

IN THE HIGH COURT OF MADHYA PRADESH BENCH
AT GWALIOR

Writ Petition No. 22056 of 2022 (S)

Petitioner

Phool Singh Parihar S/o Shri Harprasad age 63 years Occupation- Retired (Asst. Grade-III) P.H.E. Datia R/o Mudiyan ka Kunwa, Mali Wali Gali Datia District Datia (M.P.)

Presented on 23/09/22
By K. K. Sharma

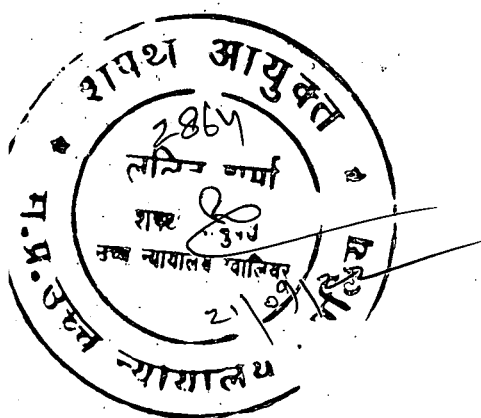
Shab.
Presentation Assistant

VERSUS

Respondents

1. The State of M.P. Through The Principal Secretary, Public Health and Engineering Department, Vallabh Bhopal (M.P.)
2. The Senior Account Officer, O/o Accountant General (A & E-II) M.P. Arera Hills Hosangabad Road, Bhopal (M.P.)
3. The Chief Engineer Public Health and Engineering Department, Gwalior (M.P.)
4. The Executive Engineer Public Health and Engineering Department, Division-Datia District-Datia (M.P.)
5. The District Treasury Officer District Datia (M.P.)
6. The District Pension Officer Datia District Datia

कार्यालय महाधिवक्ता, ग्वालियर
अग्रिम प्रति 01 से 10/05
पृष्ठ क्र. 23-9-22
दिनांक 23-9-22
दस्तावेज व नाम 23/9/22



Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ of mandamus and/ or certiorari and / or any other suitable writ, order or direction in the nature of a writ thereby doing justice in the matter

Declaration



The copies as required under rule 25 chapter X of the High Court of MP Rules 2008 have been Served upon Additional Advocate /Solicitor General on -----at -----am at Gwalior

(K.K. Sharma)

Advocate

The humble memo of petition as under:-

1) Particulars of the cause/order against which the petition is made:

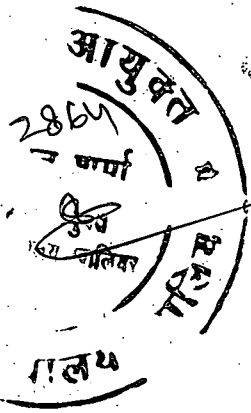
(1) Date of Order/ Notification / Circular/ Policy / Decision etc: None

(2) Passed in (Case or File Number) -None

(3) Passed by - None

(4) Subject-matter in brief:-

The petitioner who was working with the respondent department as Assistant Grade-III is not aggrieved by any particular order but is aggrieved by the action of respondent authorities whereby petitioner's PPO has not been issued and his retiral dues have not been settled and paid to him till date, despite the fact that petitioner got superannuated on 30-11-2021. The authorities are doing this on the pretext that there is a negative balance of Rs. (-) 7,56,681/- in the General Provident Fund account no. PHE/106376 of petitioner and they have further directed to recover the same from retiral dues. It is pertinent to mentioned here that negative balance in GPF account shown by the respondents is without proper reconciliation of records and some of the part final withdrawal were not done by the petitioner therefore petitioner sought information under RTI but respondents did not supply complete information and against it petitioner filed appeal under RTI which pending consideration.



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Further it is worth mentioning here that pension and gratuity are not bounties but they are hard earned properties by rendering services to the department. They are not fundamental right but are constitutional rights and are held to be property of employee therefore withholding of pension and gratuity and petitioner is highly irregular and arbitrary.

The petitioner got superannuated on 30-11-2021 but due to anomalies in GPF account pensionary benefit and other retrial dues are not settled till date, thus causing great hardship to the petitioner and ultimately petitioner and his family is on the verge of starvation. Hence this petition.

2. A declaration that, no proceedings on the same subject matter has been previously instituted in any court/tribunal. If instituted, the status or result thereof, along with copy of the order :

The petitioner declares that he has not earlier filed any other matter pertaining to the subject matter of the petition, neither any such matter is pending before any court or tribunal.

3) Details of remedies exhausted:

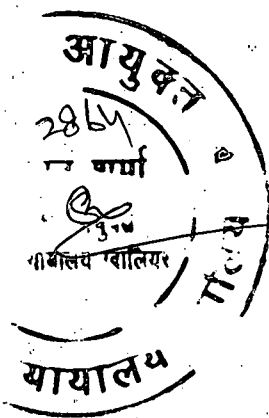
The petitioner declares that he has exhausted all other remedies available to him and now he has no other remedy available to him under any rules..

4) Delay if any, in filing the petition and explanation therefor:

The petitioner submits that there is no delay in filing of the present petition.

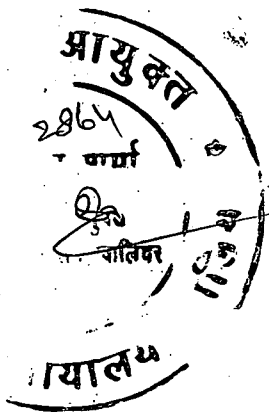
5) Facts of the case:-

The brief facts and shorn of details of the case are as followings:-





- 5.1 That, the petitioner was working in the respondent department and he was posted as Assistant Grade-III at P.H.E. Dn. Datia (M.P.). On completion of age of superannuation he was retired on 30-11-2021 vide order dated 30-11-2021. A copy of superannuation order is enclosed here with as **Annexure P/1**.
- 5.2 That, earlier to superannuation, for issuing the pension and other retrial dues the documents were prepared by the department and forwarded to the respective authorities. The petitioner was having GPF account no. PHE/106376 and department prepared the documents of GPF and sent it to office of Accountant General.
- 5.3 That, the office of accountant general Bhopal vide its letter dated 11-09-2020 intimated that in the GPF account of petitioner there is a negative balance of Rs. (-) 7,56,681/- In pursuance of this letter departmental authorities vide letter dated 19-10-2020 directed respondent no. 4 to take necessary action and recover the said amount from the retrial dues of petitioner. A copy of letter dated 11-09-2020 and 19-10-2020 are submitted herewith and marked as **Annexure P/2 and Annexure P/3** respectively.
- 5.4 That, vide letter dated 08-01-2022 respondent no. 4 sent the GPF authorization letter in prescribed form alongwith original GPF passbook for final payment to the office of respondent no. 2 wherein balance is shown Rs. 7,41,471/- A copy of letter dated 08-01-2022 is submitted herewith and marked as **Annexure P/4**.
- 5.5 That, again respondent no. 2 sent a letter alongwith computation sheet to the petitioner and





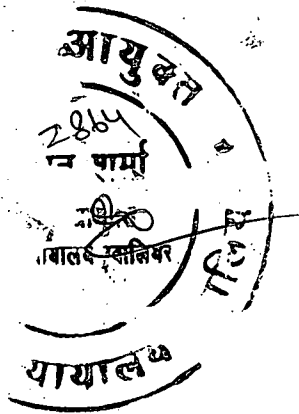
intimated vide its letter dated 18-02-2022 that there is a negative balance of Rs. (-) 901724/- in G.P.F. account but some of the part final withdrawal reflected computation sheet were not made by the petitioner. A copy of such letter alongwith computation sheet is enclosed here with as **Annexure P/5**

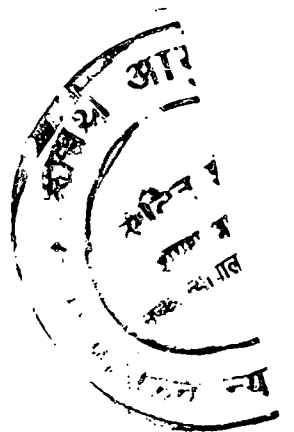
5.6 That, when petitioner was not getting pension and his financial condition was getting deteriorated therefore he represented before the authorities and requested to sanction and disburse anticipatory pension as per rule 74 of M.P. pension 1976 but of no avail. A copy of representation dated 24-03-2022 is enclosed here with as **Annexure P/6**

5.7 That, on 06-05-2022 respondent no. 4 sent a letter to the petitioner and asked to deposit Rs 901724/- through challan as per the letter dated 18-02-2022 issued by the respondent no. 2. A copy of letter dated 06-05-2022 is enclosed here with as **Annexure P/7**

5.8 That, as the petitioner was not in good financial condition, immediately on 13-05-2022 petitioner submitted reply before the authorities and objected to the excess withdrawal entries reflected in GPF account. Again requested to sanction pension of the petitioner but no heed was paid. A copy of reply dated 13-05-2022 is enclosed here with as **Annexure P/8**

5.9 That, in such compelling circumstances petitioner on 27-05-2022 again requested to the authorities to sanction the pension and further submitted consent that in case any amount of GPF is recoverable petitioner same may be adjusted from gratuity payable to him after proper reconciliation of records. A copy of representation dated 27-05-2022 is enclosed here with as **Annexure P/9**



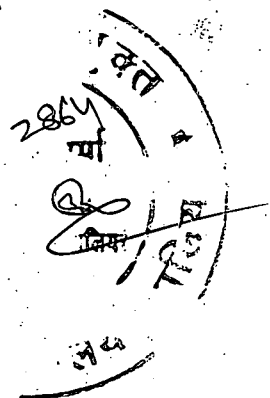


5.10 That, to resolve the anomalies and to submit objections before the authorities petitioner sought information under RTI regarding part final withdrawals but authorities did not supply information within stipulated time of 30 days therefore petitioner file appeal on 29-07-2022 under RTI. Thereafter incomplete information was supplied on 24-08-2022 immediately on 29-08-2022 petitioner again requested for complete information so that he can represent before the authorities. A copy of application dated 08-06-2022, reply 24-08-2022 and application dated 29-08-2022, appeal under RTI act dated 29-07-2022 are enclosed here with as **Annexure P/10, Annexure P/11, Annexure P/12, Annexure P/13** respectively

5.11 That, when pension of the petitioner was not processed and his retiral dues were not settled despite repeated request therefore petitioner sent a legal notice to advocate to the respondents. A copy of legal notice is enclosed here with as **Annexure P/14**.

5.12 That, in reply to the legal notice respondent no. 2 again intimated that there is negative balance of Rs. (-) 681000/- in GPF account and further submitted that neither department nor the subscriber submitted further details after scrutinizing and verification of records so that anomalies can be resolve. It was the duty of respondent no. 4 reconcile the report and send it to respondent no. 2 department but same was not done and petitioner was also not supplied with complete information under RTI. A copy of reply of legal notice is enclosed here with as **Annexure P/15**.

5.13 That, as per the rules, if any reason the pension is not finalized after the retirement, the respondent should grant anticipatory pension so that the petitioner and his family can survive which has not been done in the case of



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petitioner despite the repeated requests. Further it is also submitted that there is no any departmental enquiry pending against the petitioner.

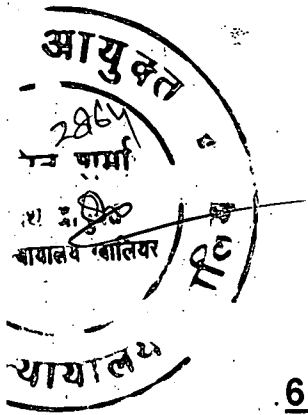
5.14 That as per the rule 57 of MP civil services (Pension) rules 1976 every head of office shall under take the work of preparing pension papers two year before the date on which a government servant is due to retire on superannuation. Similarly rule 74 provides that is the PPO is not received 15 days before the date of pension became due, the head of the office shall sanction and disburse the anticipatory pension, similarly provision pension shall be sanctioned and disbursed by the head of the office on the first of the month in which it becomes due. It is also pertinent to mention here that state government through finance department has also issued various circulars in this regard.

5.15 That, due to paucity of funds and poor financial condition petitioner could not provide better treatment to his wife and ultimately she expire on 11-07-2022 despite the repeated request made respondents to finalize and start the pension.

Now being aggrieved by the in action of respondent authorities this petition on behalf of the petitioner is being filed under Article 226 of Constitution of India inter alia on the following grounds:-

6) Grounds urged:-

- A. That, the entire action of the respondents is illegal, arbitrary and unconstitutional and also against the principles of service jurisprudence.
- B. That, inaction on the part of respondent authorities itself shows that authorities deliberately to the harass the petitioner did not finalize the pension and other retiral dues

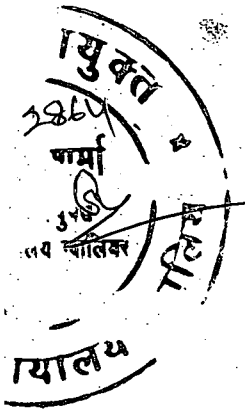




and wants to linger on the matter, hence deserve a suitable and stern direction by this Hon'ble court in this regard.

- C. That, it is statutory duty of the respondents to complete all retiral dues and to issue PPO at the time of retirement but in the case of petitioner respondent adopted lethargic attitude with the result that the petitioner and his family is on the verge of starvation.
- D. That, the service record of every employee is secured and maintained by the employer and in the case of petitioner GPF account record was not maintained properly and when information was sought under RTI respondent supplied incomplete information, ultimately petitioner is suffering, hence suitable direction may kindly be issued by the Hon'ble court.
- E. That, it is the duty of respondent to start the anticipatory pension if or any reason pension is not finalized and same was not done in the case of petitioner, such action of the respondent authority is to be deprecated by this Hon'ble court and suitable direction may kindly be issued.
- F. That, it is well settled principle of law that pension and gratuity are not bounties but are constitutional right and held to be property under Article 300-A of constitution of India. It also constitutes fundamental right to livelihood under article 21 Constitution of India. In the case of petitioner without rhyme and reason respondent did not finalized the pension and settled GPF account and other retiral dues.
- H. That, the other ground shall be urged at the time of final hearing of this case.

7) Relief prayed for



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- 7 That, the petitioner therefore most humbly prays that this Hon'ble court may kindly be pleased to allow this petition thereby issuing a writ of mandamus and direct the respondents to issue PPO and to release the payment of gratuity as well as regular pension forthwith and arrears from the period from the date of retirement may kindly be paid with interest @12% per annum, and respondents may also kindly be directed to make the payment of compensation. Cost may be also awarded on delay of payment of pension. To pass such other further order(s) as deemed fit and proper in the interest of justice.

8) Interim order/writ , if prayed for:

The petitioner prays that pending final disposal of the petition, the respondents may kindly be directed to start the anticipatory pension to the petitioner forthwith in the interest of justice.

9) Documents relied on but not in possession of the petitioner:Nil

10. Caveat. That no notice of lodging of a caveat by the opposite parties is received.

Place : Gwalior

Date: 21-9-12

Humble petitioner

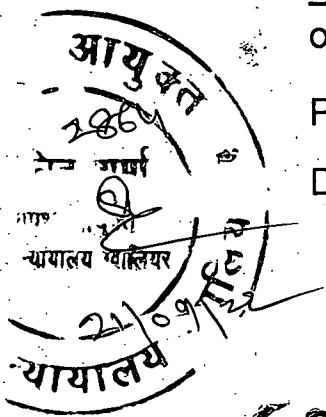
Phool Singh Parihar

Through Counsel

(K.K. Sharma)

(K.K. Prajapati)

Advocates



मलित शर्मा
शर्मा आयुक्त
न्यायालय ग्वालियर

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