

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2200 of 2013

Badri Prasad Mishra, Aged about 63 years, S/o Shri Kaushal Prasad, Retired Forester, R/o-Village-Latiyar, Post and Thana Hardua, Via-Semariya, Distt.Rewa (M.P.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Conservator of Forest, Circle Surguja, Ambikapur, District Surguja (C.G.)
3. Divisional Forest Officer, Forest Division Manendragarh, District Koriya (C.G.)
4. Sub Divisional Forest Officer, Janakpur, Forest Division Manendragarh, District Koriya (C.G.)

---- Respondents

For Petitioner:	Mr. Vinay Dubey and Mr.Ajay Mishra, Advocates.
For Respondents/State:	Mr. Y.S. Thakur, Deputy Advocate General and Mr. Ajit Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/12/2015

1. The petitioner was subjected to disciplinary proceeding while he was holding the post of Forest Guard in the Department of Forest. He was subjected to charge-sheet on 10-11-2010 for misconduct. During the pendency of

disciplinary proceeding, he retired on 30-11-2010, thereafter, enquiry officer was appointed on 11-11-2010 and on 4-12-2012, an order of recovery was passed against him directing recovery of Rs.2,99,490/-. The petitioner preferred appeal before the Conservator of Forests who by the impugned order, dismissed the appeal affirming the order passed by the disciplinary authority against which this writ petition has been filed stating inter alia that by virtue of Rule 9 (1) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short 'the Rules, 1976'), such a course without any permission from the Governor is impermissible in law and, therefore, the impugned order is bad in law.

2. The respondents / State have filed return that departmental enquiry was completed prior to retirement of the petitioner and, therefore, recovery directed by the disciplinary authority is in accordance with law and it has rightly been affirmed by the appellate authority and no interference is called for.
3. Mr. Vinay Pandey and Mr.Ajay Mishra, learned counsel for the petitioner, would submit that departmental proceeding initiated against the petitioner before his retirement by the disciplinary authority could not be completed while he was

in service and it was concluded only after his retirement and on 4-12-2012 i.e. after retirement of the petitioner, the impugned recovery order was passed which is in teeth of Rules 9 (1) and 9 (2) of the Rules, 1976. The course open to the respondent authority was to submit a report to the Governor and final order could not have been passed by the disciplinary authority.

4. Mr. Y.S. Thakur, learned Deputy Advocate General and Mr. Ajit Singh, learned Panel Lawyer, appearing on behalf of the State/respondents, would submit that such a recovery order is passed in accordance with law and the impugned order is strictly in accordance with law and no interference is called for.

5. In order to consider the plea raised at the Bar, it would be appropriate to notice Rule 9 of the Rules, 1976 which read as under: -

“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, 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.

xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx”

6. A careful perusal and meaningful reading of sub-rule (1) of Rule 9 of the Rules, 1976 would show that the authority to pass an order for recovery of any pecuniary loss caused to the Government after retirement of Government servant is reserved only to the Governor and no other authority. Proviso to sub-rule (2) (a) of Rule 9 of the Rules, 1976 makes it ample clear 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 and the Governor in accordance with the procedure applicable to the departmental enquiry may pass appropriate order, but the disciplinary authority who has initiated action prior to retirement of Government servant is not entitled to impose penalty.
7. Rule 9 (1) of the Rules, 1976 came up for consideration before a Division Bench of the M.P. High Court in the matter of **State of M.P. and others v. R.L. Ogale and**

others¹ in which it has been held in paragraph 8 as under:-

“8. A reading of sub-rule (1) of Rule 9, quoted above, shows that the power to pass an order for recovery of any pecuniary loss caused to the Government is reserved only to the Governor and no other Authority. Sub-rule (2) (a) of Rule 9 of the Rules of 1976 however, provides that if departmental proceedings were instituted while the Government servant was in service whether before his retirement or during his re-employment, all such departmental proceedings shall be deemed to be proceedings under Rule 9 of the Rules of 1976, after the final retirement of the Government servant and shall be continued and concluded by the Authority by which they were commenced, in the manner as if the Government servant had continued in service. Hence, if the Conservator of Forest was the Disciplinary Authority in the case of the original respondent and before the retirement of the original respondent from service on 31-8-1985, departmental proceedings have been initiated and charge-sheet has been issued on 22-8-1984 by the Conservator of Forest, the said departmental proceedings are deemed to be proceeding under Rule 9 of the Rules of 1976, even after retirement of the original respondent. The proviso of sub-rule (2) (a) of Rule 9 of the Rules of 1976, however, makes it amply clear that where the departmental proceedings are instituted by the Authority sub-ordinate to the Governor, that Authority shall submit a report regarding its findings to the Governor. In the present case, therefore, the Conservator of Forest having initiated the departmental proceedings, before the retirement of the original respondent, was only entitled to continue and complete the same and submit a report to the Governor regarding his findings in the departmental proceedings, but was not entitled to pass a final order for recovery of the loss of Rs.4,10,071.84 from the original respondent. In our view, therefore, the Tribunal was right in quashing

1 2006(2) M.P.H.T. 202 (DB)

the order dated 1-6-1991 passed by the Conservator of Forest, Khandwa for recovery of Rs.4,10,071.84 from the original respondent after his retirement on 31-8-1985.”

8. Applying the mandate flowing from the provisions contained in Rule 9 (1) and proviso to sub-rule (2) (a) of Rule 9 of the Rules, 1976, it is held that once the concerned Government servant has retired after initiation of departmental enquiry and departmental proceeding could not be concluded during his service tenure and concerned Government servant has retired from service, the only course available to respondent No.2 was to submit report to the Governor after conclusion of enquiry along with his finding for appropriate order which he has admittedly, not done and straightway has passed order for recovery of Rs.2,99,490/- which is in teeth of proviso to Rule 9 (1) of the Rules, 1976 and proviso to sub-rule (2) (a) of Rule 9 of the Rules, 1976, therefore, such an order of recovery cannot be sustained.

9. As a fall out and consequence of the aforesaid discussion, the order passed by respondent No.3 dated 4-12-2012/5-12-2012 (Annexure P-2) duly affirmed by the Conservator of Forest by Annexure P-1 are hereby quashed. However, the respondents are at liberty to proceed in accordance with law.

10. Accordingly, the writ petition is allowed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-