

**(2002) 07 MP CK 0063**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Writ Petition No. 2169/98

B.D. Dubey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision:** July 12, 2002

**Acts Referred:**

- Madhya Pradesh Civil Services (Pension) Rules, 1976 - Rule 64, 9(4)

**Citation:** (2003) ILR (MP) 267 : (2002) 4 MPHT 164 : (2002) 3 MPLJ 483

**Hon'ble Judges:** R.B. Dixit, J; Chandresh Bhushan, J

**Bench:** Division Bench

**Advocate:** A.M. Naik and B.K. Agrawal, for the Appellant; K.B. Chaturvedi, Government Advocate, for the Respondent

**Final Decision:** Partly Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

Chandresh Bhushan, J.

Aggrieved by order dated 14-7-1998 (Annexure P-I), passed by the M.P. State Administrative Tribunal, Gwalior, in O. A. No. 160/98, this petition under Article 227 of the Constitution of India has been preferred by the petitioner.

The facts in brief are that the petitioner, who was holding the post of Joint Director of Education, retired w.e.f. 30-6-1988. Thereafter, a departmental enquiry for misconduct was held against him, but was later on dropped vide order dated 23-2-1995 (Annexure P-3) and he was paid arrears of pension amounting to Rs. 98,631/- together with commuted amount of pension of Rs. 60,978A and gratuity and leave encashment on 19-8-1996 and 24-5-1997. Contending that these amounts of his retiral benefits were withheld without any authority of law and therefore, he has entitled to interest on all these amounts at the rate of 18% per annum, an application, registered as O.A. No. 160/98, was filed by the petitioner before the M.P.

State Administrative Tribunal, Gwalior. That original application of his was disposed of by that Tribunal vide impugned order dated 14-7-98 allowing his claim of interest at the rate of 12% per annum on the amount of gratuity and leave encashment only and denying his claim for interest on the delayed payment of pension and the commuted pension.

The learned Counsel for the petitioner contended that no amount of his pension could have been withheld without the orders of the Governor or in any case after the expiry of the period of two years from the date of his retirement, in view of the proviso to Clause (4) of Rule 9 of M.P. Civil Services (Pension) Rules, 1976.

A perusal of the provision of Rule 9 of M.P. Civil Services (Pension) Rules, 1976 together with Rule 64 of the said Rules clarifies that no specific order of withholding pension by in the name of the Governor was required in case of a Government servant against whom there was any departmental enquiry or judicial proceeding instituted by the time he retired. From the perusal of Annexure P-4, it is clear that on the very day the petitioner retired charge-sheets, etc., in a departmental enquiry were also issued to him and therefore, it could be said that there were departmental proceedings instituted against him before his retirement and were continued after his retirement also. In such a case only provisional pension was payable to him under the said Rule 64 and that could be any amount but not exceeding the maximum pension. Sub-clause (b) to the last proviso of Clause (4) of the said Rule 9 further provides that 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.

The decision of Hon'ble Apex Court in the case of R. Veerabhadram Vs. Govt. of A.P., relied upon by the learned Counsel for the respondents, could not be applied to the present case firstly because in that case of Veerabhadram (supra), it was the gratuity which was withheld and secondly because there was a specific provision in the concerning pension Rules (A.P. Revised Pension Rules, 1980) which provided for withholding of the amount of gratuity till the conclusion of departmental or judicial proceedings. No such provision applicable to the employees of the State of Madhya Pradesh permitting withholding of pension payable to them, was brought to our knowledge by the learned Counsel for the respondents. Therefore, this contention of the petitioner that in any case he was entitled for payment of his full pension, i.e., inclusive of commuted pension, after the expiry of two years from the date of his retirement deserves acceptance.

The Hon'ble Apex Court in the case of State of Kerala and Others Vs. M. Padmanabhan Nair, observed that:--

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement

thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

In the present case, the enquiry was dropped by the Government itself which suggested that continuation of it was not justifiable. No provisional pension was fixed and paid to the petitioner, who has specifically pleaded that his retiral benefits were withheld without any valid reasons. Even if it was to be said that his whole pension could have been withheld, withholding could not last for a period of more than two years after his retirement in view of above referred provision as contained in Rule 9 of the said pension Rules. Non-payment of those dues for a further period of almost six years clearly showed a culpable delay on the part of the authorities of concerned department. The observation of the learned Tribunal in this respect that it is not in dispute that the applicant had received full pension till commutation of its part, appears to be misconceived because the petitioner had from the very beginning claimed in his petition that the amount of retiral benefits which includes pension was not paid to him but was withheld and therefore, it could not be said that he had received full pension till commutation of its part.

Thus, this petition deserves to be allowed in part. It is accordingly partly allowed and the respondents are directed to pay interest at the rate of 12% for delayed payment of pension to the petitioner from 30-6-1990, i.e., two years after the date of his retirement, till the date of payment. The respondents shall also pay Rs. 1,000/- as costs to the petitioner.