IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 21st OF JULY, 2025

WRIT PETITION No. 9086 of 2023

RAMBHAROSA MEENA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Harish Kumar Dixit learned Senior Counsel with Ms. Ritika Chaubey- Advocates for the petitioner.

Shri N.K. Gupta- Govt. Advocate for the respondents/State.

ORDER

The petitioner has filed this writ petition seeking *writ of mandamus* to the respondents to release *Sanchit Nidhi* of the petitioner as provided in order, dated 06.02.2013. (Annexure P/3).

[2]. The facts necessary for decision of the case are that the petitioner was appointed as Home Guard in the year 1982 under respondent no.3 and worked till 31.12.2021 when he stood retired from service on attaining the age of 60 years. Thus, petitioner has rendered services of about 40 years with the respondent-department.

[3]. The State Government through its Finance Department issued an order, dated 06.02.2013 (Annexure P/3) whereby Home Guard Sainik has been held entitled to certain amount on account of his having worked for 10 years or more as provided in Clause 2 of the said order. This has been termed

as *'Sanchit Nidhi'*. For the purposes of this case, it is sufficient to mention that as per Clause 2(1), the incumbent shall not be entitled to the aforesaid benefit, if he has been discharged from service at any point of time during his entire service.

[4]. When the petitioner was not extended the aforesaid benefit of *Sanchit Nidhi* despite his having made representations, he approached this Court by filing the present petition. The respondents have filed the application for dismissing the petition wherein, it has been stated that since the petitioner was discharged from service on 15.02.1991 and thereafter nominated again on 31.05.1996, he is not entitled to *Sanchit Nidhi* as per Clause 2(1) of the order, dated 06.02.2013.

[5]. The petitioner has not filed any rejoinder rebutting this averment of the respondents regarding his remaining discharged from 15.02.1991 to 31.05.1996. Therefore, this fact has to be accepted as correct.

[6]. Learned Senior Counsel referred to an order, dated 15.12.2023, issued by Finance Department of the State Government and submitted that after issuance of this order, the petitioner is entitled to the amount of *Sanchit Nidhi* for the period excluding the period in which he remained discharged from service. On the other hand, learned counsel for the respondents submitted that since the petitioner had already retired on 31.12.2021, the order, dated 15.12.2023, would not be applicable in the petitioner's case and the said order would apply prospectively. Therefore, the issue for consideration is as to whether the provisions of order, dated 15.12.2023, are applicable to the petitioner's case not ?

[7]. To understand the effect of order, dated 15.12.2023, the same is reproduced hereunder verbatim.

मध्य प्रदेश शासन
गृह विभाग
मंत्रालय, बल्लभ भवन,

//आदेश//

भोपाल, दिनांक 15/12/2023

क्रमांक एफ-2(अ)30/2022/बी-4/दो:- विभागीय समसंख्यक आदेश दिनांक 6 फरवरी 2013 द्वारा राज्य मानव अधिकार आयोग द्वारा होमगार्ड सैनिकों के संबंध में की गई अनुशंसाओं पर विचार करने हेतु प्रमुख सचिव, सामान्य प्रशासन विभाग की अध्यक्षता में गठित समिति का प्रतिवेदन दिनांक 7 सितंबर, 2012 द्वारा की गई अनुशंसाओं के संबंध में आदेश जारी किए गए थे उक्त आदेश में पात्रता के लिए अन्य शर्तों में से (एक) **"पूर्व सेवा अवधि में एक बार भी होमगार्ड सैनिक सेवा से डिस्चार्ज ना हुआ हो"** स्थापित है के स्थान पर **"होमगार्ड सैनिक के डिस्चार्ज वर्ष या वर्षों को छोड़कर शेष सेवा अवधि के लिए संचित निधि की गणना की जावे"** स्थापित किया जाता है शेष आदेश यथावत है "

मध्य प्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार

(अन्नू भलावी)
अवर सचिव,
मध्य प्रदेश शासन, गृह विभाग

[8]. From the language used in the order, dated 15.12.2023, it is

gathered that the term **"पूर्व सेवा अवधि में एक बार भी होमगार्ड सैनिक सेवा से डिस्चार्ज ना हुआ हो"** has been substituted by **"होमगार्ड सैनिक के डिस्चार्ज वर्ष या वर्षों को छोड़कर शेष सेवा अवधि के लिए संचित निधि की गणना की जावे"**

[9]. The substituted condition has to be read in the order, dated 06.02.2013, right from the inception and it cannot be said that the changed condition would be applicable prospectively w.e.f. 15.12.2023. The view of this Court finds support from the law laid down by Apex Court in the case of **Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay & Ors.** reported in **(1952) 2 SCC 1** wherein the Apex Court held in para-7 as under;

> **"7.** The construction of an Act which has been amended is now governed by technical rules and we mast first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England:see *Craies on Statute Law*, 5th edition, page 207; it is the law in America: see *Crawford on Statutory Construction*, page 110; and it is the law which the Privy Council applied to India in *Keshoram Poddar v. Nundo Lal Mallick*. Bearing this in mind it will be seen that the 1950 Act remains the 1950 Act all the way through even with its subsequent amendments. Therefore, the moment 1952 Act was passed and section 2 came into operation, the Act of 1950 meant the 1950 Act as amended by section 2, that is to say, 1950 Act now due to expire on the 1-10-1952."

[10]. Again in the case of **Income Tax Officer Vs. Vikram Sujitkumar Bhatia** reported in **(2024) 7 SCC 741**, the Apex Court reiterated the similar legal position in para-54 as under;

> "54. As observed hereinabove, Section 153-C has been amended by way of substitution whereby the words “belongs or belong to” have been substituted by the words “pertains or pertain to”. As observed and held by this Court in the case of *Shamrao V. Parulekar* that amendment by substitution has the effect of wiping the earlier provision from the statute book and replacing it with the amended provision as if the unamended provision never existed."

[11]. In view of the aforesaid legal position, it is evident that an amendment by substitution has the effect of wiping the earlier provision from the statute book and replacing it with the amended provision as if the unamended provision never existed. Thus, the provision of order, dated 15.12.2023, would apply w.e.f. 06.02.2013. The petitioner is, therefore, entitled to the benefit of *Sanchit Nidhi* for the period excluding the period of his discharge from 15.02.991 to 31.05.1996.

[12]. The respondents have placed reliance upon the order passed by the Coordinate Bench of this Court in the case of **Manohar Lal Sahu & Ors. Vs. State of Madhya Pradesh & Ors. (W.P. No.16912 of 2020)** in support of their contention. However, the said judgment is of no help to the respondents inasmuch as in the said case Clause 2(1) of order, dated 06.02.2013 was challenged before this Court which was not accepted and the petition was dismissed. However, in view of the fact that the respondents themselves have substituted the aforesaid Clause as detailed hereinbefore, the petitioner would be entitled to the benefit.

[13]. In view of the discussion made above, the petition is allowed. The respondents are directed to confer benefit of *Sanchit Nidhi* as per Clause 2(1) of order, dated 06.02.2013, as amended by order, dated 15.12.2023.

[14]. Let the benefit be conferred on the petitioner within a period of 90 days from the date of submission of certified copy of this order.

(ASHISH SHROTI)
JUDGE

vpn/-