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WP-11771-2020

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 24th OF SEPTEMBER, 2024WRIT PETITION No. 11771 of 2020*DR. RAJESH KOTHARI**Versus**URBAN ADMINISTRATION AND HOUSING DEPARTMENT AND
OTHERS*

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Appearance:

Shri L. C. Patne, learned counsel for the petitioner.

Shri Shashank Sharma, learned Panel Lawyer for respondent

No.1/State.

Shri Aniket Naik, learned counsel for the respondents No.2 & 3.

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ORDER

The present petition is filed under Article 226 of the Constitution of India, challenging the order dated 11.07.2019 issued by Respondent No. 3, which rejected the petitioner's claim for the grant of the second 'Kramonnati' in the pay scale of Rs. 14,000-18,300 (revised to Rs. 37,400-67,000 + 8700/- w.e.f. 1.1.2006) after 24 years of service, w.e.f. 7.4.2010, on the ground of the pendency of a criminal case. The petitioner has further sought a direction to the respondents to grant the benefit of the second 'Kramonnati' in the pay scale of Rs. 14,000-18,300 (revised to Rs. 37,400-67,000 + AGP 8700 w.e.f. 1.1.2006) after the completion of 24 years of service, i.e., w.e.f. 7.4.2010, and to re-fix and revise the petitioner's pay as per the provisions of the M.P. Revision of Pay Rules, 2017 in Level 15 w.e.f. 1.1.2016. The petitioner also



seeks the recalculation of full pension, gratuity, leave encashment, and other admissible retiral dues based on the last drawn salary, as well as the release of arrears with interest @12% p.a.

2. Draped in brevity, the facts of the case are that the petitioner was initially appointed to the post of Assistant Health Officer on 7.4.1986 in the then regular pay scale of Rs. 1370-2100/- (revised to Rs. 2600-4200/- and further to Rs. 3000-4500/-) in the service of Respondent No. 3, Municipal Corporation at Indore. In due course, the petitioner's designation was changed to Health Officer in 2001. The petitioner was granted the benefit of the 1st 'Kramonnati' after completing 12 years of service in the then regular pay scale of Rs. 10650-15850/- w.e.f. 1.9.2001 (which was subsequently changed to Rs. 12000-16500/- in 2006), and his pay was fixed at Rs. 13,565/- as of 1.9.2001, with the next increment dated 1.4.2002, when his pay was fixed at Rs. 13,900/-. The petitioner's pay was further revised to Rs. 15,600-39,100/- + 6600/- under the provisions of the M.P. Revision of Pay Rules, 2009, and was fixed at Rs. 34,270/- w.e.f. 1.1.2006, with the next increment at Rs. 35,370/- w.e.f. 1.7.2006. The petitioner submits that, in accordance with the Circular dated 19.4.1999, read with the Circular dated 3.5.2000/17.5.2000 issued by the State Government, he was entitled to the benefit of the 2nd 'Kramonnati' after completing 24 years of service in the then regular pay scale of Rs. 4000-18,300/-, as was granted to two other similarly situated Health Officers, namely Dr. D.C. Garg and Dr. K.S. Verma, by Respondents No. 2 and 3, as evidenced by the copies of Resolution No. 584 dated 31.8.2013, passed by Respondent No. 2, and the



consequential order dated 4.3.2014, issued by Respondent No. 3. The petitioner further submits that while serving as Health Officer in Indore Municipal Corporation, Indore, he was falsely implicated in a criminal case pertaining to disproportionate assets at the instance of his daughter-in-law, who was in a strained marital relationship with his son, with divorce proceedings pending before the Court of Law. The Lokayukt registered an FIR dated 16.7.2011 at Crime No. 77/2011 with the Special Police Establishment, Lokayukt, Bhopal, under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, against the petitioner. On account of the mere registration of the aforesaid criminal case, the petitioner has not been granted the benefit of the 2nd 'Kramonnati' after completing 24 years of service, despite submitting several representations over time. The petitioner retired from the post of Health Officer while on deputation to Dewas Municipal Corporation upon attaining the age of superannuation on 31.8.2017. As the petitioner was approaching retirement, Dewas Municipal Corporation forwarded the petitioner's service book and other service records to Respondent No. 3 in its letter dated 28.8.2017, to ensure the petitioner's pension case would be settled expeditiously after his retirement.

3. The petitioner further submits that despite the fact that there was no legal impediment in the matter of sanction of full pension, gratuity, leave encashment and other admissible retiral dues to him, soon after his retirement, the respondents have deliberately and willfully withheld the same for considerably long time and it is only by an order dated 17.4.2018 that Respondent No. 3 sanctioned provisional pension to the petitioner under



Rule 74 read with Rule 64 of M.P. Civil Services (Pension) Rules, 1976 (in short **Pension Rules, 1976**) whereas the petitioner having no criminal case pending within the definition of term 'judicial proceedings' as defined under Rule 9 of MP. Civil Services (Pension) Rules, 1976 was entitled to be granted full pension & gratuity in view of the law laid down by this Court in the case of *Prahlad Amarchya v. State of M.P. & Another WP No. 8514/2013, decided on 10.3.2016* as affirmed by the Division Bench of this Court in the case of *State of M.P. & Another v. Prahlad Amarchya (WA No. 153/2017, decided on 10.4.2017)*. Similarly, the petitioner is entitled to claim encashment of his leaves under the provisions of M.P. Civil Service (Leave) Rules, 1977 including Earned Leave of 240 days in view of provisions of Rule 25(1)(c) of the M.P. Civil Service (Leave) Rules, 1977 and even endency of such criminal case shall not come in way of petitioner in getting the aforesaid benefit of leave encashment in view of the law laid down by this Court in the case of *Banshilal Shrivastava v. State of M.P. & Others (W.P. No. 917/2011, decided on 7.12.2011)*.

4. The petitioner further contends that, due to the registration of the aforementioned criminal case in 2011, the respondents have not extended the benefit of the 2nd 'Kramonnati' in the pay scale of Rs. 14,000-18,300 (revised to Rs. 37,400-67,000 + 8700/- w.e.f. 1.1.2006) after 24 years of service, w.e.f. 7.4.2010. His claim was illegally and arbitrarily rejected by Respondent No. 3 through the impugned order dated 11.7.2019. Additionally, the petitioner has not been granted the benefit of leave encashment of 240 days following his retirement, in accordance with Rule



25 of the M.P. Civil Services (Leave) Rules, 1977.

5. Counsel for the petitioner argued that the respondents' action in withholding the full pension and gratuity under Rule 9 of the Pension Rules, 1976 is illegal, arbitrary, and contrary to Rules 4 and 9(6)(b)(i) of the Pension Rules, 1976. As per Sub-Rule 6(b)(i) of Rule 9, read with Sub-Rule (4) of Rule 9 of the Pension Rules, 1976, in the case of a government servant who has retired upon 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), provisional pension and death-cum-retirement gratuity, as per Rule 64 of the Pension Rules, 1976, shall be sanctioned. Additionally, under Sub-Rule 6(b)(i) of the Pension Rules, 1976, pension can only be withheld when judicial proceedings are pending. This implies that judicial proceedings are considered to be instituted in a criminal case when a Magistrate has taken cognizance of a complaint or a report filed by a police officer.

6. It is argued that the petitioner retired on 31.08.2017, and as of that date, no judicial proceeding had been instituted. The charge sheet was only filed in March 2020. Rule 9(6)(b)(i) of the Pension Rules, 1976 stipulates that judicial proceedings shall be deemed to be instituted in the case of criminal proceedings on the date the Magistrate takes cognizance of a complaint or a police officer's report. Since no judicial proceeding was pending at the time of the petitioner's retirement, the withholding of pension, as well as the denial of 'Kramonnati' and leave encashment benefits, is illegal.



7. Per contra, counsel for the respondents submitted that, prior to the petitioner's retirement, an FIR had already been registered, and as per the provisions of Sub-Rule (6)(b)(i) of Rule 9 of the Pension Rules, 1976, judicial proceedings shall be deemed to be instituted when the complaint or report of a police officer is submitted to the competent court for taking cognizance. In support of his submission, he relied on the judgment passed by the Coordinate Bench in W.P. No. 5442/2019 (*Prem Rao Chandelkar vs. Water Resource Department & Ors.*), decided on 12.12.2023, wherein, while referring to Rule 9(6)(b)(i) of the Pension Rules, 1976, and the judgment of the Single Bench in *Chandramani Tripathi vs. The State of M.P. & Ors.*, 2020 (4) M.P.L.J. 637, it was held that judicial proceedings are deemed to be instituted on the date of the filing of the complaint or police report. Respondents No. 2 & 3 also referred to the judgment in *Amrit Rao Mukut Rao Survey vs. State of M.P.*, 1999 (1) M.P.L.J. 105, which held that criminal proceedings are deemed to be instituted on the date the complaint is made.

8. Counsel for the State adopted the arguments advanced by the Counsel for the respondents No.2 & 3.

9. After hearing the learned counsel for the parties, the question that arises for consideration is whether full pension and retiral dues can be withheld if no charge sheet is filed and no cognizance is taken on the complaint/report of a police officer in a criminal case as of the date of retirement, or if it can be withheld when a complaint is made to the Magistrate or upon the report of a police officer? Because of the divergent



views on the said point by the Courts, it is apposite to interpret Rule 9(6)(b) (i) of the Pension Rules, 1976.

10. Both parties have referred to various judgments. The petitioner has relied on the judgment in the case of *Prahlad Amarchya (supra)*, decided by a Single Judge on 10.03.2016, which referred to the Supreme Court's ruling in *Union of India vs. K. V. Jankiraman (1991) 4 SCC 109*. It was held that Rule 9 of the Pension Rules, 1976, grants the Governor the authority to withhold or withdraw pension and provides for the payment of provisional pension/gratuity. However, Rule 9(6)(b)(i) of the Pension Rules, 1976, stipulates that judicial proceedings shall be deemed to be instituted in respect of a criminal case on the date when cognizance has been taken. The petition was allowed in that case, as cognizance in the criminal case was taken after the petitioner's retirement. The Court directed the release of gratuity and full pension to the petitioner. The State filed a writ appeal, W.A. No.153/2014, which was dismissed by the Division Bench on 10.04.2017. The Division Bench, after considering the judgments in *Parmanand Champalal Lad vs. State of M.P. 2004 (4) M.P.L.J. 199*, *Aditya Mishra vs. State of M.P. 2014 (2) M.P.L.J. 59*, and *Kamla Bai vs. Nathuram Sharma & Ors. 2014 (2) M.P.L.J. 62*, affirmed the Single Judge's ruling that under Rule 9(6)(b)(i) of the Pension Rules, 1976, judicial proceedings are deemed to be instituted in a criminal case on the date cognizance is taken.

11. He further referred to the recent judgment of this Court dated 12.09.2024, passed in W.P. No.18430/2022 (*Pawan Kumar Shilpi vs. Department of Mineral Resources and Ors.*), where this Court considered the



term 'judicial proceedings' under Rule 9 of the Pension Rules, 1976. It was held that withholding retiral dues solely on the basis of the registration of a criminal case at the time of retirement is contrary to the provisions of Rule 9 of the Pension Rules, 1976. The judgment in the case of *Prahlad Amarchya* (supra), which was affirmed by the Division Bench in W.A. No.153/2017, was also cited, along with the case of *Ramlal Malviya vs. State of M.P. & Ors.* (W.P. No.3173/2016), decided on 16.03.2017, and affirmed in W.A. No.243/2017 on 15.09.2024. It was concluded that the judgment in the case of *Amrit Rao Mukut Rao Survey* (supra) is per incuriam in light of the Full Bench judgment in *Jabalpur Bus Operators Association & Ors. vs. State of M.P. & Anr.*, 2003 I MPLJ 513.

12. Counsel for the petitioner vehemently argued that the judgment relied upon by the Respondents in the case of *Prem Rao Chandelkar* (supra) is based on the judgment of another Single Bench in the case of *Chandramani Tripathi* (supra). The case of *Chandramani Tripathi* (supra) was decided based on the judgment in *Amrit Rao Mukut Rao Survey* (supra). In that judgment, the Division Bench ruling in the case of *Prahlad Amarchya* (supra) was not considered, and the judgment was rendered solely on the basis of *Amrit Rao Mukut Rao Survey* (supra). Consequently, this Court, in the case of *Pawan Kumar Shilpi* (supra), held that the judgment in *Amrit Rao Mukut Rao Survey* (supra) is per incuriam. Therefore, the judgment in the case of *Chandramani Tripathi* (supra) is also no longer good law.

13. Counsel for the Respondents argued that the Special Leave Petition (Civil) Diary No. 40606/2022 against the judgment in the case of



Chandramani Tripathi (supra) has also been dismissed by order dated 03.03.2023. Therefore, the view taken in that case, particularly in paragraph 14, which considered Rule 9(6)(b)(i) of the Pension Rules, 1976, stating that the institution of 'judicial proceedings' refers to the date on which the complaint or report was made to the police officer, has been affirmed. This interpretation has also been followed in the case of *Prem Rao Chandelkar (supra)*.

14. The learned counsel for Respondents No. 2 & 3 further contended that the order passed by the Division Bench in W.A. No. 153/2017 in the case of *Prahlad Amarchya (supra)* was not on merit, as the writ appeal filed by the State was dismissed on the ground of delay. Therefore, it cannot be considered a judgment affirming the Single Judge's view that the term 'judicial proceeding' under sub-rule 6 of Rule 9 of the Pension Rules, 1976, shall be deemed to be instituted on the date when cognizance is taken by the Court on the complaint or report to the police. I do not find merit in this contention. Upon reading the order passed by the Division Bench as a whole, it is clear that the Bench examined the Single Judge's order on merit in paragraphs 7 and 8, and then dismissed the appeal on the grounds of delay, as no merit was found. The relevant paragraphs of the Division Bench's order are quoted as follows:

7. On the other hand learned counsel for the respondent has drawn our attention in the matter of *Parmanand Champalal Lad vs. State of M.P. 2004(4) M.P.L.J. 199*, *Aditya Mishra vs. State of M.P. 2014(2) M.P.L.J. 59* and *Kamla Bai vs. Nathuram Sharma and others 2014 (2) M.P.L.J. 62* and submits that this question has been



considered by this Court time and time again.

8. Admittedly, in the present appeal, charge-sheet has been filed on 19/02/2013 and keeping in view the law laid down in *Parmanand Champalal Lad (Supra)*, *Aditya Mishra (Supra)* and *Kamla Bai (Supra)*, we are of the view that learned Writ Court has rightly allowed the writ petition filed by the respondent (herein) and directed to pay the amount alongwith interest.

In view of the aforesaid, the contention of the counsel for the respondents No.2 & 3 cannot be accepted that the aforesaid judgment is not on merit affirming the view of Single Judge as they are only obiter and passing remark.

15. The further submission of the learned counsel for Respondents No. 2 & 3 is that the view taken by the Single Judge in paragraph 14 of the case of *Chandramani Tripathi (supra)*, which interprets the term 'institution of judicial proceeding' as deemed to occur on the date of making the complaint or report to the police officer, has been affirmed by the Supreme Court, as the Special Leave Petition (SLP) against that case was also dismissed. However, this Court finds, upon perusal of the order of the SLP, that it was dismissed *in limine*; thus, it cannot be considered a judgment affirming the law laid down by the Single Judge in that case. The law in this regard is well settled and no longer *res integra*, as established in the cases of *Union of India vs. Manik Lal Banerjee*, (2006) 9 SCC 643, *Y. Satyanarayan Reddy vs. Mandal Revenue Officer*, (2009) 9 SCC 447, *Fuljit Kaur vs. State of Punjab*, (2010) 11 SCC 455, and *Managing Director and M.P. Poorva Kshetra V.V. Co. Ltd. & Ors. vs. Sita Ram Patel & Ors.* (W.A. No. 897/2019).

In the aforesaid, it cannot be held that the view taken by Single Judge



in the case of *Chandramani Tripathi* (supra) was affirmed by the Supreme Court.

16. On close scrutiny and critical analysis of the aforesaid judgments, it is noticeable that in the judgment, passed by learned Single Judge in the case of *Chandramani Tripathi* (supra), the judgment passed by the Division Bench in the case of *Prahlad Amarchya* (supra) (W.A. No.153/2023) and *Ramlal Malviya vs. State of M.P. & Ors.* (WA No.243/2017) has not been considered. Though the judgment passed by learned Single Judge in the case of *Prahlad Amarchya* (W.P. No.8514/2023) has been referred, but not been discussed. Further the judgment of Division Bench in the said was not brought to the notice of the Single Judge. Therefore, the view taken by learned Single Judge in the case of *Chandramani Tripathi* (supra), that the word 'judicial proceeding' referred under Rule 9(6)(b)(i) of Pension Rules, 1976 would mean the criminal proceeding instituted on 'the date on which the complaint of police report is made', is not a correct view and is contrary to the view taken by the Division Bench in the case of *Prahlad Amarchya* (supra) (WA No.153/2017) and *Ramlal Malviya vs. State of M.P. & Ors.* (WA No.243/2017). Therefore, the judgments in the case of *Chandramani Tripathi* (supra) and *Prem Rao Chandelkar* (supra) are held to be per incuriam.

17. Thus, in view of the aforesaid, the law as exists today in respect of Rule 9(6)(b)(i) of Pension Rules, 1976 is that the word 'judicial proceeding' would mean the date on which the cognizance is taken on the complaint or report of police officer and not the date on which the complaint or report of



police officer is made.

18. Counsel for the parties submit that in none of the aforementioned cases, the relevant Rule 9(6)(b)(i) has been interpreted. Therefore, the said rule requires interpretation because of the divergent views of this Court in this judgment. Counsel for both parties has elaborated on this point in detail.

19. In order to appreciate the aforementioned submission and to interpret the relevant provision, the pertinent text of Rule 9 of the Pension Rules, 1976, is reproduced as follows:-

9. 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 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.

20. Counsel for the petitioner argued that the language of Rule 9(6)(b) (i) of the Pension Rules, 1976 states that in the case of criminal proceedings, the relevant date is when the complaint or report of a police officer is made to which the Magistrate takes cognizance. He contends that the intention of the legislature in framing this rule is not to withhold pension but to ensure that the petitioner receives his pension and other retiral dues, which are not a bounty but a right. The language of the rule is plain and unambiguous. In the present case, it is undisputed that the charge-sheet was filed after the petitioner's retirement and that cognizance was not taken on the date of his retirement; therefore, his pension and retiral dues cannot be withheld.

21. The only exceptions carved out under Rule 9 of the Pension Rules, 1976 indicate that in cases of criminal proceedings, if a Magistrate has taken cognizance of a complaint or report from a police officer on or before the date of retirement, then the pension and retiral dues may be withheld as per the provisions of Rule 9 of the Pension Rules, 1976.

22. Counsel for the respondents No. 2 & 3 submitted that, according to Rule 9(6)(b)(i) of the Pension Rules, 1976, judicial proceedings shall be deemed to be instituted in the case of criminal proceedings on the date the complaint or report of a police officer is made. In the present case, the FIR was already registered prior to the petitioner's retirement; therefore, the



respondents are fully justified in withholding the pension, retiral dues, and other claims.²²

23. According to the counsel for the petitioner, the relevant date is the date on which the Magistrate takes cognizance of the complaint or report of a police officer, which would be deemed to be judicial proceedings instituted; whereas the counsel for the respondents No. 2 & 3 submits that the relevant date would be the date on which a complaint or report of a police officer is made.

24. In order to interpret the aforesaid provision, it is apt to see the object and intention of the legislature. From going through the various provisions of Pension Rules of 1976, the legislature intends to make the payment of retiral dues and other claims of a retired government servant, who has completed qualifying services as a matter of right. The Rule 9 of the Pension Rules, 1976 deals with the right of governor to withhold or withdrew pension. The Pension Rules, 1976 provides for payment of pension, gratuity and other retiral dues to a retired government servant. The Rule 9 which deals with right of governor to withhold or withdraw pension is an exception which carves out the contingencies under which the pension of retired government servant can be withhold or withdraw. Those exceptions are enumerated from Rule 2 to Rule 6. Sub-rule 4 provides that 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



under Rule 64 of Pension Rules, 1976, 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. The word 'judicial proceeding' referred in sub-rule (4) has been explained in sub-rule (6)(b)(i) of Pension Rules, 1976 in the case of criminal proceedings which reads that judicial proceeding shall be deemed to be instituted 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. The Pension Rules are made for grant of pension to a retired government servant and Rule 9 of Pension Rules, 1976 is an exception to withhold or withdraw the pension. In the case of *Deokinandan Prasad vs. State of Bihar (1971) 2 SCC 330*, it has been held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. The same view has been followed in the case of *D.S. Nakara vs. Union of India, (1983) 1 SCC 305*, *U.P. Raghavendra Acharya vs. State of Karnataka, (2006) 9 SCC 630*, in para-25 it is held that pension is not a bounty, but it is treated to be a deferred salary. It is akin to right of property. The same view is reiterated in the case of *V. Sukumaran vs. State of Kerala, (2020) 8 SCC 106*. Thus, the



Pension Rules, 1976 recognises right of pension of a retired government servant and withholding or withdrawing pension is an exception to the Rule. For interpreting the relevant Rule 9(6)(b)(i) of Pension Rules, 1976, we have to see the language which is plain and unambiguous that the 'judicial proceeding' shall be deemed to be instituted 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. The intention of the legislature is to withhold or withdraw the pension or retiral dues only when the cognizance is taken on the complaint or report of a police officer in a criminal proceeding then only it shall be deemed to be instituted. In the case of *Kanai Lal Sur vs. ParamnidhiSadhukhan, AIR 1957 SC 907*, it has been held that primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The similar view was taken in the case of *District Mining Officer vs. Tata Iron and Steel Co., (2001) 7 SCC 358* wherein in para-18, it has been held that a statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature.



25. In the case of *Padma Sundara Rao vs. State of T.N., (2002) 3 SCC 533* in para-12, the Supreme court held that it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The similar view was reiterated in the case of *Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat, (2004) 6 SCC 672*. In *W.P. No.26605/2019 (SamridhiMahawar vs. State of M.P. & Ors.)*, it has been held by this Court that it is a basic principle of interpretation that when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. (Principles of Statutory Interpretation: Justice G.P. Singh : 14th Edn. Ch.1. Title 3.)

26. If the argument of the counsel for respondents No. 1 & 2 is accepted, that the 'judicial proceeding' shall be deemed to have been instituted on the date when the complaint or police officer's report is made, then the words 'Magistrate takes cognizance on the complaint or of police report' used in Rule 9(6)(b)(i) of the Pension Rules, 1976, would become redundant, and would defeat the intention of the legislature. Furthermore, the word 'of,' used in Rule 9(6)(b)(i) in 'the cognizance on report of the police officer,' would also become redundant. Therefore, the word 'make,' used in the relevant rule, cannot be read in isolation. It is a well-settled principle of law that the interpretation of a provision must give it effect, not render it



redundant. In this regard, reference may be made to the judgment passed by the Apex Court in *Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709*.

27. The word 'cognizance' used in the relevant aforesaid provision has got significant importance. The word 'cognizance' is not defined under the Pension Rules, 1976, but under Section 190 Cr.P.C. provides for cognizance of offence by Magistrates as under:-

- 190. Cognizance of offences by Magistrates.**-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -
- (a) upon receiving a complaint of facts which constitute such offence;
 - (b) upon a police report of such facts;
 - (c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.
- (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

28. From the aforesaid provision, it is clear that when a Magistrate applies his mind considering the facts of a complaint and material prima facie forms an opinion that whether a case is made out for cognizance or not. Thus, the word 'cognizance' connotes that there is judicial application of mind by Magistrate on a complaint made to him. The legislature has intentionally used word 'cognizance' in Rule 9(6)(b)(i) of Pension Rules, 1976 that a pension or retiral dues of a retired government servant can be withheld or withdraw only when cognizance is taken on the complaint or report of a police officer in a criminal proceedings. Thus, mere making of a



complaint or report against the government servant before the date of retirement would not deprive him from his right to pension or other retiral dues. There has to be cognizance on the complaint or report of a police officer on the date of retirement. Thus, accordingly the Rule 9(6)(b)(i) of Pension Rules, 1976 is interpreted.

29. In view of the judgments passed by the Division Bench in the cases of *Prahlad Amarchya (supra)* and *Ramlal Malviya (supra)*, along with the interpretation of Rule 9(6)(b)(i) of the Pension Rules, 1976 by this Court, it is held that the petitioner is entitled to full pension, as no charge-sheet was filed and no cognizance was taken on the police report as of the date of retirement. It is further held that the petitioner is entitled to kramonnati (Vetanman) as per the government circulars, which has been denied to him solely because of the filing of the FIR before his retirement. The order dated 11.07.2019 is quashed. The respondents have failed to point out any provision under the M.P. Civil Services (Leave) Rules, 1979 that states a retired government servant is not entitled to leave encashment due to the pendency of a criminal case. In the case of *Banshilal Shrivastava (supra)*, it has already been held that the pendency of a criminal case does not hinder a retired government servant from obtaining the benefit of leave encashment. Thus, it is held that the petitioner is also entitled to earned leave of 240 days in accordance with the provisions of Rule 25(1)(c) of the Leave Rules, 1977.

30. Accordingly, the petition is **allowed**. The respondents are directed to pay the full pension of the petitioner in accordance with the law within a



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period of two months from the date of communication of the order passed today, along with the other retiral dues along with 6% interest from the date it has become due til the payment is made. They shall also pay kramonnati and leave encashment as per entitlement, ignoring the pendency of the criminal case.

(VIJAY KUMAR SHUKLA)
JUDGE

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