

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6676 of 2017**

B. R. Soan S/o Late Nanhe Lal Soan, Aged About 67 Years,
Retired Assistant Office Superintendant, Office Of Integrated
Women And Child Development Project, Masturi, District Bilaspur,
(C.G.), R/o Katiyapara, Durga Chowk, Juna Bilaspur, (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Women and Child Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh, Chhattisgarh
2. Director, Women And Child Development Department, Indrawati Bhawan, Naya Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Collector, (Women and Child Development Department), Bilaspur, District Bilaspur, Chhattisgarh
4. District Programme Officer, Women And Child Development Department, Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
5. Project Officer, Integrated Child Development Project Masturi, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
6. P.N.Dewangan, Assistant Grade-II, Working in the Office Of Regional Deputy Director, Angan Badi Training Centre, Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	: Shri C.J. K. Rao, Advocate.
For Respondents/State	: Shri Dilman Rati Minj, Dy, Govt. Advocate.

Order On Board

17/01/2018

(1) The petitioner was subjected to disciplinary proceeding while he was holding the post of Assistant Office Superintendent in the office of Director, (Women and Child Development Department). He was placed

under suspension on 2.4.2009, and departmental enquiry was initiated against the petitioner on 30.09.2009. During the pendency of disciplinary proceeding, he retired on 30.06.2010, thereafter, after the delay of seven years i.e. on 06.06.2017 final order has been passed by the Collector for recovery of an amount of Rs.21,24,991/- from the petitioner as a measure penalty, which has been challenged by the petitioner in the instant writ petition stating *inter alia* that by virtue of Rule 9(1) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short 'the Rules, 1976'), such a course without any permission from the Governor is impermissible in law and, therefore, the impugned order is bad and unsustainable in law.

(2) Mr. Rao, learned counsel appearing for the petitioner would submit that departmental proceeding initiated against the petitioner before his retirement by the disciplinary authority could not be completed while he was in service and it was conducted only after his retirement and on 06.06.2017 i.e. after retirement of the petitioner, the impugned recovery order was passed which is in teeth of Rules 9(1) and 9(2) of the Rules, 1976. The Course open to the respondent authority was to submit a report to the Governor and final order could not have been passed by the disciplinary authority.

(3) Mr. D.R. Minj, learned Deputy Govt. Advocate appearing on behalf of the State/respondents, would submit that such a recovery order is passed in accordance with law and the impugned order is strictly in accordance with law, which does not call for interference by this Court in the instant writ petition.

(4) In order to consider the plea raised at the Bar, it would be appropriate to notice Rule 9 of the Rules, 1976 which read as under: -

“9. Right of governor to withhold or withdraw pension.--(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension as determined by the Government from time to time.

(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.

xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx”

(5) A careful perusal and meaningful reading of sub-rule (1) of Rule 9 of the Rules, 1976 would show that the authority to pass an order for recovery of any pecuniary loss caused to the Government after retirement of Government servant is reserved only to the Governor and no other authority. Proviso to sub-rule (2) (a) of Rule 9 of the Rules, 1976 makes it ample clear 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 and the Governor in accordance with the procedure applicable to the departmental enquiry may pass appropriate order, but the disciplinary authority who has initiated action prior to retirement of Government servant is not entitled to impose penalty.

(6) The Division Bench of the Madhya Pradesh High Court in the matter of **D.D. Jalota Vs. The State of Madhya Pradesh & others**¹ has held as under:-

“(6) A fair understanding of Rule 9(1) would project that the Governor is entitled to reserve to himself the right of withholding or withdrawing a pension or part thereof and of ordering recovery of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after

1 2010 (3) M.P.H.T. 172 (DB)

retirement. The power vested in the Governor is to withhold or withdraw a pension or part thereof permanently or for a specified period and further power is to recover the amount which is suffered as a pecuniary loss by the Government because of the misconduct of the Government servant. Such power is to be exercised by the Governor while taking up the case of a person who has since retired.

(7) Rule 9(2)(a) provides that where the departmental proceeding referred to in sub-rule (1) are 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 proceeding under Rule 9 and shall be continued and concluded by the authority by which they were commenced treating the Government servant to be in service. Rule 9 (2)(b) deals with the situation where the departmental proceeding are not instituted while the Government servant was in service whether before his retirement or during his re-employment. In such case, the proceedings shall be instituted with the sanction of the Governor and shall not be instituted in respect of any event which took place more than four years before such institution.

(8) There is marked distinction between Rule 9(2) (a) and Rule 9(2)(b). On one side Rule 9(2) (a) provides that the proceedings which were in progress shall be continued even after the retirement; such proceedings may be in relation to an act which is more than four years old, which may be in relation to the action or inaction or misconduct which might be for the period beyond four years or more. But once a person retires then the authority would not be entitled to taken an action, in relation to the action or misconduct or of any even which took place more

than four years before such institution. Rule 9(2)(a) says that after the final retirement of the Government servant, the earlier proceedings shall be deemed to be proceedings under Rule 9 and shall be continued by the authority which had commenced the proceedings. Once it is held that continuation of the proceedings shall be proceedings under Rule 9(1), which authorises the Governor to institute fresh proceedings after the retirement then continuation of the proceedings from the next date of the retirement shall be deemed to be valid proceedings under Rule 9(2)(a) but shall also be deemed to be fresh institution under Rule 9(1). Once continuation of the proceedings is held to be institution for purposes of Rule 9(2)(a) then we find no difficulty in applying Rule 9(4)(b) of the Rules.

(9) It is to be seen from Rule 9(4) that according to sub-rule (4) 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 (4) shall apply. There is a distinction between “fresh institution of the proceedings” and “deemed institution of proceedings”. In case where fresh proceedings are instituted, the same would be under Rule 9(2)(b) of the M.P. Civil Services (Pension) Rules, 1976, but where the proceedings are continued under Rule 9(2)(a) read with Rule 9(1) then date of the continuation shall be deemed to be the date of institution.”

(7) Applying the mandate flowing from the provisions contained in Rule 9 (1) and proviso to sub-rule (2) (a) of Rule 9 of the Rules, 1976, it is held that once the concerned Government servant has retired after initiation of departmental enquiry and departmental proceeding could not be

concluded during his service tenure and concerned Government servant has retired from service, the only course available to respondent No.2 was to submit report to the Governor after conclusion of enquiry along with his finding for appropriate order which he has admittedly, not done and straightway has passed order for recovery of Rs.21,24,991/-which is in teeth of proviso to Rule 9 (1) of the Rules, 1976 and proviso to sub-rule (2) (a) of Rule 9 of the Rules, 1976, therefore, such an order of recovery cannot be sustained.

(8) As a fall out and consequence of the aforesaid discussion, the order dated 06.06.2017 (Annexure P-1) passed by respondent No. 3 is hereby quashed. However, the respondents are at liberty to proceed in accordance with law.

(9) Accordingly, the writ petition is allowed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-