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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 462 OF 2015

Gous Ali Beg S/o Shri Asgar Ali Beg, aged about 67 years, Occupation retired Forest Ranger, R/o Lattipara, Kanker, Police Station City Kotwali, Kanker, District Kanker (C.G.)

---Petitioner

Versus

1. State of Chhattisgarh, Through, The Secretary, Forest Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Chief Conservator of Forest, Ananya Bhawan, Medical College Road, Raipur, District Raipur (C.G.)
3. Conservator of Forest, Jagdalpur Circle, Jagdalpur, District Bastar (C.G.)
4. Joint Director, Treasury and Pension, Jagdalpur, District Bastar (C.G.)

---Respondents

For Petitioner : Mr. Ajay Shrivastava, Advocate

For State/Respondents : Mr. Yashwant Singh Thakur, Deputy Advocate General with Mr. Dilmanrati Minj, Deputy Government Advocate

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Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/01/2016

1. Invoking writ jurisdiction of this Court under Article 226/227 of the Constitution of India, petitioner herein has questioned the legality, validity and correctness of the order dated 05/01/2015, by which, in exercise of power conferred under Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter referred to as "the Rules of 1976"), the State Government has directed that a amount of ₹8,95,909 be recovered from the petitioner and further directed to withhold 20% of his pension for next five years.

2. The imperative facts required to judge the correctness of the above-stated order reads as follows:-

2.1 The petitioner was superannuated from the post of Forest Ranger on 31/03/2008 and on the date of retirement, departmental enquiry was pending against him, in which, on 17/02/2010, the

Conservator of Forest (Disciplinary Authority) finding that misconduct on the part of the petitioner has been proved, inflicted order of recovery of ₹ 8,95,909 against him, which the petitioner preferred an appeal before the Chief Conservator of Forest (Appellate Authority). The Appellate Authority by its order dated 24/11/2011 dismissed the appeal of the petitioner affirming the order of Disciplinary Authority.

2.2 In the meanwhile, by order dated 07/10/2010, the amount of ₹ 2,44,877 was adjusted against the recovery amount from the service benefits payable to the petitioner.

2.3 The petitioner questioned the order dated 17/02/2010 directing recovery, the order dated 24/11/2011 dismissing his appeal and the order dated 07/10/2010 adjusting ₹ 2,44,877/-, in a duly constituted petition being Writ Petition (S) No.185/2012 (*Gous Ali Beg v. The State of Chhattisgarh and Others*), which was decided by this Court on 16/07/2012 and the aforesaid orders dated

17/02/2010, 24/11/2011 and 07/10/2010 were quashed by this Court and no liberty was reserved in favour of the respondents/State to initiate fresh proceeding under the Rules of 1976.

2.4 Thereafter, the State Govt. issued show cause notice (Annexure-P/2) dated 11/11/2014 for initiating the proceeding under Rules 8 and 9 of the Rules of 1976.

2.5 Ultimately by order dated 05/01/2015, the State Government directed that ₹ 8,95,909 be recovered from the petitioner and further directed to withhold 20% from his pension for next five years.

2.6 Now, instant writ petition has been filed questioning the order dated 05/01/2015 directing recovery of ₹ 8,95,909 from the petitioner and stoppage of his pension to the extent of 20% for next five years stating *inter alia* that such an order is unsustainable and bad in law as the order passed by this Court in the earlier writ petition filed by the petitioner being Writ Petition (S) No.185 of 2012 is binding upon the respondents and in that case, no liberty was reserved in favour of the respondents to initiate fresh proceeding under the Rules of 1976.

2.7 Reply has been filed by the State Government that since the order passed by the Disciplinary Authority and Appellate Authority has been quashed by this Court on the ground of non-compliance of the Rules of 1976 and in view of amended notification dated 05/07/2014, such an order is permissible in law.

3. Learned counsel appearing for the petitioner would submit that order passed by the State Government dated 07/10/2010 imposing recovery of ₹ 8,95,909 was set aside by this Court in a duly constituted petition and he would further submit that no liberty was reserved in favour of the respondents to initiate fresh proceeding under the Rules of 1976, therefore, the State Government is absolutely unjustified in passing the order dated 05/01/2015 (Annexure-P/1) and directing the recovery of above-stated amount, as such, writ petition be allowed and order dated 05/01/2015 (Annexure-P/1) be quashed.

4. Learned counsel appearing for the State/respondents would submit that since the order imposing recovery and order dismissing appeal were set aside by this Court for non-compliance of the Rules of 1976, fresh proceedings were initiated against the petitioner and after hearing the petitioner, impugned order has been passed directing recovery of ₹ 8,95,909 from the petitioner and stoppage of his pension to the extent of 20% for next five years, which is valid and in accordance with law, as such, writ petition deserves to be dismissed.

5. I have heard learned counsel appearing for the parties.

6. It is not in dispute that order imposing recovery dated 17/02/2010, order dismissing appeal dated 24/11/2011 as well as order adjusting ₹ 2,44,877 dated 07/10/2010 were subject matter of writ petition being Writ Petition (S) No.185/2012, in which, this Court by order dated 16/07/2012 set aside the above-stated three orders and no liberty was reserved in favour of the respondents to initiate fresh proceeding under the Rules of 1976. The operative portion of order dated 16/07/2012 reads as follows:-

> "13. Thus, it is clear from bare reading of the provisions of Rules 9(1), 9(2)(a), the proviso to Rule 9(2)(a) and 9(4) of the Rules,1976 that the departmental enquiry initiated before retirement of an employee is deemed to be a proceeding under the Rule and shall continue and be concluded by the authority by which they were commenced as if the government servant continues in service. However, after conclusion of the departmental enquiry, the authority i.e. the Conservator of Forest, who is subordinate to the Governor cannot pass the order, but to submit a report to the Government (Governor) and the Government, as well settled by the Supreme Court in *State of M.P. & Others v. Dr. Yashwant Trimbak (supra)* in accordance with Article 166(2) of the Constitution if India, is competent to pass the order. In the case on hand, since no order was expressed in the name of the Governor and duly authenticated, the impugned order cannot sustain in the eyes of law and no recovery can be made.
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> 14. The final order has been passed by the

Conservator of Forest directing recovery of the amount from the pensionary benefits. There is no indication from any document and it is also not the case of the respondents that the order was passed by the Government, duly authenticated under Article 166(2) of the Constitution of India. Thus, if the order passed by the Secretary or Under Secretary as prescribed under the Rules of Business, duly authenticated as provided under Article 166(2) of the Constitution of India, it is deemed that the order has been passed by the Governor as contemplated under Rule 9 of the Rules, 1976. Thus, the impugned order dated 24.11.2011 (Annexure P/1), 17.02.2010 (Annexure P/2) and 07.10.2010 (Annexure P/3) are quashed.

15. Resultantly, the writ petition is allowed with no order asto costs."

7. A bare perusal of the aforesaid part of the order would show that although the orders were quashed but this Court consciously did not reserve any liberty in favour of the respondents to initiate fresh proceeding under the Rules of 1976. Obviously, the petitioner stood retired from the service on 31/03/2008 and in absence of liberty having been granted by this Court setting aside the above-stated order in favour of the State Govt., the State

Government was jurisdictionally incompetent to initiate fresh proceeding under the Rules of 1976. The order passed by this Court was not challenged either in review or before the higher forum and no modification was sought seeking leave of the Court to initiate further proceeding under the Rules of 1976.

8. In the matter of **Himachal Pradesh Road Transport Corporation[1],** Their Lordships of the Supreme Court in the similar fact situation observed as under:-

> "4. It is significant to note that the respondent did not make an application under Article 136 of the Constitution before this Court challenging that part of the judgment dated July 31, 1989 with which he was aggrieved nor did he make an application for review before the High Court. The judgment, in the circumstances, became final…………"

9. Like wise in the matter of **M. Nagabhushana v. State of Karnataka and others[2],** Their Lordships of the Supreme Court have held that principle of finality is passed on high principle of public policy and observed at paragraph-13 as under:-

1 **1993 Supp (1) SCC 552**
2 **(2011) 3 SCC 408**

> "13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the color and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties."

10. Thus, in the light of above cited judgments of the Supreme Court, it is apparent that the respondents herein were party in the earlier writ petition filed by the petitioner being Writ Petition (S) No.185/2012 and the decision rendered *inter se* is binding upon the parties by virtue of doctrine of finality, as such, order of this Court dated 16/07/2012 is binding *perse* between the parties including respondents/State. The order passed by the State Government dated 05/01/2015 (Annexure-P/1) is without jurisdiction and without authority of law and it is hereby quashed.

11. Since an amount of ₹3,57,514 has been recovered from the petitioner's service benefits and ₹ 10,890 from the month of January,2015 has also been recovered from him, it is directed that above-stated amounts shall be refunded to the petitioner within a period of 45 days from the date of receipt and/or production of certified copy of this order along with interest at the rate of 7.5% per annum.

12. The writ petition is allowed with cost of ₹5,000.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari