

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 922 of 2017 (S.B.)

Dr. Ramesh S/o Gulabrao Dhawale,
aged 68 years, Occu. Retired,
R/o: 26, Malgi Nagar, Ring Road, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra through its
Secretary, Medical Education and Drugs,
Mantralaya, Mumbai – 32.
- 2) The Director of Medical Education and
Research, State of Maharashtra,
St. George's Hospital Compound,
Near CST, Fort, Mumbai.
- 3) Vasantrao Naik Government Medical College,
through its Dean, Yeotmal, Dist. Yeotmal.
- 4) The Account General (Account and Entitlements)-II,
Indian Audit and Accounts Department,
Pension Wing, Old Building, Civil Lines, Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 16th March, 2023.

Date of Pronouncement of Judgment : 5th April, 2023.

JUDGMENT

(Delivered on this 5th day of April, 2023)

Heard Shri S.P. Palshikar, learned counsel for the
applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant is qualified as M.B.B.S. / M.D. (Medicine). On 27/11/1981, he was appointed as a Lecturer in Medicine by respondent nos.1 and 2. The applicant was promoted as Associate Professor of medicine on 14/03/1985. On 17/07/2003, the applicant was transferred to Vasantao Naik Government Medical College, Yeotmal. The applicant was due to retire on 31/07/2006. On 02/11/2004, the applicant had submitted application for voluntary retirement V.Rs. (3 months notice). On 01/02/2005, even though no any specific order was passed by respondent nos. 1 and 2, the respondent no.3 had relieved the applicant on V.Rs. on 01/02/2005. Therefore, the applicant had no occasion to continue his duty from 02/02/2005.

3. In the month of March / April, 2006, one public notice was issued by respondent nos.2 and 3 in the news paper, in respect of unauthorised absence of applicant and other employees. On 28/06/2006, the applicant had approached to respondent nos.1 and 2 for joining the duty. Respondent no.2 informed the applicant to approach respondent nos.3. On 01/07/2006, the applicant was permitted to join duty. He was on duty from 01/07/2006 to 10/06/2006.

4. The applicant was relieved on 31/07/2006 on superannuation. Respondent no.1 had issued order / Govt. G.R.

dated 09/03/2007 and permitted the applicant to retire. But the period from 02/02/2005 to 31/07/2006 was treated as extra ordinary leave that period is not to be counted for pensionary benefits.

5. In view of implementation of 6th Pay Commission, the pay fixation of the applicant was also carried out in the revised pay scale for pensionary benefits. However, pensionary benefits were paid as per 5th Pay Commission alleging that the applicant was not in service from 01/01/2006 to 31/07/2006. Therefore, benefits of 6th Pay Commission would not be admissible. The actions of the respondents are arbitrary. Therefore, applicant approached to this Tribunal for the following reliefs –

“ i) By an appropriate order or direction respondent Nos. 1 to 4, the State of Maharashtra and others, be directed to grant pensionary benefits to the applicant with effect from 01.08.2006 by taking into account the basic pay of Rs.53,970/- (as per fixation in 6th Pay Commission pay scales) and accordingly revise the entitlement of the applicant for commutation of pension, leave encashment, monthly pension and gratuity as per 6th Pay Commission pay scales.

ii) By an appropriate order of direction respondent Nos.1 to 4, the State of Maharashtra and others be directed to release and pay the difference in the amounts of commutation of pension, leave encashment, gratuity and arrears of monthly pension with effect from 01.08.2006 within a period of three months from the date of the order.

iii) By a suitable order or direction the decision on the part of respondent Nos.1 to 4 to deny the pensionary benefits as per 6th Pay Commission pay scales to the applicant communicated in terms of letter dated 24.08.2015

(Annexure-A-25) issued by respondent No.3 may kindly be quashed and set aside.

iv) By a suitable order of direction respondent Nos.1 to 4, the State of Maharashtra and others be directed to pay interest at 12% p.a. with effect from 01.08.2006 on the difference of amounts and arrears of monthly pension payable to the applicant till date of actual date of payment.

v) Allow the application with costs.

vi) Grant any other relief which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

09. Interim Relief Prayed for:-

As the reliefs claimed being in the nature of mandatory directions, no interim relief is being prayed for. However taking into consideration the fact that the applicant is deprived of his legitimate pensionary entitlement for last 10 years, it is expedient in the interest of justice to hear and decide the application on priority at the stage of admission.”

6. Heard Shri V.A. Kulkarni, learned P.O. for the respondents. The O.A. is strongly opposed by the respondent nos.2 to 4. After hearing both the sides, there is no dispute that applicant was working as Associate Professor in Vasantao Naik Government Medical College, Yeotmal. The applicant applied for V.Rs. on 02/11/2004. The documents filed on record show that the applicant had handed over charge after completion of 90 days, i.e., on 01/02/2005. The documents filed by the respondents, i.e., letter dated 05/02/2005 show that detailed proposal for V.Rs. was not received by the Government and therefore the request of the applicant for V.Rs.

was not accepted. There is no dispute that even after completion of 90 days, the applicant did not join his duty. The applicant had completed 58 years on 31/07/2006. The Government of Maharashtra as per G.R. / order dated 09/03/2007 has taken the following decision—

“शासन निणयः-

डॉ. रमेश गुलाबराव ढवळे, सहयोगी प्राध्यापक औषधवैद्यकशास्त्र, श्री. व. ना. शा. वे. महाविद्यालय, यवतमाळ यांची स्वेच्छानिवृत्तीची नोटिस शासनाने अमान्य केली आहे. त्यानुसार त्यांनी कामावर रुजू व्हावे असे त्यांना कळवूनही ते त्यांच्या कामावर रुजू झाले नाहीत. दरम्यान डॉ. ढवळे यांना दि.१.७.२००६ रोजी वयाची ५८ वर्षे पूण झाल्याने दिनांक ३१.७.२००६ पासून नियतवयोमानानुसार सेवानिवृत्त झाले आहेत. यास्तव डॉ. रमेश गुलाबराव ढवळे हे दिनांक ३१.७.२००६ पासून नियतवयोमानानुसार सेवानिवृत्त झाल्याने त्यांच्या सेवा निवृत्तीस शासन मान्यता देत आहे.

२. डॉ. ढवळे हे दिनांक २.२.२००५ पासून ते दिनांक ३१.७.२००६ पर्यंत गैरहजर राहिल्याने त्यांचा सदरचा अनुपस्थितीचा कालावधी असाधारण रजा म्हणून घोषित करण्यात येत आहे. सदर कालावधी कोणत्याही सेवा प्रयोजनाथ (निवृत्तीवेतन विषयक लाभांसह) ग्राह्य धरण्यात येऊ नये. ”

7. The applicant is getting pension as per the 5th Pay Commission, because, the applicant was absent from his duty from

2/2/2005 to 31/07/2006 that period was treated as extraordinary leave period. The said period was not treated as duty period for pensionary benefits. Respondent no.4 returned the pension papers with direction to Respondent no.4 that the applicant was not in service (duty) from 01/01/2006 to 31/07/2006 therefore he is not entitled for 6th Pay Commission. Accordingly, the applicant was paid pension as per 5th Pay Commission.

8. The Government has issued Circular dated 25/10/2011. As per this Circular, those employees who were on extraordinary leave and who were under suspension before 01/01/2006 or retired or died, those employees are not entitled to get the benefit of 6th Pay Commission as per the revised Maharashtra Civil Services Rules of 2009.

9. During the course of submission, the learned counsel for applicant has submitted that the applicant had joined his duties on 01/07/2006. He has pointed out joining report dated 01/07/2006. The proposal was sent by respondent no.3 to respondent no.2 on 07/07/2006. Respondent no.2 informed to Respondent no.3 not to allow the applicant to join duty as per communication dated 07/07/2006. Therefore, it is clear that the applicant was not on duty from 02/02/2005 till the date of retirement i.e. upto 31/07/2006.

Nothing is on record to show that the applicant was permitted to join duty on 01/07/2006.

10. The applicant was continuously absent from 02/02/2005. The applicant had handed over charge after completion of 90 days i.e. on 02/02/2005 to Dr. Bansod. Therefore, it is clear that the applicant was not on duty from 02/02/2005 till the date of his retirement on 31/07/2006.

11. As per the Government decision, the employees who were not on duty from 01/01/2006 till his retirement, then they are not entitled for the benefit of 6th Pay Commission. The decision taken by the respondents is perfectly legal and correct. The applicant was not interested to continue his service as Associate Professor. Therefore, he had given application for VRs. on 02/11/2004. Though his VRs. application was not accepted, but it is deemed to be accepted after completion of 90 days as per the Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982. Respondent no.1 passed the specific order that applicant came to be retired on 31/07/2006. His absence period from 02/02/2005 to 31/07/2006 was treated as extra ordinary leave. That period shall not be counted for pensionary benefits. The Government has issued Circular dated 25/10/2011 by which it is clarified that employees who were not on duty from 01/01/2006, they are not entitled for the benefit of 6th Pay Commission.

12. From the documents filed on record, it is clear that the applicant was not on duty from 02/02/2005 till the date of retirement, i.e.,31/07/2006. Therefore, he is not entitled for the benefit of 6th Pay Commission. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 05/04/2023.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 05/04/2023.