AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2495 of 2021

S.S. Som S/o C.S. Som, Aged About 66 Years Retired Chief Municipal Officer, R/o Baniyapara, Near Century Garden, Dhamtari, District Dhamtari Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through - The Secretary, Department Of Urban Administration And Development, Mantralaya, Mahanadi Bhawan, Nava Raipur Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. The Director, Department Of Urban Administration And Development, Indravati Bhawan, Nava Raipur Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. The Deputy Director (Pension), Department Of Urban Administration And Development, Indravati Bhawan, Nava Raipur Atal Nagar, Raipur, District Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Vikas Dubey, Advocate
For State	:	Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/06/2021

1. The present writ petition has been filed claiming for a direction to the respondents for taking an appropriate decision for grant of full pension in terms of proviso Clause (b) of Rule 9(4) of the Chhattisgarh Civil Services (Pension) Rules, 1976.

2. The relevant facts for adjudication of the present writ petition is that the petitioner was working under the respondents on the post of Chief Municipal Officer Grade-B. He was appointed w.e.f. 05.10.1982 on the

post of Chief Municipal Officer Grade-B and by virtue of his seniority he got promoted to the post of Chief Municipal Officer Grade-A vide order dated 18.06.1992. While the petitioner was in service, he was subjected to disciplinary proceedings in the year 2013. A charge-sheet was issued to the petitioner on 27.11.2013, which stood duly served and thereafter the disciplinary proceedings have been initiated on the alleged charges of causing monetary loss to the Department.

3. Down the line, the petitioner reached the age of superannuation and stood retired from the services of the respondents w.e.f. 31.07.2017. On the date of retirement also the petitioner was working as a Chief Municipal Officer Grade-A. Since the departmental enquiry initiated in the year 2013 was not concluded, the petitioner was granted provisional payment of pension and other retiral dues and as of now the petitioner is getting 90% of the pension.

4. The present writ petition now has been filed for an appropriate direction to the respondents for grant of full pension referring to Clause (b) to the third proviso to Sub-rule 4 of Rule 9 of the aforesaid Rules of 1976. The petitioner submits that in terms of the Rules governing the field since the disciplinary proceedings initiated against the petitioner have not been completed within a period of 2 years from the date of institution, the petitioner therefore would be entitled for the entire amount of pension and which in other word means, the petitioner in the instant case would be entitled for the benefit of restoration of the

10% of pension which stood withheld on account of the pending departmental enquiry.

5. The State counsel on the other hand submits that taking into consideration the nature of the allegations leveled against the petitioner, firstly the charges seems to be quite grave and secondly the allegations involves monetary loss, therefore it would not be appropriate at this juncture to permit the petitioner to have the advantage of full pension be that as it may.

6. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to take note of the Rule position as it stands.

7. Rule 9 of the aforementioned Rules of 1976 empowers the governor to withhold or withdraw the pension. In the given facts and circumstances as envisaged under Rule 9 of the aforementioned Rules of 1976. Sub-rule 4 of Rule 9 deals with the release of provisional pension. Sub-rule 4 further has certain provisos carving out certain exceptions to the General Rules so far as grant of provisional pension is concerned. For ready reference Sub-rule 4 and the provisos thereon are being reproduced herein under:

> **"9. Right of Governor to withhold or withdraw pension.** -
>
> (1) xxxxxxxxxxxxxx
>
> (2) xxxxxxxxxxxxxx
>
> (3) xxxxxxxxxxxxxx
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> (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]."

8. The plain reading of the aforesaid provision of law would clearly reflect that Clause (c) of the third proviso to Sub-rule 4 of Rule 9 clearly envisages the fact that in the event of the disciplinary proceedings not being completed within a period of 2 years, the pensioner shall be entitled for restoration of the withheld pension on expiration of the period of 2 years.

9. Recently, the aforesaid dispute also came up for hearing before this Court in WPS No. 2797/2019 (Krishna Kumar Tiwari v. State of Chhattisgarh & Others). The Coordinate Bench of this Court taking into

consideration the aforesaid statutory legal position as it stands in paragraphs No. 11, 12 & 14 has held as under:-

> “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:
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>> “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.
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>> 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.
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>> 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.”
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> 12. Admittedly, the enquiry has not been concluded which has resulted into nonpayment 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.
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> 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."

10. Coming to the facts of the present case, admittedly the petitioner herein stood retired from service w.e.f. 31.07.2017. The charge-sheet in the instant case was issued way back on 27.11.2013. Two years from the date of retirement would be 31.07.2019, till date i.e. even as on date the departmental enquiry has not been concluded.

11. In view of the Clause (b) to the third proviso to Sub-Rule 4 of Rule 9, the petitioner thus would become entitled for the release of the withheld 10% of the pension and the restoration of full pension would be from the date of expiration of the period of 2 years which in the instant case would be for all practical purposes two years from the date of retirement i.e. 31.07.2019 onwards. In view of the aforesaid Rule position as also in the light of the decision of this Court in the case of "Krishna Kumar Tiwari" (supra), the petitioner has been able to

make out a strong case for an appropriate direction to the respondents for compliance of Clause (b) of the third proviso to Sub-rule 4 of Rule 9 of the Rules of 1976 entitling the petitioner for full pension.

12. Accordingly, the writ petition stands allowed. The respondents are directed to ensure restoring of the full pension to the petitioner from the date of expiration of two years from the date of retirement i.e. 31.07.2019 onwards. Let necessary compliance be done within a period of 60 days from the date of receipt of the copy of this order.

13. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

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