

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 17th of OCTOBER, 2024

Writ Petition No.8170 of 2023

SHRI KAMESHWAR CHOUBEY

Vs.

STATE OF MADHYA PRADESH AND OTHERS

Appearance

Shri Amit Choubey – Advocate for the petitioner.

Shri Girish Kekre – Government Advocate for the respondents/State.

Reserved on : 16.08.2024

Pronounced on : 17.10.2024

ORDER

Since pleadings are complete, therefore, with the consent of learned counsel for the parties, the matter is heard finally.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is assailing the validity of orders dated 11.10.2022 (Annexure-P/14) and 05.12.2022 (Annexure-P/16).

3. As per the facts of the case, the petitioner after rendering 38 years of services, got three promotions in his service career and retired from the post of Sub Divisional Magistrate on 31.07.2020.

3.1 During the petitioner's service career, an enquiry was conducted against him wherein though he got acquitted from the charges levelled against him, but vide order dated 11.10.2022, a decision for reviewing the petitioner's exoneration from such enquiry was taken and pursuant thereto,

punishing the petitioner vide order dated 05.12.2022 his pensionary benefits were withheld.

3.2 In the petition, it is averred that during the petitioner's service career, an incident of explosion in a factory situated at Village Khairi, District Balaghat, took place and thereafter, on 29.06.2017, the Divisional Commissioner had issued a show-cause notice to the petitioner. Later on, a Magisterial enquiry was conducted which had submitted its report on 08.06.2017 observing therein it is the factory owner, who was liable for the incident happened in the factory. On the basis of report submitted by the Additional District Magistrate, the then District Magistrate, Balaghat vide its order dated 24.07.2018 had discharged the petitioner from all the charges levelled against him.

3.3 However, a departmental enquiry was conducted against the petitioner by the then Commissioner, Jabalpur Division, Jabalpur, who vide its order dated 27.09.2019 had also exonerated the petitioner from all the charges levelled against him.

3.4 Though, the petitioner got retired from service on 31.07.2020, but his retiral dues were put on hold by the respondents observing that against one of the officers namely Smt. Manjusha Vikrant Rai, against whom the enquiry as was conducted against the petitioner, the charge-sheet was not issued as per law as defined under Rule 14 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (in short the 'Rules, 1966').

3.5 Thereafter, the petitioner preferred a petition i.e. W.P. No.5238 of 2022 before this Court which vide order dated 09.07.2022 got disposed of directing the respondents to consider the petitioner's representation, but as per the petitioner, in the meantime, he was summoned vide letter dated

11.10.2022 by the respondents saying that the decision of his exoneration from the enquiry is now being reviewed exercising the power provided under Rule 29(1) of the Rules, 1966 and at a later point of time, on 05.12.2022 decision in respect of withholding the 90% petitioner's gratuity amount and the petitioner's pension has been taken. Hence, this petition.

4. The respondents have filed reply to the petition saying that there is no limitation prescribed for exercising the power of review by the State and as such, it is submitted that the impugned orders passed by the authorities do not call for any interference.

5. Learned counsel for the petitioner has assailed the impugned orders mainly on the ground that power of review as per Rule 29(1) of the Rules 1966 cannot be exercised beyond the period of six months. In support of his claim, he has relied upon an order passed on 16.01.2001 by the Gwalior Bench of this Court in **Writ Petition No.781 of 2000 [State of M.P. and another Vs. Om Prakash Gupta and another]** and also upon an order passed by this Court on 05.04.2024 in **Writ Petition No.20492 of 2020 [S.D. Richharia Vs. State of Madhya Pradesh]** wherein it has been observed by the Court that power of review cannot be exercised beyond the period of six months.

6. I have heard the arguments advanced by learned counsel for the petitioner and perused the record.

7. In the case of **S.D. Richhariaya** (supra), this Court observing the power of review has held as under:-

‘8. Considering the rival contentions made by counsel for the parties and on perusal of the material available on record, the following questions emerge to be adjudicated which are as under:-

(i) Whether, in the existing circumstances, the order dated 14.01.2016 can be reviewed after four years exercising power provided under Rule 29 of the Rules, 1966;

(ii) Whether, the charge-sheet issued to the petitioner as per the note-sheets annexed by the petitioner along with the rejoinder can be said to have been issued by the competent authority when the same has been issued in anticipation of approval of the government.

9. In the opinion of this Court, the show cause notice dated 01.07.2014 (Annexure P/2) issued to the petitioner alleging misconduct in respect of an incident has been replied by the petitioner vide reply dated 17.12.2014 (Annexure P/3). Thereafter on 14.01.2016 (Annexure P/4), an order was issued by the Government accepting the explanation submitted by the petitioner in his reply and the matter was closed. From perusal of order dated 14.01.2016 (Annexure P/4), it is clear that the authority has considered each and every aspect of the matter and arrived at a conclusion that no material illegality and irregularity has been committed by the petitioner and on scrutiny of the facts which have been mentioned in the reply by the petitioner, the matter was directed to be closed against him.

10. Surprisingly, a show cause notice was again issued to the petitioner dated 18.12.2020 (Annexure P/1) reiterating the same facts asking the petitioner as to why disciplinary action shall not be initiated against him and even after passing the order dated 14.01.2016 (Annexure P/4), it is again reiterated that petitioner had caused loss to the Government amounting to Rs. 8,74,86,175/- and as such, action is required to be taken against him. These two views which have been taken by the authority in the order dated 14.01.2016 and in the show cause notice dated 18.12.2020 are contrary to each other. As per the stand taken by the respondent in the return, they are exercising the power of review as provided under Rule 29 of Rules, 1966 and as such, the order dated 14.01.2016 can be reviewed by the authority. According to the State, under the existing circumstances, bar of limitation would not come in their way. It is apt to mention the respective provision i.e. Rule 29 of the Rules, 1966 which are as under:-

“29. (1) Notwithstanding anything contained in these rules except Rule 11-(i) the Governor; or

(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or

(iii) the appellate authority, within six months of the date of the order proposed to be reviewed, or

(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 [X X X] and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless:

- (i) the authority which made the order in appeal; or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

Explanation. - [(1)] The powers conferred on the Governor under this sub-rule shall in the case of a Class III or Class IV Government servant serving in a District Court or a Court Subordinate thereto be exercised by the Chief Justice.

(2) No proceeding for review shall be commenced until after-

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules. [Explanation II- The powers conferred on the Governor under this rule shall, in the case of Judicial Officers be exercised by the High Court.]

As per the aforesaid provision and the stand taken by the respondent, it is clear that the bar of limitation is applicable only in respect of an order which is appealable whereas the order dated 14.01.2016 is not appealable and, therefore, limitation for exercising such a power by the Governor is not applicable.

11. However, I am not satisfied with the stand taken by the respondent and interpretation of sub-rule (2) of Rules, 1966 given by the respondent which provides that if any order is sought to be reviewed, the same can be done only

within the period within which an appeal can be preferred. If the order is not appealable, it does not mean that the same cannot be reviewed because sub-clause (ii) of Sub-rule (2) of Rule 29 of the Rules, 1966 deals with the situation when appeal is preferred against an order whereas sub-clause (i) of Sub-rule (2) of Rule 29 of the Rules, 1966 deals with the situation when no appeal is preferred. Thus, the case in hand even otherwise would fall under clause (i) of Sub-rule (2) of Rule 29 of Rules, 1966. The law is well settled in respect of exercising the power of review which says that the maximum period for exercising power of review under Rule 29 is six months and not thereafter.

(Emphasis Supplied)

12. The Division Bench of this Court in case of **State of M.P. and another Vs. Om Prakash Gupta and another** reported in **2001(2) M.P.L.J. 690** while dealing with the similar provision on which petitioner is placing reliance has observed in paragraphs 18 and 19 as under:-
- “18. The provision contained in rule 29(1) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, provides as under:
- “29. (1) Notwithstanding anything contained in these rules except rule II.—
- (i) the Governor; or
- (ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariate), under the control of such head of a department, or
- (iii) the Appellate Authority, within six months of the date of the order proposed to be reviewed, or
- (iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may—
- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the

penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14(xxx) and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless—

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

19. A perusal of the aforesaid rule clearly indicates that the provision relating to the limitation of 6 months is in respect of the authorities referred to in rule 29(1)(i), (ii) and (iii) of the Rules. The use of word “or” in the aforesaid rule is indicative of the fact that the power of review could be exercised by any of the authorities referred to in the rule 29(1)(i), (ii) and (iii) of the Rules within a period of 6 months and not thereafter.”

In view of the aforesaid, it is clear that the impugned orders passed by the respondents are apparently illegal as the power of review exercised by the authority is beyond the period of limitation prescribed under the law. Accordingly, the impugned orders passed by the authority on 11.10.2022 (Annexure-P/14) and also on 05.12.2022 (Annexure-P/16) are not sustainable in the eyes of law and as such, they are hereby set aside.

8. Resultantly, the petition stands **allowed** directing the respondents to release the petitioner’s retiral dues in his favour within a period of three months from the date of receipt of copy of this order along with arrears @8% over the same.

**(SANJAY DWIVEDI)
JUDGE**