

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8399 OF 2020**

Ganesh S/o Kashinathrao Gulve,
Aged: 76 years, Occ: NIL,
R/o Gotala, Post: Sawargaon,
Tq. Ahmedpur, Dist. Latur ..Petitioner

Versus

1. The State of Maharashtra,
Through its Under Secretary to the
Government of Maharashtra in
School Education & Sports Department,
Mantralaya, Fort, Mumbai-32.
2. The Accountant General No.2,
Maharashtra State, Civil Lines,
Nagpur.
3. The Deputy Director of Education,
Latur Region, Latur.
4. The Education Officer (Secondary),
Zilla Parishad, Latur.
5. The Superintendent,
Pay & Assessment Unit (Secondary),
Zilla Parishad, Latur.
6. The Headmaster,
Shantiniketan High School,
Mulki Omberga, Tq. Ahmedpur,
Dist. Latur. ..Respondents

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Mr. N. P. Patil Jamalpurkar, Advocate for the
Petitioner.

Mr. S. B. Yawalkar, AGP for Respondent Nos.1 to 5.
Mr. V. D. Gunale, Advocate for Respondent No.6.

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**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

RESERVED ON : 08th April, 2022.
PRONOUNCED ON : 22nd April, 2022.

JUDGMENT (Per R. D. Dhanuka, J.):-

1. Rule. Rule is made returnable forthwith.
2. Mr. Yawalkar, learned A.G.P. for respondent nos.1 to 5 waives notice. Mr. Gunale, learned counsel for respondent no.6 waives notice.
3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks Writ of Certiorari for quashing and setting aside the communication dated 19.06.2020 issued by the Under Secretary to the Government of Maharashtra in School Education & Sports Department, Mantralaya, Fort, Mumbai confirming, maintaining & upholding order dated 21.09.2018 by which monthly pension of the petitioner was withdrawn under the provisions of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'M.C.S. (Pension) Rules, 1982').
4. The petitioner also seeks Writ of Mandamus for an order and direction against respondent nos.1 to 5 to pay monthly regular pension to the petitioner for the services rendered by him as Assistant Teacher at Shantiniketan High School, Mulki Omberga, Tq. Ahmedpur, Dist. Latur.
5. The petitioner was appointed as Assistant Teacher at respondent no.6-School sometime in the year 1968. On 11.10.1993, when the petitioner was

in service, the petitioner and 65 others were tried in Sessions Case No.09/1993 in the Court of the Additional Sessions Judge at Latur. The petitioner was tried for commission of offence punishable under Sections 147, 148, 149, 302, 307, 324, 326, 452 and 34 of the Indian Penal Code and was acquitted.

6. Being aggrieved by the said judgment and order of the Sessions Court, the State of Maharashtra filed Criminal Appeal bearing No.80/1993 before this Court. Before the date of filing the said Appeal by the State Government, in the month of February 1999, the petitioner took voluntary retirement from the service. It is the case of the petitioner that, in view of the communication dated 13.03.2000 made by the Education Officer (Secondary), Zilla Parishad, the Deputy Director of Education, Aurangabad submitted a proposal on 10.05.2000 to the office of the Accountant General No.2, Maharashtra State, Nagpur for grant of pension to the petitioner. The said proposal was considered by the Accountant General No.2 and accordingly started releasing monthly pension since then in favour of the petitioner and paid till September 2018.

7. According to the petitioner, there was dispute in respect of the allotment of plot in Anand Nagar Co-operative Housing Society Ltd. Ahmedpur formed by teachers of which the petitioner

was member. The respondent no.6-school thereafter made a complaint to respondent no.4 Education Officer (Secondary), Zilla Parishad on 20.11.2016 contending that, since the petitioner was convicted for life imprisonment, could not be granted monthly regular pension.

8. In the meanwhile, on 25.02.1999, the Criminal Appeal No.80/1993 filed by the State of Maharashtra was partly allowed by this Court holding the petitioner guilty for offence punishable under Sections 302, 307, 452 r/w Section 149 of the Indian Penal Code and was sentenced to suffer life imprisonment. During the period 1999 to 2013 the petitioner has undergone life imprisonment and was released from jail in the year 2013.

9. Being aggrieved by the judgment and order of this Court allowing the Appeal filed by the State of Maharashtra and setting aside the order of acquittal passed by the Sessions Court, the petitioner herein filed Special Leave Petitions before the Hon'ble Supreme Court of India which were converted into Appeals (Criminal) Nos. 324 of 2000, 156, 158 and 159-161 of 2002.

10. By judgment delivered by the Hon'ble Supreme Court of India on 21.08.2002, those Appeals filed by the petitioner herein before the Hon'ble Supreme Court of India came to be dismissed.

11. In view of the information by way of complaint from the respondent no.6-school to respondent no.4 about the order of conviction of the petitioner for life imprisonment, on 27.06.2017 respondent no.4 forwarded proposal to the Director of Education, Maharashtra State, Pune for stopping the pension of the petitioner. The Director of Education thereby forwarded the said proposal to respondent no.1.

12. On 21.09.2018, respondent no.1 issued order withdrawing/stopping pension of the petitioner permanently in accordance with Rule 27(1) of the M.C.S. (Pension) Rules, 1982 on the ground that, petitioner was convicted and sentenced for life imprisonment.

13. Sometime in the year 2019, the petitioner filed a Writ Petition bearing No.1368/2019 in this Court challenging the legality and validity of the order dated 21.09.2018 issued by respondent no.1. On 07.10.2019 this Court disposed of the said Writ Petition filed by the petitioner. This Court observed that, it was a matter of record that the petitioner was convicted for the offence punishable under Section 302 of the Indian Penal Code by this Court in Appeal and the said judgment was confirmed upto the Apex Court. The respondents have resorted to the action under Section 27 of the M.C.S. (Pension) Rules, 1982. The petitioner though convicted in heinous offence under Section 302 of

the Indian Penal Code, was continued with the pension. However, before abruptly stopping the pension, the petitioner ought to have been given opportunity to explain and more particularly in view of the fact that, the petitioner was enjoying the pension for almost 18 years.

14. This Court accordingly directed that, the impugned order stopping the pension of the petitioner shall be treated as show cause notice. This Court granted opportunity to the petitioner to file reply to the said show cause notice and directed the authority to take a decision afresh, preferably within a period of three months from the date of receipt of reply. This Court made it clear that, further course of pension would be dependent upon the decision taken by the respondents.

15. Pursuant to the said order, the petitioner filed reply before the Education Officer. On 19.06.2020, respondent no.1 passed an order holding that, the pension of the petitioner was liable to be withdrawn and confirmed the earlier order dated 21.09.2018.

16. Mr. Patil Jamalpurkar, learned counsel for the petitioner submits that, the petitioner was already acquitted by the Sessions Court on 11.10.1993. The petitioner had taken voluntary retirement in the month of January 1999. Though this Court had partly allowed the Criminal Appeal

No.80/1993 filed by the State of Maharashtra on 25.02.1999, the fact remains that the proposal for the payment of pension to the petitioner was allowed in the month of May 2000 by the Accountant General No.2 and since then till September 2018 the petitioner was granted monthly payment of pension without any interruption.

17. It is submitted by the learned counsel for the petitioner that, though this Court had set aside the earlier order passed by the authority stopping the pension of the petitioner and had directed the authority to consider the reply that would be filed by the petitioner, the authority has once again passed a similar order without considering the reply filed by the petitioner. The impugned order is not only in violation of the directions issued by this Court, but also shows non-application of mind on the part of the authority. No reasons are recorded by the authority while upholding the earlier order for withdrawal of monthly pension of the petitioner.

18. The learned counsel for the petitioner invited our attention to Rule 26 and 27 of the M.C.S. (Pension) Rules, 1982. He submits that, the conviction of the petitioner by this Court and confirmation of the said judgment by the Hon'ble Supreme Court under various provisions of Indian Penal code has no nexus with the nature of the employment of the petitioner. He submits that, on

the ground of such conviction, the respondent nos.1 to 5 could not have stopped the monthly pension of the petitioner.

19. In support of this submission learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in a case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava and Anr.** in **Civil Appeal No.6770 of 2013** and would submit that the right of the petitioner to receive pension is a property under Article 31(1) of the Constitution of India. By a mere executive order, the respondents had no power to withdraw such pension already sanctioned and being paid for last 18 years. The order passed by respondent nos.1 to 5 withdrawing the pension of the petitioner also affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution of India.

20. The learned counsel for the petitioner placed reliance on the judgment of the Calcutta High Court in a case of **Gunamay Mahato Vs. The State of West Bengal and Ors.** delivered on **18.12.2015** in **Writ Petition No.28290 (W) of 2015** and would submit that, since the conviction of the petitioner in criminal proceeding had no nexus with the service of the petitioner and since no departmental proceedings were initiated against the petitioner during the tenure of the petitioner, withholding of pension by the respondent nos.1 to 5 is without authority of law.

21. The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court of India in a case of **State of Punjab Vs. K. R. Erry and Sobhag Rai Mehta** reported in **1973 AIR (SC) 834** and would submit that, since the respondents have passed impugned order in violation of principles of natural justice, the impugned order is liable to be quashed and set aside on that ground itself. He also relied upon the judgment of the Hon'ble Supreme Court in a case of **D. V. Kapoor Vs. Union of India and Ors.** reported in **AIR 1990 SC 1923** and would submit that, employee's right to pension is a statutory right and thus measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution.

22. It is submitted that the impugned action on the part of respondent nos.1 to 5 is contrary to the principles laid down by the Hon'ble Supreme Court in the said judgment. He submits that, the petitioner had committed grave misconduct or negligence in discharge of his duty while in office, no such order canceling the payment of pension of the petitioner could have been passed.

23. The learned counsel for the petitioner placed reliance on the judgment of the Calcutta High Court in a case of **Sk. Jamaluddin Vs. The**

State of West Bengal & Ors. delivered on **14.05.2018** in **Writ Petition No.5168 (W) of 2018** in support of the submission that, since the conviction of the petitioner in criminal proceeding had no nexus with the service of the petitioner, no order of withholding the pension could have been passed by respondent nos.1 to 5.

24. The learned counsel for the petitioner also placed reliance on an unreported judgment of this Court in a case of **Sau Sheela Rameshchandra Bargaje Vs. The Administrative Officer and Others** delivered on **29.10.2021** in **Writ Petition No.12817 of 2017** in support of the submission that, since conviction of the petitioner had nothing to do with the service of the petitioner as Assistant Teacher, the pension could not have been withdrawn by the respondents.

25. The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in a case of **Ram Chand and Others Vs. Union of India and Others** reported in **(1994) 1 SCC 44** in support of submission that, since there was gross delay on the part of respondent nos.1 to 5 in initiating proposal for withdrawing the pension, this Court has ample power to interfere with such delayed action on the part of respondents.

26. Mr. Yawalkar, learned Additional G.P. for respondent nos.1 to 5 on the other hand submits

that, the incident in this case for which the petitioner was tried for offence punishable under various Sections including Section 302 of the Indian Penal Code had taken place on 07.09.1991. In the year 1993, the petitioner was acquitted by the Sessions Court, Latur. The petitioner continued in service till he took voluntary retirement in the month of January 1999. He submits that, on 25.02.1999 the petitioner was admittedly convicted by this Court for various offence including offence punishable under Section 302 of the Indian Penal Code and had undergone punishment of life imprisonment.

27. It is submitted that, the petitioner suppressed the fact of his conviction by the judgment of this Court on 25.02.1999 and confirmed by the Hon'ble Supreme court all throughout. The petitioner cleverly took voluntary retirement one month prior to the date of decision of this Court convicting the petitioner and holding guilty of the offence punishable under Sections 302, 207, 452 r/w Section 149 of the Indian Penal Code.

28. It is submitted by the learned Additional G.P. that, the Education Officer (Secondary), Zilla Parishad, Latur had by letter dated 10.05.2016 informed the office of the Accountant General that this Court by judgment and order dated 25.02.1999 in Criminal Appeal No.80/1999 had convicted the

petitioner and he had been sentenced to life imprisonment. It is submitted that, since the Education Officer came to know from respondent no.6 on 20.11.2016 about the conviction of the petitioner for life imprisonment and still getting monthly regular pension. The Education Officer rightly forwarded the proposal to the Director of Education for stopping the pension of the petitioner. The Director of Education had accordingly forwarded the proposal to the respondent no.1 for withdrawing the pension of the petitioner. He submits that, from the date of knowledge of the conviction of the petitioner and that the petitioner having suffered life imprisonment, the respondents immediately started initiating action for withdrawal of pension of the petitioner. The petitioner also did not inform the respondent no.5 about the pendency of his criminal Appeal before the Hon'ble Supreme Court of India.

29. The learned Additional G.P. for the respondent nos.1 to 5 invited our attention to some of the findings recorded by the Hon'ble Supreme court in the Criminal Appeals filed by the petitioner impugning the judgment and order of this court convicting the petitioner of various offence and awarding life imprisonment to the petitioner. He submits that, both the Courts found the petitioner personally involved in the said criminal offence of serious nature involving moral turpitude and against the State. The said offence was

committed by the petitioner when he was working as Assistant Teacher with respondent no.6-school. The serious offence committed by the petitioner had nexus with the nature of services rendered by him as an Assistant Teacher.

30. The learned Additional G.P. placed reliance on the judgment of the Hon'ble Supreme Court in a case of **Sushmita Basu and Ors. Vs. Ballygunge Siksha Samity and Ors.** reported in (2006) 7 SCC 680 and in particular paragraph no.5 and would submit that, profession of teaching is a noble profession and is not an employment in the sense of it being merely an earner of bread and butter. He is the 'guru'. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God.

31. The learned Additional G.P. for the respondent nos.1 to 5 also placed reliance on the judgment of the Hon'ble Supreme Court in a case of **Manager, Nirmala Senior Secondary School, Port Blair Vs. N. I. Khan and Ors.** reported in (2003) 12 SCC 84 and would submit that, the petitioner having failed to comply with his duty and obligation as a teacher and was convicted of very serious offence and such teacher did not befit a teacher. The

conviction of the petitioner reflected his character, reputation, integrity or devotion to duty and is an unbecoming act. The respondents being employer thus was entitled to take action by withdrawing the pension.

32. The learned A.G.P. for respondent nos.1 to 5 invited our attention to Rules 26 and 27 of the M.C.S. (Pension) Rules, 1982 and would submit that, the offence committed being of serious nature and thus need not have nexus to the services for withdrawing his monthly pension under the said provision. The Government or the employer has to give punishment so as to protect the society from such offence of murder and other serious offence which are against the State. The State Government cannot feed such offenders. The State Government has ample powers to withdraw the pension irrespective of the facts whether such offence committed by the employee were relating to the services or not.

33. It is submitted that, Rules 26 and 27 of the M.C.S. (Pension) Rules, 1982 are framed to deter offenders in committing any such misconduct or crime. It would affect their entitlement to claim pension. He submits that, under Rule 26(2) of the M.C.S. (Pension) Rules, 1982 when the petitioner is convicted, action can be initiated by the State Government or employer at that stage. He submits that, since the petitioner has suppressed

the material facts with the respondents and also before this Court, this Court shall not exercise any jurisdiction in favour of such petitioner.

34. The learned counsel for respondent nos.1 to 5 distinguished the judgment of this Court in case of **Ram Chand and Others Vs. Union of India and Others** (supra). He submits that, in the said judgment this Court had taken a view that, offence under Section 498-A of the Indian Penal Code did not relate to the nature of service of the employee. He submits that, facts before this Court in the said judgment were totally different.

35. The learned counsel for respondent no.6-school submits that, the petitioner had already taken voluntary retirement in the year 1999. In view of the voluntary retirement and without knowledge of involvement of the petitioner in serious crime, the proposal for payment of pension was submitted to the Education Officer by respondent no.6-school. The petitioner suppressed the factum of his conviction, subsequently, by this Court on 25.02.1999 and confirmed by the Hon'ble Supreme Court and continued to avail of monthly pension. It is not disputed that the petitioner has undergone life imprisonment pursuant to the said order of conviction passed by this Court on 25.02.1999. As soon as the respondent no.6 came to know about the conviction of the petitioner sometime in the year 2016, it was brought to the

notice of the Education Officer for withdrawal of payment of pension.

36. In his rejoinder arguments the learned counsel for the petitioner, it is submitted that, the State Government had filed an Appeal against the order of acquittal of the petitioner before this Court in the year 1999 which was allowed on 25.02.1999. The respondents thus cannot be allowed to urge that, the respondents were not aware of the criminal proceedings against the petitioner in the year 1999. There is thus gross delay on the part of respondents in initiating action of withdrawal of pension. He submits that, impugned order passed without recording any reasons shows non-application of mind.

REASONS AND CONCLUSIONS

37. The question that arises for consideration of this Court is whether the petitioner who was employee of respondent no.6-school as Assistant Teacher and was convicted of offence punishable under Sections 147, 148, 149, 302, 307, 324, 326, 452 and 34 of the Indian Penal Code while in service could have been deprived of his monthly pension under Rule 26 or 27 or both by the M.C.S. (Pension) Rules, 1982 or not.

38. Rules 26 and 27 of the M.C.S. (Pension) Rules, 1982 are extracted as under:

26. Pension subject to good conduct

- (1) Future good conduct shall be an implied condition of every grant of pension or family pension. Government may, by order in writing, withhold or withdraw a pension or family pension or part thereof, whether permanently or for a specified period, if the pensioner or family pensioner is convicted of a serious crime or is found guilty of grave misconduct:

Provided that where a part of pension or family pension is withheld or withdrawn, the amount of remaining pension or family pension shall not be reduced below the minimum pension or family pension as fixed by Government.

- (2) Where a pensioner or family pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.
- (3) In a case not falling under sub-rule (2), if Government considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under sub-rule (I), follow the procedure as laid down in rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for imposing a major penalty.
- (4) The Maharashtra Public Service Commission shall be consulted before an order under sub-rule (I) is passed in respect of officers holding posts within their purview.

Explanation- In this rule-

- (a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (act XIX of 1923);

- (b) the expression 'grave misconduct' includes the communication or disclosure of any secret official code or pass-word or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (Act XIX of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

27. Right of Government to withhold or withdraw pension

- (I) Appointing Authority may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to 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 reemployment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- (2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, 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.

- (b) The departmental proceedings, if not instituted while Appointing Authority servant was in service, whether before his retirement or during his re-employment-
 - (i) shall not be instituted save with the sanction of the Government,
 - (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 at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.
- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.
- (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 as provided in rule 130 shall be sanctioned.

- (5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (I) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.
- (6) For the purpose of this rule-
 - (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date: and
 - (b) judicial proceedings shall be deemed to be instituted-
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance in made, and
 - (ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.

39. It is admitted position that, in the year 1993 when the incident which resulted in conviction of the petitioner under Sections 302, 307, 452 r/w Section 149 of the Indian Penal Code took place, the petitioner was in service of respondent no.6-school as Assistant Teacher and continued to be in service till he took voluntary retirement in the month of January 1999. The State of Maharashtra

had already filed an Appeal. The Appeal filed by the State of Maharashtra impugning the judgment and order of the Sessions Court came to be allowed. The petitioner was not granted any bail and had undergone his punishment of life imprisonment. The petitioner did not inform the employer or the Education Department about his conviction and also that he had undergone life imprisonment.

40. We are inclined to accept the statement made by the respondents that they came to know for the first time about such conviction of the petitioner in the year 2016. As soon as the respondent no.6 came to know about such conviction, information was given to the Education Officer about it for appropriate action. We are not inclined to accept the submissions of the learned counsel for the petitioner that, since the State Government had filed Appeal impugning the judgment and order passed by the Sessions Court, the school and the Education Department were deemed to be aware of such conviction of the petitioner for various offence. In our view, there is thus no delay on the part of the respondents in initiating action for withdrawal of pension of the petitioner.

41. A perusal of the judgment of the Supreme Court of India in Criminal Appeals filed by the petitioner clearly indicates that, the petitioner was accused of offence punishable under Sections 147, 148, 149, 302, 307, 324, 326, 452 and 34 of

the Indian Penal Code alongwith 60 others accused and was tried by the Sessions Court. This Court confirmed the conviction and sentenced 11 accused and acquitted 2 accused. The Hon'ble Supreme court referred to the findings recorded by this Court against the petitioner that all the witnesses had not only stated the presence of the petitioner in the mob, but had also stated the overt acts done by him at the time of the incident. He was seen prominently in the mob which marched to the house of victim.

42. It was held that the petitioner and others had challenged some of the parties to come out of the house. The petitioner took part in assault on the victim and also threw axe which struck on his head. At his instance, the dead bodies of deceased were dragged upto Chawadi. This Court also held that, there was positive evidence against the petitioner to show that he had very much shared the common object of the unlawful assembly and he did positive acts to achieve the object. The High Court had accordingly convicted the petitioner and other 11 accused also on the basis of same evidence that was available against the petitioner.

43. The Hon'ble Supreme Court held that, the assault of the petitioner on Damodar had been fully established. The conclusion of the High Court in respect of the petitioner in its judgment cannot be interfered with. The Hon'ble Supreme Court

observed that, the Trial Court had lost sight of the positive evidence available against the petitioner and thus there was no reason for not accepting that evidence against the petitioner. The Hon'ble Supreme Court accordingly dismissed the Appeals filed by the petitioner herein.

44. The Delhi High Court in a case of **S. P. Mishra Vs. Union of India and Anr.** reported in 2018 SCC OnLine Del 13160 after adverting to various judgments held that, the conviction of the Government servant in respect of an offence which also tantamount to misconduct, is sufficient, and the pendency of the criminal appeal before the appellate Court was not an impediment to passing of an order under the provisions considered by the Hon'ble Supreme Court relating to recovery of amount from the provisional pension of an employee. In our view, the principle laid down by the Delhi High Court in case of **S. P. Mishra** (Supra) would apply to the facts of this case. In our view, the facts of this case are even better than the facts before the Delhi High Court, since in this case a conviction of the petitioner has been upheld by the Hon'ble Supreme Court of India. We are in respectful agreement with the view expressed by the Delhi High Court in the said judgment.

45. The Jharkhand High Court in a case of **Mukut Dhari Mahato Vs. State of Jharkhand and Others** reported in 2020 SCC OnLine Jhar 1406 has

held that, if an employee is convicted for a serious offence involving moral turpitude then only on that ground, the employee can be dismissed from his service. The moment a person is convicted, he ceases to become a public servant. A Government Servant is required to maintain absolute integrity, devotion to duty and to do nothing which is unbecoming of a Government Servant. The Jharkhand High Court considered a judgment of the Hon'ble Supreme Court in a case of **Dayashankar Vs. High Court of Allahabad** reported in **AIR 1987 SC 1469**, in which it was held by the Hon'ble Supreme Court that where a Government Servant having been caught using unfair means in the examination, an act which did not relate to discharge of his official duty, was held to be conduct totally unworthy of the office of a Government Servant. The Jharkhand High Court accordingly rejected the arguments of the petitioner therein that act done by a Government Servant in his private capacity and not involving discharge of his official duty could not amount to an act of moral turpitude. In our view, the principles laid down by the Jharkhand High Court would apply to the facts of this case. We are in respectful agreement with the view expressed by the the Jharkhand High Court in a case of **Mukut Dhari Mahato Vs. State of Jharkhand and Others** (supra).

46. The Patna High Court in a case of **Asha Devi Vs. The Bihar State Electricity Board** reported in **2015 (1) CLR 443** has dealt with the Bihar

Pension Rules and held that the issue whether on account of demise of late husband of the petitioner as a convicted person, his wife will be entitled to the family pension and gratuity or not. The Patna High Court held that, husband of the petitioner till his death was attached with the conviction for offence under section 302 of the Indian Penal Code and as such will be treated to have been involved in the moral turpitude. The Patna High Court considered the case of **Indradeo Prasad Singh Vs. The State of Bihar and others**, reported in 2009(2) PLJR 38 wherein the Patna High Court had dealt with the case of person who was working as Assistant Teacher and after his retirement had claimed the retrial dues such as pension, gratuity, unutilized earned leave.

47. The Patna High Court held that, conviction of that teacher remained undiluted up to the Apex Court. The Patna High Court accordingly held that, though payment of pension to the Government servant, of course, is not bounty but definitely, it is also not a charity to be granted as a matter of right to a person when he is convicted for serious crime. After adverting to the said judgment in a case of **Indradeo Prasad Singh Vs. The State of Bihar and others** (supra), the Patna High Court in the judgment in a case of **Asha Devi Vs. The Bihar State Electricity Board** (supra) held that, since the husband of the petitioner therein was convicted under Section 302 of the Indian Penal

Code, he had suffered from moral turpitude which dis-entitled him from service.

48. The Patna High Court accordingly held that person who has been convicted under Section 302 of the Indian Penal Code is not entitled to the pension as commission of serious offence itself entail moral turpitude. The principles laid down by the Patna High Court in a case of **Asha Devi Vs. The Bihar State Electricity Board** (supra) would apply to the facts of this case with greater force. We are in respectful agreement with the view expressed by the Patna High Court in the said judgment.

49. In so far as, the judgment of the Hon'ble Supreme Court in a case of **Jharkhand & Ors. Vs. Jitendra Kumar Srivastava and Anr.** (supra) relied upon by the learned counsel for the petitioner is concerned, it is held that, the gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. The Hon'ble Supreme Court in the said judgment adverted to the earlier judgment in a case of **D.S. Nakara and Ors. Vs. Union of India** reported in (1983) 1 SCC 305.

50. The Hon'ble Supreme Court in the said judgment was dealing with the provision which provides that, even after the conclusion of the departmental inquiry, it is permissible for the Government to

withhold pension only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. It is held that, there is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending. In the facts of this case, the criminal proceedings filed against the petitioner have been decided convicting the petitioner of serious offence initially by the High Court and thereafter by the Hon'ble Supreme Court. The judgment of the Hon'ble Supreme Court in a case of **Jharkhand & Ors. Vs. Jitendra Kumar Srivastava and Anr.** (supra) thus would not advance the case of the petitioner.

51. In so far as judgment of the Calcutta High Court in a case of **Gunamay Mahato Vs. The State of West Bengal and Ors.** (supra) relied upon by the learned counsel for the petitioner is concerned, it is held by the Calcutta High Court that where a person has been convicted in a criminal proceedings and such criminal proceedings has no nexus with the service of the petitioner coupled with the fact that there is no allegation during the service of the petitioner and no disciplinary proceedings having been initiated during the tenure of such employee, withholding of terminal benefits is without authority.

52. However, in the facts of this case, the petitioner has been convicted of serious offence and the said order has attained finality. In the said matter before Calcutta High Court, the employee was granted bail by the Appellate Court and same was pending. The High Court had suspended the execution of sentence. In our view, the facts before the Calcutta High Court in the case of **Gunamay Mahato Vs. The State of West Bengal and Ors.** (supra) are distinguishable in the facts of this case and would not advance the case of the petitioner.

53. In so far as judgment of Calcutta High Court in case of **Sk. Jamaluddin Vs. The State of West Bengal & Ors.** (supra) relied upon by the learned counsel for the petitioner is concerned, the facts before the Calcutta High Court in the said judgment were totally different. The Calcutta High Court had rendered findings that, the State Government had not demonstrated that the criminal proceeding against the petitioner had any nexus with the duty required to be discharged by the petitioner as a teacher. In our view, the said judgment would not advance the case of the petitioner.

54. In so far as, judgment of the Hon'ble Supreme court in a case of **D. V. Kapoor Vs. Union of India and Ors.** (supra) relied by the learned counsel for the petitioner is concerned, the

Hon'ble Supreme Court in the said judgment had quashed the impugned order by holding that, there was no finding that appellant therein committed grave misconduct as charged for, the exercise of the power was clearly illegal and in excess of jurisdiction as the condition precedent. In the Rule under consideration before the Hon'ble Supreme Court, the power of the employer was hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In this case the petitioner has been convicted for serious offence when the petitioner was in the employment of respondent no.6-school which involves moral turpitude. Rule under consideration of the Hon'ble Supreme Court was totally different. In our view, respondents were thus justified in withdrawing the pension of the petitioner by applying Rule 27 of the M.C.S. (Pension) Rules, 1982.

55. In so far as the judgment of the Hon'ble Supreme Court in a case of **State of Punjab Vs. K. R. Erry and Sobhag Rai Mehta** (supra) relied upon by the learned counsel for the petitioner is concerned, the question was whether officers could have been deprived of full pension without giving them reasonable opportunity to make their defence or not. In this case the petitioner was given full

opportunity by the authority post remand of the matter of this Court. Be that as it may, the authority could not have gone into the merits of the order of conviction passed by this Court first and confirmed by the Hon'ble Supreme court. The learned counsel for the petitioner could not dispute that his client was convicted of various serious offences and had already undergone punishment of life imprisonment awarded by this Court and upheld by the Hon'ble Supreme court.

56. In so far as judgment of this Court in a case of **Sau Sheela Rameshchandra Bargaje Vs. The Administrative Officer and Others** (supra) relied by the learned counsel for the petitioner is concerned, this Court in the said judgment had considered a situation where during the employment of the petitioner, her daughter-in-law had filed FIR alleging offences under Section Section 498A, 313, 323, 504, 506 read with 534 of the Indian Penal Code. The petitioner therein was arrested and was sent to 15 days custody. The services of the petitioner therein were suspended as teacher by the employer. Interim relief was granted in favour of the petitioner. This Court had directed to Police not to file charge-sheet without leave of the Court. During the pendency of the said proceedings, the petitioner therein retired on attaining the age of superannuation. There was no conviction of the petitioner in that matter. The said judgment would not advance the case of the

petitioner, as the same is clearly distinguishable in the facts of this case.

57. There is no substance in the submissions made by the learned counsel for the petitioner that the impugned order passed by the authorities is in violation of the principles of natural justice. The impugned order is based on the order of the conviction of the petitioner under various provisions of Indian Penal Code. The Hon'ble Supreme Court has recorded various findings against the petitioner showing involvement of the petitioner in the said heinous crime.

58. In our view, even otherwise in view of the conviction of the petitioner for such offence of murder which is an offence against the State, the authorities could not have taken a different view in the matter than to withdraw the monthly pension being paid to the petitioner. If those facts would not have been suppressed by the petitioner in last so many years, the respondents would have taken such action of withdrawal of pension earlier based on the order of conviction of the petitioner for various serious offences against the State. In our view, Mr. Yawalkar, learned Addl. G.P. is right in his submissions that the State Government is not under any obligation to feed such employee, who is convicted of serious offence against State.

59. The Hon'ble Supreme Court in a case of **Sushmita Basu and Ors. Vs. Ballygunge Siksha Samity**

and Ors. (supra) and **Manager, Nirmala Senior Secondary School, Port Blair Vs. N. I. Khan and Ors.** (supra) has dealt with the role of a teacher in the life of the nation. It is held that, he is a Guru who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God. It is held that, the teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.

60. The Hon'ble Supreme Court has also dealt with in great detail as to what shall be the duty of a teacher. The Hon'ble Supreme Court held in that matter that, Educational institutions are temples of learning and Educational Institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is manifest that, the appointment of teachers is an important part in educational institutions. The Hon'ble Supreme Court held that, the virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where

the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshipers of learning, no discord or challenge will arise. It is held that, an educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions.

61. In our view, the petitioner who was an Assistant Teacher in respondent no.6-school had pious obligation and duty of imparting education and moral values to the students. A person who was involved in serious offence involving moral turpitude and later on convicted was not expected to perform such pious obligation and duty to impart education. The petitioner cleverly tendered voluntary retirement immediately after his acquittal by the Sessions Court and before this Court passing an order of conviction against the petitioner.

62. In our view, there is no infirmity in the impugned order passed by the authority withdrawing the pension of the petitioner. Under Rule 27 of the M.C.S. (Pension) Rules, 1982, the petitioner having been convicted of serious offence in a judicial proceedings, the authority rightly

exercised powers to withdraw the payment of pension against the petitioner. There is no substance in the submissions of the learned counsel for the petitioner that, the order of withdrawal of pension is without jurisdiction or is illegal.

63. In our view, the petition is totally devoid of merit. We accordingly pass the following order:

(a) Writ Petition is dismissed. Rule is discharged. No Order as to costs.

(b) Parties to act on the authenticate copy of this order.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE