

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS NO 234 OF 2019 & 88 OF 2020

DISTRICT : PUNE

1. ORIGINAL APPLICATION NO. 234 OF 2019

Dr. Vilas Raghunath Bhailume,)
Occ : Retd on 28.2.2019 from the post of)
Medical Superintendent at Regional)
Mental Hospital, Ratnagiri.)
R/at Nav Sahyadri Hsg Soc. Plot No. 82,)
Survey No. 44, Karve Nagar, Pune 411 052.)... **Applicant**

Vs.

1. The State of Maharashtra,)
Through the Secretary,)
Public Health Department,)
G.T Hospital Complex Bldg, 10th floor,))
Mumbai 400 001.)
2. The Deputy Director of Health Services))
Kolhapur Circle,))
Central Administrative Building,))
Kasaba Bawada Road,))
Near D.S.P Office, Kolhapur.)...**Respondents**

2. ORIGINAL APPLICATION NO. 88 OF 2022

Dr. Vilas Raghunath Bhailume,)
Occ : Retd on 28.2.2019 from the post of)
Medical Superintendent at Regional)

Mental Hospital, Ratnagiri.)
R/at Nav Sahyadri Hsg Soc. Plot No. 82,)
Survey No. 44, Karve Nagar, Pune 411 052.)... **Applicant**

Vs.

The State of Maharashtra,)
Through the Secretary,)
Public Health Department,)
G.T Hospital Complex Bldg, 10th floor,)
Mumbai 400 001.)...**Respondent**

Shri K.R Jagdale, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 08.08.2022

PRONOUNCED ON : 29.08.2022

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. In O.A 234/1999, the applicant prays that the impugned order of suspension dated 28.2.2019 be quashed and set aside, and he further prays that the Respondents be directed to pay the applicant regular pension including all terminal benefits forthwith.

In O.A 88/2020, the applicant prays that the impugned charge sheet dated 3.9.2019 issued by the Respondent be quashed and set aside and further the applicant seeks regular pension,

gratuity, leave encashment and arrears of 7th Pay Commission and transportation allowance along with interest.

2. The applicant who retired on 28.2.2019 was suspended on the last date of his retirement. The applicant was served with the charge sheet on 3.9.2019 after retirement and relevant annexures and documents were submitted on 13.12.2019. Learned counsel for the applicant submitted that the incidence for which the enquiry is initiated is of 19.2.2015 and the charge sheet was issued on 3.9.2019. Learned counsel for the applicant relied on Rule 27 (2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982 that the incidence shall not be in respect of any event which took place more than four years before the retirement. Learned counsel for the applicant raised the point of discrimination. One Dr Donglikar, who was facing the same charge was exempted from the D.E. Dr Donglikar retired on 31.12.2017. He was exempted giving benefits of Rule 27 (ii)(b) of the M.C.S (Pension) Rules, 1982 by order dated 9.10.2019. Learned counsel for the applicant further submitted that the Provident Fund authority attached the Bank Account of the Government on 30.6.2015. At that time Dr Donglikar was In-charge and Mrs Kamal Ghotkar was Administrative Officer and the applicant was Medical Superintendent. Learned counsel for the applicant states that the alleged incident took place in between May 2009 to February, 2014, which is reflected from the order of the Assistant Provident Fund Commissioner, Pune. The applicant recovered the amount of P.F from the Contractor of Rs. 14,78,000/- and remitted the same to the P.F Account. Learned counsel submitted that it is not the case of misappropriation.

3. Learned counsel for the applicant relied on the following case laws:-

- 1) Bhagirathi Jena Vs. Board of Directors, O.S.F.C 1999 AIR (SC) 1841.
- 2) Dhairyasheel A. Jadhav Vs. MAIDC Ltd, (2010) 2 MhLJ 618.
- 3) The Chairman Secretary Vs. Bhujgonda B. Patil, 2003 (3) MHLJ 602.
- 4) Prabhakar Vs. The State of Maharashtra & Ors, 2016 (5) Bom CR 50.
- 5) Digambar Dnyanoba Kolekar & Ors Vs. State of Maharashtra & Ors, 2022 (2) Bom. C.R 680.m

4. Learned P.O submits that applicant's case does not fall under Rule 27(2)(b)(ii) of the M.C.S (Pension) Rules, 1982, but it falls under Rule 27(6)(a) of the said Rules. The applicant was suspended on the last date of retirement i.e. 28.2.2019 before mid-night and this Court has accepted the same at the time of hearing the Original Application on the point of interim relief. Learned P.O relied on the affidavit in reply dated 23 March, 2021. Learned P.O submitted that Dr. Donglikar has in fact retired on 31.12.2017 as per the letter dated 9.10.2019 and therefore enquiry was not conducted against Dr. Donglikar. Learned P.O submitted that the charge sheet was filed on 3.9.2019. However, the Original Application was filed on 29.1.2020, i.e. after 1 year and 5 months. Learned P.O submitted that jointly disciplinary action has been initiated against Dr Vijay Kathale, then Administrative Officer, Smt Kamal Ghotkar, then Administrative Officer and Smt Sushma Abhangrao, then Office Superintendent, by order dated 17.2.2020. Learned P.O further submitted that the Enquiry Officer informed that the enquiry will be completed and report will be submitted within 15 days.

5. Learned P.O relied on the following case laws:-

- 1) State of Punjab Vs. Khemi Radm, AIR 1970 SC 214.
- 2) State of Maharashtra Vs. M.H Mazumdar, (1988) 2 SCC 52.

6. In Bhagirathi Jena's case (supra), the Hon'ble Supreme Court has dealt with the issue of continuance of the proceedings after superannuation of the delinquent officer. The Hon'ble Supreme Court held that in the absence of statutory regulations permitting continuance of unconcluded disciplinary enquiry even after superannuation of the delinquent officer, the Disciplinary Authority would lapse. However, the applicant in the present case is covered under Rule 27 (2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982, wherein the State has power to continue the enquiry if at all the person is suspended during the service for the charges/reason mentioned in the D.E. The said Rule 27(2)(a) is reproduced below:-

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

(2) The departmental proceedings referred to in sub-rule (i), 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 shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant continued in service.”

In the present case, the applicant was suspended before he retired. Therefore, we accept the submissions of the learned P.O that when the applicant was suspended before his retirement, the enquiry is not illegal and the ratio in the case of Bhagirathi Jena is not applicable in the present case.

7. In the case of Dhairyasheel A. Jadhav (supra), though the petitioner therein was from the State of Maharashtra covered

under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, the Division Bench of the Hon'ble Bombay High Court has relied on ratio in Bhagirathi Jena's case and reiterated the same view.

8. In Bhujgonda B. Patil's case (supra), the Hon'ble Bombay High Court has discussed Rule 27(2)(a) & 27(6)(a) of the Maharashtra Civil Services (Pension) Rules, 1982. In the said case, the challenge was raised that the Government servant had attained the age of superannuation on 31.5.1996 and the preliminary enquiry was alleged to have been conducted during the period 15.8.1996 to 2.8.1997, that is after his superannuation. In the said case, the issue was more about the continuation of the disciplinary action after retirement and that can be only for the purpose of reduction in pension. The Hon'ble High Court held that as per Rule 27(6)(a) of the M.C.S (Pension) Rules, 1982, the departmental enquiry is deemed to be instituted on the date when statement of charges is issued. In Bhujgonda Patil and Prabhakar's case the applicants were working in the Corporation and the enquiry was conducted under the separate rules of the said Corporation. In these rules there is no provision parallel to Sec 27(6) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 and so also the provisions of initiating enquiry after the retirement. In Bhujgonda Patil's case the Corporation has adopted the said provisions in the rules and have concluded the enquiry. However, the Hon'ble High Court has held that in the absence of specific rules of its own enquiry initiated after retirement is vitiated.

9. In Digambar Dnyanoba Kolekar's case (supra), the statement of charges was not issued before the retirement of the Petitioner and therefore, it was held that D.E could not have been initiated

after retirement of the Petitioner and the alleged incidence have taken place more than 4 years prior to the retirement and therefore, it was held that enquiry is vitiated and cannot be continued. In the present case the facts are different. The applicant was suspended on 28.2.2019 from the post of Medical Superintendent, on the date of his retirement. The applicant admittedly handed over the charge at around 5.30 pm and went home. The order of suspension was not served on him till then. It was pasted on the door of his residential service quarter at 11.15 pm. Thus, the date of birth of a person starts at 12.00 non night and it ends on 12.00 noon on that day. His date of birth is from 01.00 hrs till 23.59 hrs, which consists of 24 hrs. A day starts and the next date is given after 12.00 pm at night. The date of retirement of the applicant was 28.2.2019. Thus, the applicant was in service till 23.59 hrs (11.59 pm) on 28.2.2019.

10. Rule 27(6(a) of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under:-

“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;”

11. We also rely on the judgment of the Hon'ble High Court dated 3.10.203 in W.P 3319/2012, Manohar Patil Vs. State of Maharashtra & Ors. The Hon'ble Bombay High Court while dealing with the powers of the Government in reduction or withholding of pension has held that Rule 27 permits initiation of the departmental proceedings against the Pensioner by taking action as provided under sub-rule (1) of Rule 27 of the M.C.S (Pension) Rules, 1982. Though under clause (b) of sub rule (2) of Rule 27 of the said Rules, the departmental proceedings cannot be

instituted after superannuation, save with the sanction of the Government and the proceedings shall not be in respect of any event which took place more than 4 years before such institution. However, the present case falls under Rule 27, sub-rule 6(a). Therefore, the applicant's suspension is valid and there is no merit in the challenge to the departmental enquiry.

12. In the case of Khemi Ram (supra), wherein the order of suspension was passed against the Government servant and it was held that the suspension takes effect from the date of communication and not from the date of actual receipt. The Hon'ble Supreme Court has held that to communicate means to impart, confer or transmit information and it cannot be interpreted to mean that the order would become effective only on its receipt by the concerned Government servant, unless the provisions in question expressly so provide. Thus, under the Maharashtra Civil Service Rules, the order of suspension is to be issued or communicated and therefore once it is issued and it is pasted on the door of the Government servant then the communication is complete and takes effect. Thus, the applicant was suspended at 11.15 pm on the date of his retirement on 28.2.2019.

13. We asked learned counsel for the applicant Shri Jagdale to show us the case law on the point that the time of handing over the charge is the time of retirement. We go by the commonly accepted time schedule of 24 hours for a day / date and therefore, by applying the same logic, we accept the applicant was suspended before retirement. Hence, the departmental enquiry cannot be considered as vitiated on account of issuance of charge sheet after superannuation.

14. Thus, the order of suspension dated 28.2.2019 was served before the time of retirement of the applicant. Hence, the order of suspension dated 28.2.2019 stands. Further the initiation of departmental enquiry is not illegal and hence we maintain the order of issuance of charge sheet dated 3.9.2019.

15. In view of the above, we find no merit in the Original Applications and are dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.08.2022
Dictation taken by : A.K. Nair.