

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1045 of 2018**

Jivrakhan Lal Shori S/o Late Mahoru Ram Shori Aged About 64 Years
Accountant Retired, R/o Village Tahsil Para, Bhanupratapur, District
North Bastar Kanker, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Principal Secretary, Department Of Forest, Mantralaya, New Raipur, Chhattisgarh.
2. Chief Conservator Of Forest, Kanker, Circle Kanker District- Kanker, Chhattisgarh.
3. Forest Range Officer, Kanker Forest Range Kanker, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Varun Sharma, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****04/05/2018**

1. The challenge in the present writ petition is to Annexure P/1 dated 09.01.2018, an order whereby the pension granted to the petitioner has been withheld on account of the conviction, which the petitioner has suffered in a criminal case i.e. Criminal Case No. 2/2011 decided by the Special Judge (P.C. Act), Kanker. The further relief sought for in the present writ petition is for the direction to the respondents for releasing the gratuity, GPF, leave encashment and other retiral dues including the balance of arrears of 6th Pay Commission payable to the petitioner.
2. The fact of the case is that the petitioner, working as Accountant with the Forest Department in the State of Chhattisgarh, was involved in a criminal case under the provisions of the Prevention of Corruption Act.

3. The petitioner stood prosecuted before the Special Judge (P.C. Act), Kanker vide Criminal Case No. 2/2011. Vide order dated 19.11.2009, the petitioner was placed under suspension pending the criminal case registered against him. The suspension order stood revoked vide order dated 29.06.2010 and the petitioner continued to discharge his duties till he crossed the age of superannuation on 31.05.2011. After the retirement of the petitioner, the respondents released the anticipatory pension to the petitioner under Rule 74 of the Chhattisgarh Civil Services (Pension) Rules, 1976. In due course of time, the petitioner stood convicted in the criminal case vide order dated 08.04.2016 and the petitioner has been held guilty of the offence under the P.C. Act and has been sentenced to undergo rigorous imprisonment for one year with fine of Rs.5000/- for the offence under Section 7 of the P.C. Act and for the offence under Section 13(1)(d) read with Section 13(2), the petitioner has also been sentenced to undergo rigorous imprisonment for 2 years with fine of Rs.10,000/- with default stipulation. Subsequent to the conviction of the petitioner, the respondents have now issued the impugned order dated 09.01.2018.
4. The contention of the counsel for the petitioner is that before issuance of the order Annexure P/1 dated 09.01.2018 withholding of the entire pension paid to the petitioner, no opportunity of hearing was granted and it is the requirement of law that atleast before passing the order, the respondents ought to have provided an opportunity of hearing to the petitioner. Likewise, it was also the contention of the counsel for the petitioner that apart from the pension (which stands withheld), the petitioner would otherwise be entitled for all the other retiral dues, which he was otherwise entitled for like the payment of gratuity, the

amount under the Group Insurance Scheme, the benefit of leave encashment, the amount accrued in the GPF account of the petitioner, so also the balance of arrears of pay of the 6th pay commission.

5. Per contra, the State counsel submits that it is a case where the petitioner in fact was prosecuted for an offence under the provisions of the P.C. Act and he has been held guilty and also been convicted under the said law and therefore, since the petitioner now is a convicted person, he would not be entitled for any pension and pensionary benefits and therefore the writ petition deserves to be rejected. He further submits that even otherwise the petitioner had been given the anticipatory pension at the first instance, but because of the subsequent judgment of conviction, the petitioner becomes disentitled for pensionary benefits, and as such there is no error on the part of the department in issuing the impugned order Annexure P/1, dated 09.01.2018.
6. On a specific query being put to the State counsel, he fairly concedes the fact that so far as the gratuity, GPF, GIS, arrears of 6th pay commission are concerned, the law by now being settled that the respondents cannot under any circumstances withhold these amounts until unless there is a charge sheet was issued for a departmental enquiry, while the employee was in service before his retirement. In the absence of which, there is no ground for retaining the said amounts by the respondents.
7. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the respondents should forthwith consider releasing of the payment of gratuity, the amount under the GIS, the amount lying

in the GPF account of the petitioner, so also the balance of arrears of 6th pay commission and the benefits of leave encasement at the earliest to the petitioner preferably within a period of 90 days.

8. So far as withholding of the pension vide the impugned order is concerned, the only grievance of the petitioner seems to be of not being provided an opportunity of hearing. Given the factual situation of the case, this Court is of the opinion that let the petitioner make a suitable representation to the respondent No.2 within a period of 2 weeks from today, raising all the contentions, so far as withholding of pension is concerned and thereafter the respondent No.2 shall pass an order on the said representation in accordance with the Act and Rules applicable, so far as the release of pension is concerned.
9. The writ petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved