 9 of the Rules of 1976, and the original Respondent was paid, however, a provisional pension in accordance with the said Sub-rule (4) of Rule 9 of the Rules of 1976. Any proceeding under Rule 9 of the Rules of 1976 for recovery of loss from pension can be instituted only on or after the retirement of a Government servant and by virtue of sub rule (2) of Rule 9, the proceedings against the original Respondent could be deemed to have been instituted on the date of his retirement i.e. on 31-8-1985. Clause (b) of the third proviso of the said Sub-rule (4) of Rule 9 of the Rules of 1976, makes it amply clear that if the departmental proceedings are not completed within a period of 2 years from the date of institution, the entire amount of pension so withheld shall stand restored on the expiration of the period of 2 years. Thus, the pension that has been withheld in the case of the original Respondent stood restored on the expiration of 2 years from the date of institution of the departmental proceedings and no further order on the completion of such 2 years could be passed by the Governor for recovery of the loss of Rs. 4,10,071.84 from the original Respondent. Thus, even if we hold that the departmental proceedings initiated by the Conservator of Forest did not stand vitiated and the findings in the said departmental proceedings by the Disciplinary Authority could be placed before the Governor, it will not be possible for the Governor to pass any final order for recovery of the loss of Rs. 4,10,071.84 from the original Respondent in view of Clause (b) of the third proviso to Sub-rule (4) of Rule 9 of the Rules of 1976.

(emphasis are ours)

7. Two propositions emerge from the above extracted portion of the judgment of the earlier Division Bench and they are as follows:

(i) The departmental proceedings initiated by the government against its delinquent retired employee after his retirement shall relate back to the date of his actual retirement; and (ii) The Governor can not pass any final order relating to the pension of the retired employee against whom disciplinary proceedings were initiated after his retirement with regard to proved misconduct relatable not beyond four years of the date of institution of enquiry, in case the enquiry is not concluded within two years of its inception.

8. It is not disputed by the counsel for the parties before us that the government is well within its right to institute disciplinary enquiry against a retired employee and only limitation for institution of such an enquiry is that the enquiry should not relate to an event more than four years before such institution. The disciplinary enquiry can be instituted against a delinquent government employee either before or after his retirement.

Rule 9 of the rules of 1976 deals with the procedure for payment of pension to those government employees against whom disciplinary proceedings were instituted either before or after his retirement. Rule 9 of the rules of 1976 is extracted herein-below:

Right of governor to withhold or withdraw pension.-(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed:

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)(a) The departmental proceedings, if instituted while the Government servant was in service whether before his retirement or during his re employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings.:

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or (b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders

could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in Rule 64, as the case may be, shall be sanctioned:

Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than the minimum pension as determined by the Government from time to time:

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date of aforementioned," had been substituted: 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 (c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in Sub-rule (5) of Rule 43.

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to be instituted (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and (ii) in the case of civil proceedings, on the date the plaint is presented in the court.

10. We have to interpret Rule 9 extracted herein-above in a manner that no provision of it is rendered nugatory and effect is given to all the provisions contained therein. We find that Rule 9 of the rules of 1976 lays down a complete comprehensive scheme to deal with the question of payment of pension to those retired government employee against whom disciplinary proceedings were initiated either before or after his retirement. Clause (a) of third proviso to Sub-rule (4) of Rule 9 of the rules of 1976 provides that in case disciplinary proceeding instituted against a retired employee is not completed within one year of its inception, then he shall be entitled to release of fifty per cent withheld pension. Clause (b) of third proviso to Sub-rule (4) of Rule 9 provides for release of entire withheld pension in the event of enquiry not concluded within two years. However, in terms of Clause (c) of third proviso to Sub-rule (4) of Rule 9, the disciplinary enquiry instituted against a delinquent retired employee can continue even if it is not concluded within two years of its inception and in case the delinquent employee is found guilty of charges levelled against him, then findings of the enquiry are to be placed before the Governor for passing of final order relating to pension payable to a retired employee.

11. In our view, it is not provided in the scheme of 1976 rules that a disciplinary enquiry instituted against a retired employee shall automatically come to an end in the event it is not concluded within two years of its inception. With due respect at our command, we do not agree with the view taken by the earlier Division Bench in R.L. Ogale's case (*supra*) that the enquiry instituted against a retired employee after its retirement shall be deemed to have been instituted on the date of his retirement. If this interpretation of the rule is accepted, then in our view the whole scheme for payment of pension to a delinquent retired employee contained in Rule 9 shall be rendered nugatory. This we would like to demonstrate by an illustration. Assuming a disciplinary proceeding is instituted by the government on 14th May 2008 against a government employee, who has retired on 31st March 2006, then in view of the earlier judgment of the Division Bench in R.L. Ogale's case (*supra*), the enquiry instituted on 14th May 2008 shall be deemed to have been instituted on the date of retirement of the employee on 31st March 2006 and in such a situation, the delinquent retired employee shall become immune from any disciplinary action, as according to the earlier Division Bench, Governor can not pass any final order regarding pension of that employee since two years period on the date of institution

of enquiry had already elapsed as the employee had retired on 31st March 2006 and enquiry was instituted against him on 14th May 2008. Such an interpretation of the rules contained in the earlier Division Bench judgment in R.L. Ogale's case (supra) completely negates the scheme of payment of pension to a delinquent employee contained in Rule 9 of Rules of the 1976.

12. For the abovementioned reasons, we do not subscribe to the view taken by the earlier Division Bench on the question that requires consideration in the present case, and, therefore, we deem it expedient to refer the matter to a larger Bench for its decision on the following questions:

1. Whether the disciplinary proceedings initiated by the Government against a government servant any time after his retirement are deemed to have been instituted on the date of his retirement and if so, its effect on the period for conclusion of enquiry in view of Rule 9 of M.P. Civil Services (Pension) Rules, 1976 ?
2. Whether the disciplinary proceedings initiated by the Government against a government employee after his retirement automatically comes to an end in case the enquiry is not concluded within two years of its inception ?
3. Whether on the face of Clause (c) of third proviso to Sub-rule (4) of Rule 9 of M.P. Civil Services (Pension) Rules, 1976, the Governor is precluded from passing a final order in relation to payment of pension to a government employee, against whom disciplinary proceedings are initiated after his retirement, in case the enquiry against him is not concluded within two years of its inception ?

13. The matter be placed before Hon'ble the Chief Justice for constitution of a Larger Bench to resolve the conflict between the earlier Division Bench judgment in R.L. Ogale's case (supra) and the view that we have taken in this case.