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**(2016) 02 MP CK 0044**

**MADHYA PRADESH HIGH COURT (GWALIOR BENCH)**

**Case No:** Writ Petitioner No. 2748 of 2009

Satya Narayan Omar

APPELLANT

Vs

State of M.P

RESPONDENT

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**Date of Decision:** Feb. 15, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2016) 1 MPWN 208

**Hon'ble Judges:** Sheel Nagu, J.

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

**Sheel Nagu, J.**—The present petition has a chequered history. This petition is placed before this Court after being revived by an order of the Division Bench passed on 07.09.2012 in W.A. No. 47/2012 where the Division Bench was pleased to pass the following order:

"This writ appeal has been filed under Section 2 (1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam 2005 arising out of the order dated 30.11.2010 passed in W.P. No. 2748/2009(s) whereby while dismissing the said writ petition filed against the order of dies non dated 10.11. 2008, the writ court has imposed cost on the petitioner/appellant herein of Rs. 5,000/-.

2. The petitioner/appellant in person and State counsel are heard and the record is perused.

3. Though the case involves checkered history but this Court is of the considered view that the instant writ appeal can be decided on the short point that the writ court has declined to interfere in the order dated 10.11. 2008 of dies non by holding that the issue has been adjudicated earlier, whereas the reality as explained infra is

to the contrary.

4. Perusal of the impugned order indicates that the last petition that was filed by the petitioner/appellant was W.P. No. 4305/07. Thus the writ court fell in error in passing the impugned order by holding that adjudication of order of dies non dated 10.11.2008 has already taken place.

5. It may be possible that the adjudication on the question of dies non may have taken place but the last order of dies non which was passed on 10.11.2008 which came to be challenged in W.P. No. 2748/2009 (s) in which the impugned order has been passed, was never tested on the anvil of judicial review.

6. The question before the writ court was very much alive as to whether while passing the last order of dies non dated 10.11.2008, the competent authority had followed the principle of natural justice in regard to which there is no adjudication by the writ court.

7. In view of the above, this Court in the given facts and circumstances is compelled to set aside the impugned order dated 30.11.2010 passed in W.P. No. 2748/2009(s) and remand the matter to the writ court for re-consideration on the question of legality, propriety and validity of the last order of dies non dated 10.11.2008.

8. No orders a to cost."

2. Thus, the only question that remains to be answered by this Court is as to whether the order of dies non passed by the State on 10.11.2008 Annexure P-9 is legal and valid.

3. Petitioner submits that the notice Annexure P-6 dated 01.10.2008 given to the petitioner of being heard in response to an earlier order passed in W.P.No.2548/2003 on 27.01.2008, was in respect of a dies non order dated 04.11.1998 whereas the impugned order dated 10.11.2008 Annexure P-9 passed by the State, confirmed the order of dies non passed earlier on 04.11.1999.

4. It is pertinent to point out at this juncture that the basic order of dies non which is not disputed by the petitioner is of 04.11.1999 and not of 04.11.1998. The mention of date as 04.11.1998 in the order passed by this court earlier and also in the show-cause notice dated 01.10.08 is apparently due to inadvertence and not intentional.

5. From perusal of the impugned order Annexure P-9, it is evident that the petitioner had been given opportunity of making his appearance and submitting his reply in respect of dies non order.

6. The petitioner despite receiving the said notice Annexure P-6 did not come forward. No reply was submitted by him as is evident from reading of para 3 of Annexure P-9.

7. While passing the impugned order the competent authority has taken into account the relevant facts. The facts revealed from the impugned order are that in regard to some service dispute (unrelated to the present dispute herein) raised before the Civil Court, the petitioner, for the period from 05.03.1977 to 14.03.1983 was declared to be entitled to salary and admissible allowances. Thereafter, the petitioner was transferred from Gwalior to Ratlam in 1984 and as a consequence thereof was relieved on 03.07.1984. The petitioner neither joined at Ratlam nor did he inform about the reasons for his absence. Ultimately, while being absent from duty, he attained the age of superannuation on 28.02.1998. The competent authority, thereafter, passed an order dated 04.11.1999 of dies non for the period of absence from 04.07.1984 to 28.02.1998. This order came to be challenged in various rounds of writ petitions culminating in passing of the order dated 07.09.2012 in W.A.No.47/2012 as reproduced above.

8. Thus, the only issue which remains to be answered is as to whether the fresh order of dies non dated 10.11.2008 Annexure P-9 by which the original order of dies non dated 04.11.1999 has been upheld, and reiterated.

9. It is seen from the record that the petitioner was afforded opportunity by issuance of show-cause notice Annexure P-6 which the petitioner admits to have received. It is further not denied that the petitioner failed to respond to such notice and also did not appear in the office of the Principal Secretary, Commercial Tax for personal hearing as directed in the show-cause notice.

10. Accordingly, the State passed the order of dies non for the period from 04.07.1984 to 28.02.1998. Accordingly, it cannot be said that the order of dies non has been passed without affording any opportunity of hearing to the petitioner. In fact, it is a case where despite affording of opportunity, the same was not availed by the petitioner and therefore, the impugned order of dies non dated 10.11.2008 is not vitiated on the anvil of the principle of natural justice.

11. The order of dies non dated 10.11.2008, Annexure P-9, is a reasoned order which assigns sufficient cogent reasons to justify its validity on the anvil of Article 14 of the Constitution of India.

12. In view of above, there is no case for interference in the present matter and the present Writ Petition is hereby dismissed.

13. However, the dismissal of this petition shall come in way of the petitioner if he so chooses to invoke Rule 29 of M.P. Civil Services (CCA) Rules, 1966 for filing a review before the same authority which passed the order impugned, provided the law permits and occasion arises.

14. No cost.