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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2690 of 2016

Krishna Kumar Tiwari S/o Malikram Tiwari, Aged About 73 Years R/o House No. 286, Senior M I G, Sector- 2, Deendayal Upadhyay Nagar, Raipur, P. S. D. D. Nagar, Civil And Revenue District- Raipur, Pin- 492001 (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through- The Secretary, Department Of Commerce And Industry, Mahanadi Bhawan, Mantralaya, Naya Raipur, Revenue And Civil District- Raipur (Chhattisgarh), Pin- 492001
2. State Of Madhya Pradesh, Through- The Secretary, Department Of Commerce, Industry And Employment, Mantralaya, Vallabh Bhawan, Bhopal (M. P.), Pin- 462004
3. District Industries And Trade Centre, Raipur, Through- Chief General Manager, Raipur, Civil And Revenue District- Raipur (Chhattisgarh), 492001

---- Respondents

For Petitioner	:	Shri Sunil Otwani, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/07/2017

Heard.

1. Plight of a retired Government servant, aged 73 years, been ventilated through this petition on account of non-payment of gratuity amount even after 17 years of his retirement.

2. In this case, taking into consideration that the petitioner retired on 31.3.2000 i.e. prior to reorganization of State of Madhya Pradesh and the appointed day on 1st November, 2000, notices were issued separately to the State of Madhya Pradesh. Despite repeated service made, State of Madhya Pradesh has chosen not to represent itself in these proceedings. Therefore, respondent No.2/State of Madhya Pradesh is being proceeded ex parte.

3. The petitioner retired upon attaining age of superannuation on 31.3.2000 while in the service of erstwhile State of Madhya Pradesh, prior to reorganization of State of Madhya Pradesh under Madhya Pradesh Reorganization Act, 2000 (for short, hereinafter referred to as "*the Reorganization Act*") with an appointed day as 1st November, 2000.

4. It is found that before petitioner's retirement, a departmental enquiry was initiated against the petitioner by issuing a charge sheet dated 27.3.2000. In the charge sheet, allegation pertained to misconduct on the part of the petitioner and pecuniary loss to the Government. As the petitioner retired after three days, there was no possibility of conclusion of enquiry within such a short time. The petitioner submitted his reply. The Enquiry Officer, as is pleaded in the petition, submitted his report on 2.12.2005. However, thereafter, no decision was taken on petitioner's case. The gratuity which was payable to the petitioner upon his retirement was withheld in purported exercise of powers under Rule 64 of the MP/CG Civil Services(Pension) Rules, 1976 (hereinafter referred to as "the Rules of 1976") without any payment to the petitioner. Though the petitioner waited patiently that a final decision would be taken in matter, nothing happened. As no decision was taken in the departmental enquiry against the petitioner despite 17 years after his retirement, the petitioner was driven to knock the doors of justice through this petition.

5. Learned counsel for the petitioner submits that the State is acting arbitrarily in withholding indefinitely the amount of gratuity payable to the petitioner, on the ground of pendency of departmental enquiry. According to him, the State is not justified and fair in taking benefit of its own default and putting the petitioner to his peril for none of his fault. He submits that as no orders have been passed till date, the respondent be directed to release the entire amount of gratuity.

6. On the other hand, learned counsel for appearing for the State of Chhattisgarh submits that as the petitioner retired prior to date of reorganization, the liability for payment of pension and other retiral benefit would be that of the State of Madhya Pradesh.

7. The petitioner retired way back on 31.3.2000. Few days before his retirement, a departmental enquiry was instituted by issuing a charge sheet dated 27.3.2000, in which, enquiry report is stated to have been submitted. Till date, no orders have been passed. It may be relevant at this stage to state that as the departmental enquiry could not be concluded till the petitioner was in service, it

could be continued only as proceedings under Rule 9 of the Rules of 1976 and order could be passed only with the prior approval of the Governor.

Unfortunately and at the same time shockingly, State authority have acted with utmost apathy and indifference in the matter. No decision has been taken in the case of the petitioner till date and at the same time, taking recourse to provisions contained in Rule 64 of the Rules of 1976, gratuity of the petitioner has remained withheld.

8. The question which arises for consideration is whether in the garb of Rule 64 of the Rules of 1967, on account of pendency of an enquiry, gratuity could be withheld indefinitely.

9. It would be relevant to extract the relevant provision as contained in Rule 64 of the Rules of 1976 as below:

> **"64. Provisional pension where departmental or judicial proceeding may be pending.** - (1) (a) In respect of Government servants refer to in sub-rule (4) of Rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.
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> (b) The provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
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> (c) Provisional gratuity shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office after adjusting dues mentioned in sub-

> rule [(2)] of Rule 60, under intimation to Audi Office. Payment of provisional pension/gratuity made under sub-rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension/gratuity finally sanctioned is less than the provisional pension/gratuity or the pension/gratuity is reduced or withheld either permanently or for a specified period."

10. The aforesaid provision entitles the State to withhold gratuity though it has discretion to release gratuity up to 50% in the event a departmental enquiry is pending against a Government servant who has attained the age of superannuation and retired.

    That means, on account of pendency of an enquiry, at the most 50% of the gratuity amount may be released and remaining 50% could be withheld until conclusion of enquiry. The provision however cannot be read to give a licence to the authority to sit over departmental enquiry for indefinite period and deprive a retired Govt. servant from benefit of gratuity for none of his fault. The fact of the case which are undisputed are that the enquiry report was submitted way back in the year 2005. Even after 12 years, no orders have been passed. Why should a retired Government servant suffer for this callous inaction?

11. Even if no specific period for conclusion of departmental enquiry is specified under Rule 64 so as to continue withholding of gratuity, in order to save the constitutionally of the provision from being hit from the rigor of Article 14 of the Constitution, the provision has to be reasonably and rationally construed to empower the authority to withhold gratuity only for a reasonable time and not indefinitely, certainly not for long 17 years by sitting over the departmental enquiry without conclusion. This Court would not read such drastic power in the hands of respondents that irrespective of any time limit, as long as the departmental enquiry is not concluded, gratuity would remain withheld. On facts, it is not a case where the enquiry could not be completed for reasons attributable solely to the petitioner and not to the State authority. Therefore, in such a case there has to be a reasonable time limit for conclusion of the enquiry and if it is not concluded within the said period, the gratuity amount will have to be released. Such a requirement must be read into Rule 64 of the Rules of 1976

to save the power of withholding gratuity as unbridled and arbitrary.

12. There can be no justification whatsoever for withholding the retiral benefits for 17 years in the name of pendency of an enquiry against a retired Govt. servant. Rule 64 of the Rules of 1976 cannot be taken recourse to withhold gratuity for indefinite period. The action of the respondent in withholding gratuity of the petitioner in the garb of pending enquiry has to be held arbitrary, illegal and unsustainable in law.

13. In the result, the petition is allowed. Respondent No.2/State of Madhya Pradesh is directed to forthwith release the entire gratuity amount to the petitioner with interest @10% from the date of his retirement till date of release. The amount shall be payable to the petitioner within a period of 90 days.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen