

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2797 of 2019**

- Krishna Kumar Tiwari, Aged about 76 years, S/o. Shri Malikram Tiwari, R/o. House No.- 286, Senior MIG, Sector – 2, Deendayal Upadhyay Nagar, Raipur, P.S. - D.D. Nagar, Civil and Revenue District – Raipur Pin-492001 (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Commerce and Industry, Mahanadi Bhawan, Mantralaya, Naya Raipur Revenue and Civil District Raipur (C.G.) Pin Code – 492001
2. State of Madhya Pradesh, Through the Secretary, Department of Commerce, Industry and employment, Mantralaya, Vallabh Bhawan, Bhopal (M.P.) Pin Code-462004
3. District Industries and Trade Centre, Raipur, through: Chief General Manager, Raipur, Civil and Revenue District Raipur 492001

---- Respondents

For Petitioner : Shri Sachin Singh Rajput, Advocate

For Respondents/State : Ms. Sunita Jain, GA

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/10/2020**

1. Heard.
2. The grievance of the petitioner is that the petitioner is now aged about 80 years and till date his retiral dues are not being finalized by the respondents.
3. According to the submission, the petitioner has retired from the erstwhile unified State of Madhya Pradesh on 31.03.2000 and before three days of his

retirement a department enquiry was initiated against the petitioner vide order dated 27.03.2020. The petitioner was served with the charge-sheet and eventually the departmental enquiry was completed on 12th of December, 2005 and the enquiry report was submitted by the enquiry officer. Thereafter, no final conclusion in the departmental enquiry has been arrived at resulting into fact that the petitioner, who as on date has attained the age of nearing 80 years is deprived of his pensionary benefits along with the benefit of 6th and 7th pay commission and arrears thereof from the date of retirement, which he is entitled.

4. Learned counsel for the petitioner would submit that the petitioner had preferred different litigations. Initially a writ petition bearing WPS No.1503 of 2015 was filed on the ground that since the retiral dues like gratuity and the other benefits have not been settled on account of the pending departmental enquiry, relief was sought for conclusion of the departmental enquiry. In the said WPS No.1503 of 2015 (Annexure P-10), the following order was passed on 04.05.2015:-

“1. Grievances of the petitioner is that the petitioner had retired from the service of the respondents from the post of Managar District Industries and Trade Centre Raipur w.e.f. 31.03.2000. However, till date his retiral dues like gratuity and the other benefits have not been settled on account of the pending department enquiry.

2. Counsel for the petitioner submits that almost more than 15 years have passed that the petitioner has retired from the service and till date they have not finalized the department enquiry even though the Inquiry Officer has submitted his inquiry report. He further submits that the petitioner is not aware whether any final decision has been passed or not at least he has not been served with any.

3. At this juncture, without entering into the merit of the

case, this Court is of the opinion that ends of justice would meet if a direction is given to the respondent concerned to take a final decision on the department inquiry against the petitioner, if it has not been decided till date. If it has been finalized the same may be communicated to the petitioner intimating the petitioner about the decision.

4. It is expected that the authority shall considering the age of the petitioner as also the fact that the petitioner has retired from the service 15 years back take a decision on the departmental enquiry as expeditiously as possible preferably within a period of 4 months from today.

5. With the aforesaid observation the writ petition is disposed of.”

5. It is further submitted that since the petitioner was also not paid the gratuity, again a writ petition was filed in the year 2016 (Annexure P-11) bearing WPS No.2690 of 2016, wherein this Court on 25.07.2017 has passed the order. The relevant part of the order is reproduced hereinunder:-

“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.

(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.

(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 constitutionality 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.

6. Against such order the MCC was filed by the State of M.P. bearing MCC No.627 of 2017 and the said MCC was dismissed by order dated 06.10.2017 with the following observation.

"1. The order passed by this Court on 25.7.2017 in WPS No.2690 of 2016 is sought to be reviewed on the submission that though notices were served, for reasons beyond control, the reply could not be filed by the applicant.

2. Learned counsel for the applicant would submit that though departmental enquiry could not be completed, there were justifiable reason because the enquiry report was submitted on 2.12.2005 and in respect of one of the charges, a recommendation was made for getting enquired through Economic Offences Wing. It is submitted that because of that weighty reason, petitioner authority with all best efforts on their part could not conclude the enquiry. It is submitted that this could not be placed before the Court at the time of hearing earlier and, therefore, the order may be recalled, reviewed, modified.

3. After hearing learned counsel for the applicant, I do not find any ground to review or recall the order passed by this Court earlier. The fact that enquiry report was submitted in the year 2005 itself was very much before this Court. The consideration weighing in the mind of the Court to issue direction in favour of writ petitioner was that there could be no justification whatsoever for withholding retiral benefits for 17 years in the name of pendency of an enquiry against Govt. servant.

Therefore, even after giving my anxious consideration to the detailed submission made by Shri Gary Mukhopadhyay learned counsel appearing for the applicant and going through the contents of the pleadings, I am not inclined to recall the order passed by this Court earlier.

4. The petition is therefore dismissed.”

7. The State of M.P. being aggrieved filed a writ appeal bearing W.A. No.56 of 2018 and the said writ appeal was withdrawn on 09.03.2018 on the premises that the payment of gratuity has already been made. Learned counsel for the petitioner referred to the Rule 9 (4) of the C.G. Civil Services (Pension) Rules, 1976 (hereinafter referred to as the 'Rules, 1976') and would submit that the departmental enquiry cannot be kept pending for the time immemorial and after expiry of two years, the employee would be entitled to receive the entire pension as he is entitled. Therefore, the departmental enquiry though the report was submitted in the year 2005, the same having not been concluded by the respondent No.2, the same cannot be kept pending for infinity and the pension is required to be restored along with the consequential benefit of arrears.

8. Learned State counsel for respondents No.1 & 3 would submit that the Annexure R-1 which is filed along with this petition would show that the entire dues have been made clear by the State of M.P. on 11.01.2018. Therefore, reading of the State Government communication would show that dues were directed to be made clear, however, the State of M.P. communicated that the outcome of the writ appeal would hold the sway and the said communication was further communicated to the petitioner in the year 2018.

9. No representation is made by the State of M.P. before this Court despite the effected service.

10. I have heard learned counsel for the parties and perused the documents.

11. Perusal of the documents would show that before the retirement of the petitioner on 31.03.2000 a departmental enquiry commenced on 27.03.2000, as on date 20 years have passed and the departmental proceedings are pending even after the submission of the enquiry report in the year 2005 with respect of likewise situation about long pendency of enquiry, the guideline has been given by the Supreme Court. The Supreme Court in the case of ***Prem Nath Bail V. Registrar, High Court of Delhi & Anr. Reported in (2015) 16 SCC 415*** with respect to conclusion of enquiry within a reasonable time in para 26 to 28 observed as under:

“26. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

27. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of

inquiry but not more than a year.”

12. Admittedly, the enquiry has not been concluded which has resulted into non-payment of the retiral dues. The documents filed along with this petition would show that initially the petitioner complained of this fact and this Court by order dated 04.05.2015 in WPS No.1503 of 2015 directed to take a final decision on the departmental enquiry against the petitioner. The same having not been done, the payment of retiral dues still is pending and subsequently for non-payment of gratuity, another petition bearing WPS No.2690 of 2016 was filed wherein this Court on 25.07.2017 has directed to pay the gratuity on the ground that for the time immemorial if the departmental enquiry is not concluded, the gratuity cannot be withheld. Against such order an application for review was filed bearing MCC No.627 of 2017, which was dismissed on 06.10.2017. Against the order for payment of gratuity, the State of M.P. preferred writ appeal bearing WA No.56/2018 wherein this Court on 09.03.2018 the said writ appeal was dismissed as withdrawn.

13. Merely because the departmental enquiry has not been concluded for more than 20 years, whether the respondent-State of M.P. can withheld the entire retiral dues? The answer would be in sub-rule (4) of Rule 9 of the Rules, 1976 and the proviso clause thereof, which reads as under:-

9. Right of governor to withhold or withdraw pension.-

(1) XXX XXX XXX

(2) XXX XXX XXX

(3) XXX XXX XXX

(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 (2), a provisional pension and death-cum-retirement gratuity as

provided in [Rule 64], as the case may be, shall be sanctioned :

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of rule 43].

14. As in this case, the departmental proceedings have not been concluded though the two years have passed according to the proviso clause (b) of the Rule 9 (4) of the Rules, 1976, which mandates that if the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years. The reply which is filed by the State of Chhattisgarh contains a communication made by the State of M.P. speaks about the writ appeal. Admittedly, the record shows that

the writ appeal was subsequently withdrawn by the State of M.P. vide Annexure P-13. Therefore, in view of the proviso clause (b) of the Rule 9 (4) of the Rules, 1976, the petitioner is entitled for entire pension, which is required to be restored in case within two years, the departmental enquiry is not concluded. Accordingly, it is directed that respondent No.2 shall restore the pensionary benefit to the petitioner, which is payable to the likewise government employees who have retired in the year 2000 including the 6th Pay Commission benefit and further pay the benefit of Commission, if subsequently been implemented. The petitioner shall also receive entire arrears with an interest of 9% p.a. from the date of his retirement over the unpaid amount of the pensionary benefit. The respondents are also directed to issue necessary orders in this regard so that amount is released as early as possible.

15. Accordingly, the writ petition stands allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu