



1

WP-13253-2022

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 15th OF OCTOBER, 2024WRIT PETITION No. 13253 of 2022*HARIVALLABH CHATURVEDI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

Shri D.P.Singh - Advocate for the petitioner.

Shri K.S.Tomar - Government Advocate for respondent/State.

.....

ORDER

With consent of both the parties, matter is heard finally at motion stage.

The present petition has been filed under Article 226 of the Constitution seeking following reliefs:-

i) That, the order impugned dated 23.05.2022 passed by the Respondent no.4 contained in Annexure- P/1 may kindly be quashed with all consequential effects, in the interest of justice.

ii) That, the respondents have failed to settle the terminal claims and the same have been withhold even after exonerating from the charges, therefore, the respondents be commanded to settle his terminal claims viz. Gratuity, P.F. G.I.S., Leave encashment and all admissible claims and pay the same alongwith interest @ 18% p.a. in the interest of justice.

iii) Cost of the petition be awarded or any other order or direction



deemed fit in the circumstances of the case be issued in favour of the petitioner.

Brief facts of the case are that petitioner was initially appointed on the post of Forest Guard on 15.11.1986 and in the year 2015 he was promoted on the post of Forest Ranger. Thereafter, petitioner was superannuated on 31.08.2021. Vide letter dated 01.05.2020, the petitioner was posted as Forest Chowki Incharge, Jorasi, Forest Range, Gwalior and vide order dated 10.08.2020, the charge of Forest Chowki Chhonda was given to petitioner. Therefore, it is pertinent that petitioner was having charge of two Chowkies. In the meanwhile, petitioner was subjected to disciplinary proceedings by issuing the charge sheet on 26.02.2021 whereby the allegations were made that over the Beat Panihar Room No.93, without any permission, road construction was done by escalation of Moorum illegally. Over such inspection, the spot was inspected by the team. The fact was affirmed by the investigation team. The said illegal construction caused loss to the Government to the tune of Rs. 2,67,900/-.

Learned counsel for petitioner submitted that action of the respondents is illegal arbitrary and malafide. After attaining the age of superannuation, the respondents have no power and authority and that power can only be exercised as per Rule 9 of the Pension Rules, 1976. It is further submitted that over the same set of allegations, the enquiry instituted against one other Forest Ranger, Mr. Sukhdev Sharma was closed and he has been exonerated but over the same set of allegations, the petitioner is subjected to penalty. The order of penalty has been issued by the respondent No.4 without



applying the provisions contemplated under Rule 9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred as Rules, 1976). Therefore, the impugned order passed by the respondent No.4 by imposing the penalty of recovery of Rs. 2,67,900/- along with 12% per annum interest from the date of incident is apparently illegal and the same is beyond jurisdiction. Therefore, the petition may be allowed and impugned order deserves to be quashed with all consequential effects.

Per contra, learned counsel for respondent/State opposed the prayer and prayed for its rejection by submitting in reply that the impugned order has been passed by the concerned authorities after duly completion of the departmental proceedings and the charges have been proved against the petitioner. The petitioner was retired on 31.08.2021 and the charge-sheet against the petitioner was framed on 26.02.2021 (Annexure P/6) and under the aegis of "*Ex Post Facto Law*", the respondent is competent to initiate the penalty upon the petitioner. On the same grounds, another petitioner vide W.P. No.16286/2022 was filed before this Court and vide order dated 21.07.2022 (Annexure R/1), the same has been dismissed. Therefore, the instant petition also deserves to be dismissed.

Both the parties are heard at length and perused the entire record with due care.

From perusal of the record, it appears that petitioner has been retired on 31.08.2021 vide letter dated 12.07.2021 (Annexure P/2) and before his retirement, departmental proceedings have been initiated against him vide order dated 26.02.2021 (Annexure P/6). It is also noteworthy that



departmental enquiry has been initiated against the petitioner as per Rule 14 of Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966 and respondent No.4 vide order dated 23.05.2022 (Annexure P/1) imposed the penalty for recovery of an amount of Rs.2,67,900/- along with 12% interest p.a. from the date of incident upon the petitioner.

The petitioner's main grievance is that although departmental enquiry can be continued against him after his retirement and no prior permission is required from the Governor to continue the enquiry against him, but after retirement, he can be punished only by the Governor as per provisions contained under Clause (a) of Sub-rule 2 of Rule 9 of Rules, 1976. Provisions contained under Clause (a) of Sub-rule 2 of Rule 9 of Rules, 1976 mandate as under:-

"9 (2) (a)- The departmental proceedings, if instituted while the Government servant was in service whether before his retirements 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 commence, 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."

As per rule 9 (2) (a) of Rules, 1976, the departmental enquiry having



been initiated before the retirement, the same can be continued after his retirement. However, in case where the order of punishment is to be passed, in such matters, the same can be done by the order of Governor, who is the highest authority in the State. In the instant matter, the same shall have been followed. Therefore, as per the rules, it is upon the disciplinary authority to submit the report of departmental enquiry conducted against the petitioner regarding its finding to the Governor and it is upon the Governor only to withhold the benefits. This aspect having been glossed over makes the order passed by the disciplinary authority qua retired employee vulnerable. **(See:- the order of the Division Bench of this Court passed in the case of Prem Prakash Sharma Vs. MPMKVCL and others., order dated 10.01.2018, passed in W.A.No.1234 of 2017.**

In view of the aforesaid, this Court is of the considered opinion that the impugned order dated 23.05.2022 (Annexure P/1) passed by the respondent No.4 is beyond jurisdiction and without following the provisions contemplated under Rule 9 (2) (a) of Rules, 1976. Any order inflicting penalty to the penalty can be issued by the Governor, but the same mandatory procedure has not been applied in the instant matter. Hence, the impugned order dated 23.05.2022 (Annexure P/1) is totally beyond jurisdiction and in the interest of justice, the same deserves to be quashed.

Resultantly, the instant petition is allowed and impugned order dated 23.05.2022 (Annexure P/1) passed by respondent No.4 is hereby quashed with all the consequential effects. Respondents are also directed to pay the other retiral dues to the petitioner along with the interest of 6% per annum



6

WP-13253-2022

within a period of two months from the date of receipt of certified copy of this order.

Petition stands allowed and disposed of.

No order as to the cost,

**(ANIL VERMA)
JUDGE**

Vishal