

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 19th OF JULY, 2022

WRIT PETITION No. 18527 of 2020

Between:-

PURWA JAIN W/O RAHUL JAIN, AGED ABOUT 34 YEARS, OCCUPATION: ADVOCATE 86,87, JANKI NAGAR, NEAR JAIN TEMPLE, INDORE (MADHYA PRADESH)

.....PETITIONER

(PETITIONER – PURWA JAIN PRESENT IN PERSON)

AND

1. UNION OF INDIA MINISTRY OF LAW AND JUSTICE THROUGH ITS SECRETARY 4TH FLOOR, A WING SHASTRI BHAWAN NEW DELHI (DELHI)
2. LOK SABHA SECRETARIAT THROUGH THE SECRETARY SANSADH MARG, LOK SABHA MARG, NEW DELHI (DELHI)
3. LOK SABHA SECRETARIAT THROUGH THE SECRETARY SANSADH MARG, LOK SABHA MARG, NEW DELHI-110 001 (DELHI)
4. MADHYA PRADESH LEGISLATIVE ASSEMBLY THROUGH THE PRINCIPAL SECRETARY RAJYA SABHA VIDHAN BHAVAN ,BHIM NAGAR, SLUMS, ARERA HILLS , BHOPAL (MADHYA PRADESH)
5. GOVERNMENT OF MADHYA PRADESH

THROUGH THE CHIEF SECRETARY MP
MANTRALAYA VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)

.....RESPONDENTS

(UNION OF INDIA BY SHRI HIMANSHU JOSHI,
ASSISTANT SOLICITOR GENERAL)
RESPONDENT NO.4 BY SHRI PRAKASH UPADHYA
&SHRI RAKESH SINGH BHADORIA, ADVOCATE)

This petition coming on for hearing this day, JUSTICE

VIVEK RUSIA passed the following:

O R D E R

The petitioner being a practicing advocate and a *pro bono* litigant has filed the present petition in the nature of Public Interest Litigation seeking the following reliefs:-

- (a) Issue any appropriate writ, order or direction to struck down the provision of Section 6A(1) of the Madhya Pradesh Vidhan Sabha Sadasya (Vetan Bhatta Tatha Pension) Adhiniyam, 1972 and directing the respondents to make amendments in the provision and fix the tenure of 5 years of their office for the eligibility of lifetime pension.
- (b) Issue any appropriate writ, order or direction to struck down the provision of Section 6A(3) of the Madhya Pradesh Vidhan Sabha Sadasya (Vetan Bhatta Tatha Pension) Adhiniyam, 1972 and directing the respondents to make amendment in the provision that former MLA shall be eligible to get only one pension of the last office which MLA left.
- (c) Issue any appropriate writ, order or direction to

struck down the provision of section 8A(1) of the Salary, allowance and Pension of Member of Parliament Act, 1954 and directing the respondents to make amendment in the provision and fix the tenure of 5 years of the office of Member of Parliament for the eligibility of lifetime pension.

(d) Issue any appropriate writ, order or direction to struck down the provision section 8A(3) of the Salary, Allowance and Pension of Member of Parliament Act, 1954 and directing the respondents to make amendment in the provision that former MP shall be eligible to get only one pension of the last office which he left.

(e) Issue any appropriate writ, order or direction to the respondent to form committee or body who maintain the information that current working MP and MLA of the State of Madhya Pradesh who are getting salary, does not get any kind of pension from centre and state for their earlier office.

(f) to call the relevant records of the case from the respondent.

(g) Allow the present PIL with costs.

(h) pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the petitioner.

02. The grievance of the petitioner is that there should be a minimum qualifying period in the relevant Rules and Regulations for grant of pension to Member of Parliament (M.P.) and Member of Legislative Assembly (M.L.A.) at par

with the civil servant and judges of High Court and Supreme Court. According to the petitioner, after the election M.Ps. and M.L.As., become entitled to a pension without serving even for a day. They are also entitled to multiple pensions which are alien in the service jurisprudence. Since they are lawmakers, therefore, they have made provisions under the Act & Rules for getting the pension without rendering the service. The main concern of the petitioner is that the taxpayers' money is being paid to those M.Ps. and M.L.As. who have not rendered any services to the public or nation after their election and getting the pension only by virtue of their election, therefore, the aforesaid provisions are unconstitutional and liable to be struck down.

03. The petitioner is attacking on Section 6A(1) of the Madhya Pradesh Vidhan Sabha Sadasya (Vetan Bhatta Tatha Pension) Adhiniyam, 1972 (for short Adhiniyam of 1972) and seeking direction to legislature to fix the tenure of a minimum of 5 years of their office as an eligibility period to get lifetime pension. The petitioner is also challenging the constitutional validity of Section 6A(3) of the Adhiniyam of 1972 and seeking direction from the legislature to make provision to the effect that the M.L.As. should get only one pension for the last office left by him / her.

04. Not only for the M.L.As., but the petitioner is also questioning the provision of Section 8A(1) of the Salary,

allowance and Pension of Member of Parliament Act, 1954 (for short the Act of 1954) and seeking amendment in the provision for fixing tenure of 5 years of the office as minimum eligibility to get lifetime pension by the Members of Parliaments. Likewise, by way of suitable amendment in Section 8A(3) of the Act of 1954 restraining the M.Ps. to get only one pension.

05. After notice in this petition, the State of Madhya Pradesh, Department of Parliamentary Affairs has filed a reply by submitting that all the issues raised by the present petitioner have already been answered and rejected by this Court as well as by the Apex Court. Hence, the petition is misconceived and has been filed only to get publicity.

06. We have heard learned counsel for the parties at length and perused the record.

07. So far as the constitutional validity of Section 6A(1) and (3) of the Adhinyam of 1972 is concerned, the validity of entire Section 6A was challenged before this Court in the case of *Raghu Thakur v/s The State of Madhya Pradesh reported in I.L.R. (1996) M.P. 334* and vide order dated 26.09.1996, this Court has dismissed the writ petition. The Division Bench has held that the Adhinyam of 1972 is *intra vires* and it is within the competence of the State Legislature under Article 195 of the Constitution read with Entry 42 of List II of Seventh Schedule of the Constitution to legislate on a pension of members of Assembly. Therefore, the entire Section 6A(1) has been upheld

by this Court. The petitioner being an advocate ought to have done homework before filing this petition challenging the constitutional validity of Section 6A(1).

08. So far as pension payable to the M.Ps. and M.L.As. is concerned, the same issue came up for consideration before the Apex Court in the case of *Lok Prahari Through Its General Secretary S.N. Shukla & Another v/s Union of India Through Its Secretary & Others* reported in (2018) 16 SCC 696. The Apex Court negated all the arguments which satisfy all the queries in the mind of the petitioner as raised by her by way of the present petition. Paragraphs 20, 21 & 26 of the aforesaid judgment are reproduced below:-

“20. The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. We have already examined the language of the relevant provisions of the Constitution. We are of the opinion that, on a true and proper construction of the text of those provisions, they do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment.

21. However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the holders of those offices by assuring them that either the legislature or the executive will not be able to deprive them of the financial resources necessary to keep them away from impecuniousness, irrespective of the fact that a decision taken by the incumbents of each of

those offices in discharge of the official responsibilities is acceptable or not either to the legislature or the executive. We must hasten to add that we must not be understood to be making any final declaration of law in this regard.

26. Another argument advanced by the Appellants is that pension is payable to an employee of State after his superannuation. Since MPs are not employees of State, they are not entitled for pension nor the Parliament is competent to provide payment of pension to the ex-MPs. In our opinion, there is a fallacy in the above submission, insofar as it assures that pension is only payable to former employees of State and nobody else. Such a submission emanates from the fact that certain payments made to the former employees of State are called pensions and the misconception of the Appellants that the expression 'pension' can only have one meaning. There are various other categories of payments made by State which are called 'pensions', such as, Old Age Pension, Widow Pension, and Disability Pension etc."

09. In the case of *Ashwini Kumar Upadhyay v/s Union of India & Another* reported in (2019) 11 SCC 683, the Apex Court has held that the mere fact that M.P. / M.L.A. draws salary under the Act of 1954 and different allowances under different Rules framed under the said Act does not result in the creation of a relationship of employer and employee between Government and the Legislature despite the description of payment received by them in the name of salary. Even the expansive definition of the term pension in the General Clause of 1897 will be of no away, therefore, the contention of the petitioner is baseless that there should be a minimum eligibility period for grant of pension to the M.Ps. and M.L.As. as provided for pension rules applicable to the Government employees / public servants.

Hence, entire Public Interest Litigation is devoid of substance and filed without proper research.

10. If any advocate approaches the High Court by way of Public Interest Litigation then it is expected that proper research on the subject ought to have been done. The petitioner being an advocate ought to have done research before filing such type of petition. All the issues raised in this petition have already been considered by this Court as well as by the Apex Court.

In view of the above, the writ petition stands dismissed with a cost of Rs.10,000/- payable to the Madhya Pradesh State Legal Aid Services Authority.

(VIVEK RUSIA)
J U D G E

(AMAR NATH (KESHARWANI))
J U D G E

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