

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 316 OF 2012**

Jodhi Ram Sahu S/o Rupu Sahu Retired Amink, Executive Engineer
Jal Sansadhan Sambhag Gariyaband Distt. Raipur (CG).

...**Petitioner(s)**

Versus

1. State of Chhattisgarh through the Secretary, Jal Sansadhan Department, DKS Bhawan Raipur (CG).
2. Pramukh Abhiyant Jal Sansadhan Vibhag Sihava Bhavan Raipur (CG).
3. Mukhya Abhiyanta Mahanadi Godawari Kacchar Raipur (CG).

... **Respondent(s)**

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24.07.2018

1. The challenge in the present writ petition is to the impugned order dated 26.05.2008 whereby the respondents have issued an order of punishment against the petitioner and the punishment was in the nature of order of recovery to the tune of Rs.5,53,109.52. The order was for recovering the said amount from the gratuity and interim pension of the petitioner.
2. The petitioner who was working as Amin with the Revenue Department of the State, stood retired from service w.e.f. 31.07.2007. According to provisions of the Pension Rules, post retirement, the authorities concerned would be precluded from passing an order of punishment and that the order of punishment can only be passed by the Governor of the State. He relied upon the judgment of this court in case of Gous Ali Beg Vs. The State of Chhattisgarh (WPS No.185 of 2012, decided on 16.07.2012).

3. The counsel for the State opposing the petition submits that the impugned order of punishment does not warrant any interference for the simple reason that disciplinary proceedings were instituted against the petitioner while he was in service and therefore the order could be passed by the disciplinary authority and the same cannot be found fault with.
4. Having heard the contentions put forth on either side and on perusal of records, what is relevant to be considered is the factual position from the pleadings which have come on record. It is not in dispute that the petitioner working as Amin with the Revenue Department stood retired from service w.e.f. 31.07.2007. It is also not in dispute that disciplinary action against the petitioner was initiated while he was in service, but the same could not be concluded till retirement of the petitioner i.e. 31.07.2007. The impugned order dated 26.05.2008 has been finally passed after about one year from the date of retirement.
5. At this juncture it would be relevant to refer Sub-rule 2(a) of Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (in short, the Rules, 1976), which for ready reference is being reproduced herein as under :

(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.”

6. The proviso clause of said sub-rule clearly envisages the fact that when disciplinary proceedings have been instituted by an authority subordinate to the Governor, the authority shall submit a report regarding its finding to the Governor. That means, the punishment order could have been passed after approval and sanction obtained from the Governor.
7. Considering the aforesaid statutory provision, the action on the part of the respondents in issuing the impugned order is in contravention to the provisions of Sub-rule 2(a) of Rule 9 of Rules, 1976.
8. The Division Bench of MP High Court in State of MP & Ors. Vs. RL Ogale & Ors, 2006(2) MPHT 202 (DB), it has been held as under :

"8.The proviso of sub-rule (2)(a) of Rule 9 of the Rules 1976, however, makes it amply clear that where the

departmental proceedings are instituted by the Authority subordinate 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.”

9. It is also relevant at this juncture to mention that this High Court also relying upon the judgment of MP High Court in RL Ogale (Supra) in WPS No.185 of 2012, decided on 16.07.2012 has in very categorical terms held that in the absence of any report being submitted by the disciplinary authority to the Governor before issuance of the impugned order, any order passed would not be sustainable and would be in contravention to Sub-rule 2 of Rule 9 of the Pension Rules, 1976. This court has further held in paragraph 13 of its judgment as under :

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 of 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.”

- 10.** Given the aforesaid facts and circumstances of the case and also considering the facts of the present case where the order of punishment has been passed without there being any report submitted by the disciplinary authority to the Governor, the impugned order dated 26.05.2008 becomes unsustainable. The same deserves to be and is hereby set aside.
- 11.** The writ petition thus stands allowed. As a consequence, the petitioner would be entitled for the amount recovered. However, the State is at liberty to proceed further in accordance with rules.

Sd/-
(P. Sam Koshy)
Judge