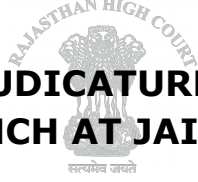


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 13036/2009

Raghuveer Narayan S/o Shri Baijnath, aged about 74 years,
resident of 12-A, Telephone Colony, Tonk Phatak, Jaipur.
Retired Office Assistant, Govt. Press Jaipur.

----Petitioner

Versus

1. The State Of Rajasthan, through the Chief Secretary, Government of Rajasthan, Jaipur.
2. Secretary to His Excellency the Governor of Rajasthan, Governor Secretariat, Jaipur.
3. Director, Printing and Stationary Department, Government of Rajasthan Jaipur.

----Respondents

For Petitioner(s) : Mr. Madhu Sudan Sharma
For Respondent(s) : Mr. Mohammed Akbar Khan

HON'BLE MR. JUSTICE SAMEER JAIN

Order

REPORTABLE

Reserved On :: 14/05/2024

Pronounced On :: 15/07/2024

1. The instant petition is filed with the following prayers:-

*"(i) issue an appropriate writ, order or direction declaring the impugned orders dated 18.04.2002 and 11.06.2003 as illegal, arbitrary and unconstitutional and the same may kindly be quashed and set aside;
(ii) issue an appropriate writ, order or direction thereby directing the respondents to restore at least the provisional pension to the petitioner which he was getting before passing the impugned orders;
(iii) Any other appropriate writ, order or direction which this Hon'ble Court deem just and proper in the facts and circumstances of the present case, may kindly be issued in favor of the petitioner with costs and compensation."*

2. The instant petition is filed assailing the impugned orders dated 01.04.2002 and 11.06.2003 passed by the respondents ceasing the provisional pension, sanctioned to the petitioner, on the ground of the petitioner's conviction in a criminal case.
3. The crux of the matter is that the petitioner was an erstwhile employee of a Government Press and after attaining the age of superannuation, retired from his service vide letter dated 29.08.1997. It is an undisputed fact that the petitioner has an excellent and unquestionable service record. However, an unfortunate incident took place on 26.03.1994, wherein, the daughter-in-law of the petitioner, (Lt.) Mrs. Sobha Gupta w/o Mr. Sushil Kumar, committed suicide by hanging herself. Resultantly, Mr. Sushil Kumar (Son of the petitioner), on the same day submitted a written complaint/information in the Police Station, Bajaj Nagar, Jaipur. Subsequently proceedings as per the provisions of Section 174 of Cr.P.C. were initiated by the Executive Magistrate. However, on 27.03.1994 the deceased's brother Mr. Brijmohan lodged an F.I.R. against the petitioner and other family members, under section 498A and 304B of I.P.C.
4. During the trial before the learned Additional Sessions Judge (Fast-track) No.2, Jaipur, vide order dated 27.02.2002, the petitioner was convicted and was sentenced to undergo three years of rigorous imprisonment and a fine of Rs. 2,000/- (in default of payment, an additional three months rigorous

imprisonment). However, the petitioner filed an appeal under Section 374(2) Cr.P.C. bearing number **S.B. Criminal Appeal No. 307/2002** titled as **Sushil Gupta and ors. vs. State of Rajasthan**. As a result, vide order dated 07.03.2002, the conviction order of the petitioner was suspended.

5. In this background, learned counsel apprised the Court of the fact that at the time of retirement of the petitioner, vide order dated 29.08.1997, the respondents granted him a provisional pension of Rs. 1270/- per month, with additional allowances (Annexure-2).
6. The controversy arose when without affording any opportunity of hearing to the petitioner, respondent no. 3 - The Director, Printing and Stationary Department, Government of Rajasthan, vide order 16.04.2002 ceased the pension and pensionary/retiral benefits qua the petitioner under Rule 6(1) of the Rajasthan Civil Service (Pension) Rules, 1996 (hereinafter referred as Pension Rules) and accordingly recommended the matter, for the approval of his excellency, the Governor of Rajasthan. The said recommendation under the powers enshrined under Rule 7 of the Pension Rules, vide order dated 11.06.2003 was affirmed by the Governor. (Annexure- 3 and 4).
7. Whilst, the impugned order was passed, the appeal qua the concerned matter was pending. Hence, the petitioner was guided to hold/put a halt to any other proceedings for time being. Thereafter, in the year 2003, a notice for demand of

justice was served upon the respondents. However, the respondents paid a deaf ear to the said notice, and no relief was granted to the petitioner. Moreover, the impugned order dated 18.04.2002, was passed exercising the jurisdiction under Rule 6(1) of the pension rules, which provides that any future conduct shall be an implied condition qua every grant and continuation of pension. However, it was explicitly clear that any action under the above stated provision will only be taken, when the due procedure has been followed i.e. a notice has to be issued to the person concerned, and a representation filed by him/her, if any, must be considered. Hence, as no such procedure was followed, in the case of the petitioner, the said action/inaction of the respondents is *per se* illegal and contrary to the mandatory provisions of the Pension Rules. Regarding the sanction/approval granted by the Governor, it is pertinent to mention that Rule 7(1) shall only be applicable in the cases where the pensioner is found guilty of grave misconduct or negligence, during the period of service, in any departmental or judicial proceeding.

8. In this regard, learned counsel representing the petitioner submitted that the chronology of events itself clarifies that the said offence did not occur at the time when the petitioner was discharging his service, withal, the criminal proceedings were already suspended vide order dated 07.03.2002. Moreover, the offence under Section 498A of I.P.C., was only established on doubt/presumption thus, not tenable. The allegations under Section 304B read with Section 306 of

I.P.C. were set aside. Hence, no serious offence as per provisions of Rule 6 and 7, could ever be established. Moreover, the said offence and the retiral dues had no correlation between them.

9. At this juncture, learned counsel had placed reliance upon the dictum of Hon'ble Apex Court enunciated in **Civil Appeal No. 6770/2013** titled as **State of Jharkhand vs. Jitendra Kumar Srivastava**, **DBCWP No. 12437/2012** titled as **H.R. Choudhary vs. Central Administrative Tribunal, Jaipur Bench, Jaipur and ors., SBCWP No. 14891/2023** titled as **Mahesh Chandra vs. State of Rajasthan** and upon the provisions enshrined under Article 21 and 300A of the Constitution of India.
10. Furthermore, learned counsel representing the petitioner averred that the petitioner died during the currency of the instant petition. Ergo, the amended cause title had been filed.
11. *Per contra*, learned counsel representing the respondents fairly conceded to the contentions levelled by the learned counsel for the petitioner and submitted that albeit the aforesaid, the petitioner had committed serious crime and as per the provisions of Rule 4 of Pension Rules, if any Government Servant is convicted of an offence incorporating moral turpitude, whether in course of discharge of his duties or not, in that case an appropriate action shall be taken. Therefore, as per provisions of Rule 6(1) and 7(1), the action

for stoppage of retiral dues is valid in law and *sans* any arbitrariness.

12. This Court has considered the arguments advanced by the learned counsel for both the sides, scanned the record and considered the judgements cited at the Bar.

13. At this juncture, this Court deems it appropriate to pen down certain undisputed facts:

13.1 That the petitioner was discharging service with respondent No. 3 -Director, Printing and Stationary Department, Government of Rajasthan Jaipur, from a prolonged period with an immaculate service record and on attaining the age of superannuation had retired from his service vide order dated 29.08.1997.

13.2 That on 26.03.1994 the daughter-in-law of the petitioner, (Lt.) Mrs. Sobha Gupta w/o Mr. Sushil Kumar, committed suicide by hanging herself. Thereafter, an information/complaint was registered by Mr. Sushil Kumar (Son of the petitioner), in the concerned Police Station. However, on 27.03.1994 the deceased's brother Mr. Brijmohan lodged an F.I.R. against the petitioner and other family members, under section 498A and 304B of I.P.C.

13.3 That the said offence is not even remotely related to the discharge of the official duties of the petitioner.

13.4 That at the time of retirement of the petitioner, vide order dated 29.08.1997, the respondents granted him a

provisional pension of Rs. 1270/- per month, with additional allowances (Annexure-2).

13.5 That the conviction order dated 27.02.2002 was suspended by the High Court vide order dated 07.03.2002.

14. Considering the aforementioned facts and circumstances of the case and upon a perusal of the record, this Court has drawn the following observations:

14.1 That the respondents without advancing any opportunity of hearing or addressing the representation of the petitioner, passed the impugned order dated 16.04.2002 under the provisions of Rule 6(1) of the Pension Rules and order dated 11.06.2003 passed by his excellency, the Governor of Rajasthan. However, considering that the respondents have failed to provide reasonable opportunity of hearing to the petitioner, the provisions of Rule 6 (3) are noted to have been bypassed. Relevant portion of the said provision is reproduced below:

“6. Pension subject to future good conduct
.....(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1),
(a) Serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority, such representation as he may wish to make against the proposal; and
(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).”

14.2 That the primary issue before this Court is that whether the retiral benefits, awarded at the time of superannuation can be subject to suspension upon an alleged criminal offence, even when the said offence is not related to the official discharge of the duties. This Court is of the opinion that the same cannot be legally valid, for the following reasons:

14.2.1 This Court while placing reliance upon the provisions enshrined under Rule 6 of the Pension Rules, 1996, is of the opinion that the said offence does not fall under the ambit of 'serious crime' or 'grave misconduct'. Hence, partial/permanent suspension of retiral benefits due to the same cannot be ordered.

The relevant portion of the said provision is reproduced below:

"6. Pension subject to future good conduct
*(1)(b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:
Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred per mensem."*

14.2.2 The provisions of Rule 6 *per se* also mandate 'conviction' qua the alleged offence. Whereas, in the instant matter, it is evident that the said conviction order was suspended vide order dated 07.03.2002 passed in **S.B. Criminal Appeal No. 307/2002** titled as **Sushil Gupta and ors. vs. State of Rajasthan**. The relevant portion of the said provision is reproduced below:

"6. Pension subject to future good conduct

(2) *Where a 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."*

14.3 That this Court, considering the ratio encapsulated in **SBCWP No. 14891/2023** titled as **Mahesh Chandra vs. State of Rajasthan** is of the opinion that the alleged charges pertaining to a family dispute or any other dispute which does not have reasonable nexus with performance of official duties, is not a valid ground for suspension of the retiral benefits of the petitioner. The relevant portion of the said order is reproduced below:

"16.The Hon'ble Supreme Court in the case of **Pramod Singh Kirar Vs. State of Madhya Pradesh & Ors. (Civil Appeal Nos. 8934-8935 of 2022)**, decided on **December 02, 2022**, in a matter regarding non-appointment of a candidate because of a criminal case for the offence under section 498A IPC has directed to allow appointment to that candidate on the post of Constable. The Hon'ble Apex Court in the aforesaid judgment has observed as under:-

"6. At the outset, it is required to be noted that the appellant applied for the post of Constable in the year 2013 and as such was found to be meritorious and was found eligible to be appointed as Constable. In the verification form itself he declared that he was tried for the offence under Section 498A of IPC earlier. Therefore, as such there was no suppression on the part of the appellant in not disclosing true and correct facts. It is also required to be noted that the appellant came to be acquitted for the offence under Section 498A of IPC vide judgment and order dated 30.10.2006 i.e., 7 years before he applied for the post of Constable. From the judgment and order of acquittal passed by Trial Court it appears that there was a matrimonial dispute which ended in settlement and the original complainant did not support the case of the prosecution and was declared hostile in view of settlement out of the court and the other

prosecution witness(s) examined in the case did not corroborate the prosecution story. Thus, it can be seen that the appellant did not face the prosecution for the other offences of IPC. Therefore, for whatever has happened in the year 2001 and the criminal case for the offence under Section 498A resulted in acquittal in the year 2006, the appellant should not be denied the appointment in the year 2013/2014. The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court. Under the circumstances and in the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498A of IPC and that too, for the offence alleged to have happened in the year 2001 for which he was even acquitted in the year 2006 may be on settlement (between husband and wife).

7. Now so far as the reliance placed upon the decision of this Court in the case of Anil Kanwariya (supra) relied upon by the learned counsel appearing on behalf of the respondent – State is concerned on facts the said decision shall not be applicable. It was a case where the candidate as such suppressed the antecedents and by suppressing the material facts obtained appointment by fraud/misrepresentation and suppression of material fact. In that case the employee was convicted for the offences under Section 343 and 323 of IPC. Therefore, at the time of appointment he was found to be convicted. Therefore, his termination came to be upheld by this Court. In the present case such is not the situation. Neither there was any suppression of material fact on the part of the appellant nor he was convicted for any offence under the IPC. The alleged incident was of the year 2001 which resulted into acquittal in the year 2006 and he applied for the post of Constable in the year 2013/2014.”

22. The basic object behind crediting the benefit of pension, gratuity and other retiral benefits is that

after retirement when an employee is of an old age, may not face any financial problem for his livelihood or necessities more particularly in cases who are alone or are neglected by the persons who are supposed to maintain them. If we go into the facts of the case, the petitioner has served with the respondents for about 38 years and by making contribution from his salary and other contributions aided by the State employer, the pension, gratuity and other retiral benefits have been credited to him. **Because of pendency of criminal proceedings and that too in regard to any family dispute which has nothing to do with the official duties, in no manner can be said to be justified.** The judicial proceedings, as referred in Rule 90 of the Pension Rules, 1996 in view of this Court, is in regard to the proceedings of an act of an employee pertaining to the official duties or in the office. **The words 'judicial proceedings' as referred in Rule 90 of the Pension Rules, 1996 cannot be treated for the proceedings related to the "family disputes", which has nothing to do with the official duties or functioning of the employee in his office.** The respondents themselves on a misconduct report after inquiry have decided not to initiate disciplinary proceedings against the petitioner."

15. Ergo, considering the aforementioned facts and circumstances of the case and for the reasons discussed above, this Court is of the view that Rule 6 and 7 of the Pension Rules, do not have any relevance in the instant matter, rather are misinterpreted by the concerned respondents-authorities.

16. In light of the above stated, this Court directs that the retiral/ pensionary benefits due qua the petitioner be released to his legal heirs, in accordance with the provisions of law, within a period of two months from the date of pronouncement of this order. It is made clear that any delay in the release of the due amount shall attract an interest rate of 10% per annum or as otherwise applicable, as per the provisions of law.



17. Accordingly, the instant petition is allowed. Pending applications, if any, stand disposed of.

(SAMEER JAIN),J

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