

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 386 OF 2016

DIST. : PARBHANI

Shri Govind Dattopant Tarkase,
Aged 58 years, Occu. Retired,
(PWD Assistant Engineer) Bungalow,
R/o Rangnath Maharaj Nagar,
Pardeshwar Mandir, Parbhani.

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APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai - 32.
2. The Chief Engineer,
Public Works Department,
Aurangabad.
3. Superintendent Engineer,
PWD, Nanded.
4. Principal Accountant General (A&E) - I,
Nagpur, Maharashtra.
5. The Executive Engineer,
PWD, Parbhani.

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RESPONDENTS

APPEARANCE : Ms. Pradnya S. Talekar, learned Advocate
holding for Shri S.B. Talekar, learned Advocate
for the applicant.

: Smt. Resha S. Deshmukh, learned Presenting
Officer for respondents.

CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)

J U D G M E N T**{Delivered on 20th day of December, 2016}**

1. The applicant Shri Govind Dattopant Tarkase stood retired on superannuation on 31.3.2016 as a Assistant Engineer Grade . 2 in the Public Works Department of the Government of Maharashtra. He came to be appointed as a Assistant Engineer on 1.12.1984 and had unblemished service record for 32 years. In order to extort money from the applicant one Local M.L.A. viz. Durani Abdulkhan @ Babajani started harassing the applicant and filed one complaint against him. The applicant was holding the additional charge of the post of Sub Divisional Engineer, P.W.D. Sub Division, Pathri, Dist. Parbhani during the period from 21.12.2013 to 11.2.2015. It is alleged that he has prepared bogus bills without work and received technical sanction to the work and hence misappropriated the Government money. On basis of such false allegations starred questions were asked in the legislative assembly. The Principal Secretary, P.W.D., Mantralaya, Mumbai was required to answer such questions. On 17.3.2016, the applicant was kept under suspension without making any enquiry and he was made a scapegoat. The suspension of the applicant is, therefore, nothing but the outcome of the political pressure exerted by the M.L.As. belonging to various political parties. In the meantime, the applicant was allowed to retire on superannuation on 31.3.2016.

2. The applicant filed representations for getting encashment of leave etc. but his request was turned down on 23.3.2016. The applicant has been deprived of the retiral benefits as per the provisions of Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Leave) Rules, 1981 (for short M.C.S. (Pension) Rules, 1982 & M.C.S. (Leave) Rules, 1981).

3. In the present O.A. the applicant has prayed that the impugned communication dated 23.3.2016 (Annex. A-10) issued by the res. no. 5 the Executive Engineer, P.W.D., Parbhani depriving the retiral benefits to the applicant as per rule 68 of the M.C.S. (Leave) Rules, 1981, be quashed and set aside and the respondents be directed to grant all retiral benefits to the applicant as per rule 68 of the M.C.S. (Leave) Rules, 1981.

4. The res. nos. 1, 2, 3 & 5 have filed a common affidavit in reply. According to the respondents, the G.I.S. amount of Rs. 2,00,724/- by order dated 30.5.2016. G.P.F. amount of Rs. 7,07,766/- was also paid to the applicant on 1.1.2016 and the provisional pension was sanctioned to the applicant as per rule 130 (1) (A) of the M.C.S. (Pension) Rules, 1981. It is stated that the applicant was kept under suspension due to serious irregularities committed by him as per rule 4 (1) of the M.C.S. (Discipline & Appeal) Rules, 1979. It is stated that as per rule 68 (5) of the M.C.S.(Leave) Rules, 1981, the leave salary can be granted only if an

employee is exonerated completely from the D.E. and his suspension is found illegal.

5. The applicant has filed rejoinder affidavit to the affidavit in reply of the respondents and stated that he has been kept under suspension on 17.3.2016 and he was allowed to retire on superannuation on 31.3.2016.

6. Heard Ms. Pradnya S. Talekar, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondents. I have perused the application, affidavit, affidavit in reply of the res. nos. 1, 2, 3 & 5, rejoinder affidavit filed by the applicant and various documents placed on record.

7. The learned Advocate for the applicant has placed reliance on the judgment in the case of **Ajay Kumar Choudhary Vs. Union of India, through its Secretary and Another {(2015) 7 SCC 291}** the Hon'ble Supreme Court has held that a charge sheet has to be filed within a period of 3 months after suspension or otherwise the suspension would automatically stand lapsed.

8. The learned Advocate for the applicant has also placed reliance on the judgments in the cases of **S.K. Mastan Bee Vs. General Manager, South Central Railway and Another {(2003) 1 SCC 184}** and **Assistant General Manager, State Bank of India and Others Vs. Radhey Sham**

Pandey {2015 (12) SCC 451}, wherein the Hon'ble Supreme Court has held that the pension is a fundamental right and not mere bounty.

9. The following material points are to be considered in this O.A.:-
- (i) whether the order dated 23.3.2016 issued by the res. no. 5 depriving the retiral benefits to the applicant as per rule 68 of M.C.S. (Leave) Rules, 1981 is legal ?
 - (ii) whether the applicant is entitled to grant all retiral benefits as per rule 68 of M.C.S. (Leave) Rules, 1981 ?
10. The impugned order whereby the payment of leave encashment has been rejected to the applicant is dated 23.3.2016 (Annex. A.10) which reads as under :-

विषय :- सेवा निवृत्तीमुळे शिल्लक अर्जित रजेचे रोखीकरण मिळणे बाबत

संदर्भ :- आपला शिल्लक रजेचे रोखीकरण मिळणे बाबत विहित नमुन्यातील अर्ज दिनांक २१.३.२०१६.

वरील संदर्भीय विषयाच्या अनुषंगाने आपणांस कळविण्यांत येते की, महाराष्ट्र नागरी सेवा १९८१ रजा नियम ६८ मधील अ.कं. ५ ची पुर्तता होत नसल्यामुळे आपला शिल्लक अर्जित रजेच्या रोखीकरणाचा विहित नमुन्यातील अर्ज दप्तर दाखल करण्यात येत आहे.

आपल्या माहितीस्तव.

सहि/--
कार्यकारी अभियंता,
सार्वजनिक बांधकाम विभाग, परभणी.+

11. From the aforesaid communication, it seems that, the leave encashment has been rejected to the applicant as provision of rule 68 (5) of the M.C.S. (Leave) Rules, 1981 is not complied with.

12. Rule 68 deals with cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation. The sub rules 5 & 6 of the said rule 68 are material so far as this case is concerned. The Rule 68 (5) & (6) of M.C.S. (Leave) Rules, 1981 is as under :-

68. Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation.

(5) {Subject to the provision of sub rule (6), a Government servant} who retires from service on attaining the age of compulsory retirement while under suspension shall be paid cash equivalent of leave salary under sub rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the Government servant has been fully exonerated and the suspension was wholly unjustified.

[(6) (a). The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against

him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any].+

13. From the sub rule 5 of rule 68, it will be clear that the employee, who retired on attaining the age of compulsory retirement while under suspension shall be paid cash equivalent of leave salary under sub rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the Government servant has been fully exonerated and that the suspension was wholly unjustified. Sub rule 6 (a) gives power to the competent authority to grant leave or, to withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him.

14. The learned Advocate for the applicant submits that in the present case, though the applicant was kept under suspension because of political pressure, the applicant was allowed to retire on superannuation. The suspension order dated 17.3.2016 in respect of the applicant shows that the Department decided to initiate D.E. against the applicant. The applicant was kept under suspension on 17.3.2016, whereas he got

retired on superannuation on completing the age of 58 years on 31.3.2016. The order of retirement of the applicant dated 21.3.2016 is at Exh. A.7. Admittedly no charge sheet has been served upon the applicant till today nor any enquiry was pending against the applicant at the time of his retirement. No criminal proceeding is also pending against the applicant at the time of his superannuation.

15. The learned Advocate for the applicant has placed reliance on the case of **Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others** **{(1999) 3 SCC 666}**. It seems that it was a case under Orissa Financial State Corporation Staff Regulations, 1975 and it was held that, no specific provision exists in Orissa Financial State Corporation Staff Regulations, 1975 for deducting any amount from the provident fund consequent to any misconduct determined in departmental enquiry, nor is there any provision for continuance of departmental enquiry after superannuation. In the absence of any such provisions, it must be held that the respondent . Corporation had no legal authority to make any reduction in the appellant's retiral benefits. It was also observed therein that, there is no provision for conducting a disciplinary enquiry after the appellant's retirement, nor is there any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing departmental enquiry even for the purpose of imposing any reduction in retiral benefits

payable to the appellant. In the absence of such an enquiry it was held that the enquiry had lapsed and the appellant was entitled to full retiral benefits.

The aforesaid citation may not be applicable in the present case for the simple reason that in Maharashtra there are Maharashtra Civil Services (Pension) Rules, 1982, which allows the Government to take departmental action against the retiral employee provided such action is admissible under rule 27 of the M.C.S. (Pension) Rules, 1982.

16. It is to be noted that the applicant was kept under suspension on 17.3.2016 and was allowed to retire on superannuation on 31.3.2016. There is nothing on the record to show that any specific order was passed as regards continuation of the D.E. against the applicant even after retirement. Admittedly, no charge sheet has been served upon the applicant before retirement and even the show cause notice was also not issued to him before his retirement.

17. In the case of **MADANLAL SHARMA VS. STATE OF MAHARASHTRA & ORS. {2004 (1) MH. L.J. 581}**, wherein the Honble Bombay High Court has observed as under :-

“In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the enquiry

proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably. On reaching the age of superannuation, the retirement is automatic unless the competent authority passes an order otherwise.”

18. The applicant has retired on superannuation on 31.3.2016 and admittedly no D.E. or criminal case is pending against the applicant at the time of his retirement. There is no order of continuation of D.E. against the applicant and, therefore, his suspension has automatically become infructuous on the date of his retirement on superannuation. Since, no D.E. was initiated against the applicant prior to his retirement the enquiry can be initiated at the most under rule 27 of the M.C.S. (Pension) Rules, 1982. The rule 27 of the M.C.S. (Pension) Rules, 1982 is as under :-

“27. Right of Government to withhold or withdraw pension.

- (1) *Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:*

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- (2) (a) *The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.*
- (b) *The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -*
- (i) shall not be instituted save with the sanction of the Government,*
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and*
 - (iii) shall be conducted by such authority and at such place as the Government may direct and in*

accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

- (3) *No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.*
- (4) *In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or were departmental proceedings are continued under sub rule (2), a provisional pension as provided in rule 130 shall be sanctioned.*
- (5) *Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub rule (1) of this rule, ordinarily be made at rate exceeding 1/3 of the pension admissible on the date of retirement of a Government servant.*
- (6) *For the purpose of this rule, -*
- (a) *departmental proceedings shall be deemed to be instituted on the date on which the statement*

of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted –

(i) In the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and

(ii) In the case of civil proceedings, on the date of presenting the plaint in the Court.”

19. As per rule 27 (2) as mentioned above, the Govt. servant against whom D.E. is initiated before his retirement, such D.E. shall be deemed to be under rule 27 of the M.C.S. (Pension) Rules, 1982 and shall be continued and concluded by the competent authority. Off course, there are some preconditions for conducting such D.E. As per rule 27 (3) of the M.C.S. (Pension) Rules, 1982, no enquiry pertaining to the events prior to 4 years of the enquiry are to be taken against the retired employee.

20. From the aforesaid circumstances, it will be clear that, if any enquiry is contemplated against the applicant after retirement, it can be only under rule 27 of the M.C.S. (Pension) Rules, 1982 as aforesaid and

in that case, if the applicant is found guilty, the competent authority has every right to withhold his pension either fully or in part. In such circumstances, there is no need to withhold the leave encashment of the applicant as per rule 68 (5) of the M.C.S. (Leave) Rules, 1981, as stated in the impugned letter. At present, no D.E. or criminal proceedings are pending against the applicant and his suspension has already become infructuous on the date of his retirement on superannuation as the applicant has been allowed to retire on superannuation and, therefore, rule 68 (5) and (6) of the M.C.S. (Leave) Rules, 1981, may not be applicable to the applicant.

21. The learned Advocate for the applicant has further placed reliance on the following judgments of Hon^{ble} Supreme Court :-

- (i) **Union of India and Others Vs. K.V. Jankiraman and Others {(1991) 4 SCC 109}**, wherein it has been held that the D.E. is set in motion only on service of the charge-sheet on the employee.
- (ii) **O.P. Gupta Vs. Union of India and Others {(1987) 4 SCC 328}**, wherein it has been held that, long continuation of suspension pending D.E. without charge-sheet is punitive.

(iii) **Union of India and Another Vs. Ashok Kumar Aggarwal** **{(2013) 16 SCC 147}**, wherein it has been held that the suspension cannot be by way of punishment.

22. As already stated, it has been held by Hon^{ble} the Supreme Court in the case of **S.K. Mastan Bee Vs. General Manager, South Central Railway and Another {(2003) 1 SCC 184}** that, right to receive pension is a fundamental right. In view of the facts referred above and discussion in foregoing paras, it will be clear that, though the applicant was kept under suspension, the said suspension came to an end on the date of his superannuation. There is no specific order regarding continuation of the D.E. even after suspension and admittedly no charge sheet has been served on the applicant prior to his retirement and no criminal case is pending against him. In the circumstances, denial of pensionary benefits to the applicant is illegal. Hence, I pass following order :-

ORDER

The impugned communication dated 23.3.2016 (Annex. A.10) issued by the res. no. 5 the Executive Engineer, PWD, Parbhani depriving the retiral benefits to the applicant is quashed and set aside. The respondents are directed to grant all retiral benefits to the applicant as per rule 68 of the M.C.S.(Leave) Rules, 1981. There shall be no order as to costs.

MEMBER (J)

ARJ-OA NO.386-2016 JDK (PENSIONARY BENEFITS)