

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3398 of 2015**

- G. P. Joshi S/o Late Shri D. S. Joshi, Aged About 62 Years R/o Capital Palace, Flat No. 404, Kavita Nagar, Near Avanti Vihar Sector 1, Raipur, District Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. The Commissioner/ Director, Directorate Public Instructions, Mahanadi Bhavan Naya Raipur, District Raipur (Chhattisgarh)
3. The Divisional Joint Director, Treasury, Accounts & Pension, Raipur Division, District Raipur (Chhattisgarh)
4. The Under Secretary, School Education Department, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)

---- Respondent

For Petitioner : Shri Prateek Sharma, Advocate.

For Respondents : Shri YS Thakur, Deputy AG and Shri DK Wankhede, GA

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****16/10/2015**

1. The petitioner, a retired District Education Officer in the School Education Department, has preferred this writ petition under Article 226 of the Constitution of India to direct to the respondents to pay him regular pension without any deduction from the date of his retirement along with interest @ 18% per annum and to set aside the order dated 13.11.2014 (Annexure-P/5).

2. Facts of the case, briefly stated, are that while the petitioner was working as District Education Officer, at Rajnandgaon during the period 2006-08, allegations were levelled against him along with 9 other District Education Officers regarding irregularities in purchase of 'Tatpatti' for the Primary Schools of the district. A show cause notice was issued against him on 23.8.2008 asking him to show cause as to why a departmental enquiry be not constituted against him. By order dated 22.12.2008, the Director Public Instructions, Chhattisgarh informed the Secretary of the School Education Department that no case for constituting departmental enquiry against the erring District Education Officers is made out. Another show cause notice was issued to the petitioner on 9.2.2012 for constituting the departmental enquiry, however, the enquiry was not constituted. In the meanwhile, the petitioner attained the age of superannuation on 30.4.2013. A departmental enquiry was constituted against him and 9 other District Education Officers on 24.6.2014 (Annexure-P/4) and on that basis the order (Annexure-P/5) has been issued refusing to issue no demand, no dues, no incident certificate for finalization of his pension papers.
3. Relying on the order passed by this Court in the matter of **P.L. Dubey Vs. State of Chhattisgarh & Others** {WPS No.5541/2012, decided on 12.8.2014}, it has been argued that under Rule 9 & 64 of the CG Civil Services (Pension) Rules, 1976 (for short 'the Rules, 1976'), a Government servant is entitled to full pension if the departmental proceedings are not completed within a period of 2 years from the date of institution of enquiry. Therefore, the petitioner is entitled for pension.
4. Learned State counsel would oppose the prayer made in the writ petition.
5. In the matter of **PL Dubey**, referred to above, this Court has held in paragraphs 10 to 12 thus:-

“10. Sub-rule (4) of Rule 9 of the Rules, 1976 makes it explicit 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 in Rule 64, as the case may be, shall be sanctioned, and thereafter providing in clause (b) of third proviso 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.

11. In R.L. Ogale (supra) Hon'ble Shri A.K. Patnaik, CJ & Hon'ble Shri Deepak Verma, J (as their Lordships then were), it has been held thus:-

“10. In the present case, the original respondent retired on attaining the age of superannuation on 31-8-1985 and his pension including gratuity was withheld by the authorities under the aforesaid Rule 9 of the Rules of 1976, and the original respondent was paid, however, a provisional pension in accordance with the said sub-rule (4) of Rule 9 of the Rules of 1976. Any proceeding under Rule 9 of the Rules of 1976 for recovery of loss from pension can be instituted only on or after the retirement of a Government servant and by virtue of sub-rule (2) of Rule 9, the proceedings against the original respondent could be deemed to have been instituted on the date of his retirement, i.e. on 31-8-1985. Clause (b) of the third proviso of the said sub-rule (4) of Rule 9 of the Rules of 1976, makes it amply clear that if the departmental proceedings are not completed within a period of 2 years from the date of institution, the entire amount of pension so withheld shall stand restored on the expiration of the period of 2 years. Thus, the pension that has been withheld in the case of the original respondent stood restored on the expiration of 2 years from the date of institution of the departmental proceedings and no further order on the completion of such 2 years could be passed by

the Governor for recovery of the loss of Rs.4,10,071.84 from the original respondent. Thus, even if we hold that the departmental proceedings initiated by the Conservator of Forest did not stand vitiated and the findings in the said departmental proceedings by the Disciplinary Authority could be placed before the Governor, it will not be possible for the Governor to pass any final order for recovery of the loss of Rs.4,10,071.84 from the original respondent in view of Clause (b) of the third proviso to sub-rule (4) of Rule 9 of the Rules of 1976.”

12. For the foregoing, this Court is of the considered opinion that by virtue of clause (b) of third proviso to sub-rule (4) of Rule 9 of the Rules, 1976, the respondents could not have withheld the amount of gratuity after expiry of the period of two years from the date of superannuation and since the said amount of gratuity still remains unpaid to the petitioner, he is entitled for the same.”

6. The principles laid down by this Court in the matter of **PL Dubey**, referred to above, and the Division Bench of the MP High Court in **State of M.P. and others Vs. R.L. Ogale and others** {2006 (2) MPHT 202 (DB) squarely apply to the fact situation of the case in hand. In the present case also, the petitioner has retired in April, 2013; the enquiry was constituted against him on 24th June, 2014. Thus more than 2 years have elapsed after his retirement and the enquiry is not yet complete, therefore, in view of the provisions contained in clause (b) of third proviso to sub-rule (4) of Rule 9 of the Rules, 1976, the respondents are not empowered or authorized to withhold the amount of pension and other retiral dues and the petitioner is entitled to the said amount.
7. Accordingly, it is directed that the respondents shall pay the entire amount of pension and other retiral dues to the petitioner within a period of 4 months from today. In the peculiar facts of the case, since withholding of the pension and retiral dues was on account of pending

departmental enquiry against the petitioner, no case for award of interest is made out.

8. With the direction aforesaid, the writ petition stands disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

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