

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 985 of 2021 (S.B.)**

Dnyaneshwar Rajaramji Raurale,
Aged about 59 years,
Occupation Ex-Serviceman/Pensioner,
R/o Khalkoni, Tq. Bhatkuli, Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai - 400 032.
- 2) The Divisional Commissioner,
Amravati Division, Amravati.
- 3) The District Treasury Officer,
Amravati, Dist. Amravati.
- 4) The Joint Director of Accounts & Treasury,
Amravati, Dist. Amravati.

Respondents.

**Shri V.A. Kothale, Advocate for the applicant.
Shri A.M. Khadatkhar, P.O. for respondents.**

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

Dated :- 11/03/2024.

J U D G M E N T

Heard Shri V.A. Kothale, learned counsel for the applicant
and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The applicant is a retired from Army service on rendering
16 years, 3 months and 2 days service. The applicant is retired on

31/07/1998 from Army. The applicant was recommended for appointment of Ex-serviceman category by Treasury Officer on 23/01/2006. The applicant is appointed against the post of Junior Clerk-cum-Typist as per order dated 16/03/2006. The applicant is promoted from Junior Clerk cadre to the post of Junior Accountant as per the order dated 15/06/2019. The applicant is retired on the post of Deputy Accountant from the office of respondent no.2 on 30/06/2019. The respondents have not paid the pension. Therefore, the applicant approached to this Tribunal.

3. The respondents have filed reply. It is submitted that there is a break in service about 9 years and therefore that 9 years gap cannot be taken into consideration to grant pension. Moreover, the applicant is appointed on 16/03/2006. Therefore, he is not entitled to get pension. At last submitted that the O.A. is liable to be dismissed.

4. During the course of submission the learned counsel for applicant has pointed out the recruitment process. As per the decision of Appointment Committee dated 21/01/2005 the name of applicant i.e. Dnyaneshwar Rajaramji Raurale was recommended for the post of Junior Clerk. The appointment order was issued on 16/03/2006.

5. As per the submission of learned counsel for applicant, the recruitment process was started before 01/11/2005, i.e., the cut off date for grant of pension. The learned counsel for applicant has

pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.2270/2021, decided on 28/04/2023. The learned counsel for applicant has submitted that as per this Judgment though the appointment order was issued on 16/03/2006, but the recruitment process was started before the cut off date i.e. 01/11/2005. Hence, the applicant is entitled to get pension. The learned counsel for applicant has also pointed out the Government Notification dated 02/02/2024. As per this Notification, the Government of Maharashtra has taken decision to grant pension who are appointed on or after 01/11/2005.

6. The Id. P.O. submits that the applicant was appointed on 16/03/2006. Before the appointment by the respondents, there is a gap of service nearabout 9 years. The applicant retired from Army service and after 9 years from the date of his retirement he was appointed, that period cannot be counted to grant pension.

7. Learned counsel for applicant Shri V.A. Kothale pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.2270/2021, decided on 28/04/2023. The Hon'ble High Court has held in para-29 as under –

“ (29) In the present case, the advertisement was issued on 20.06.2005 and the last date for submission of Application was 11.07.2005. The written test was also conducted on 09.08.2005 which was cleared by the Petitioner. They also cleared typing test prior to 01.11.2005. The appointment order is issued subsequently.

The legislature in its wisdom has not used the term "appointment on or after 01.11.2005" in Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982. The M.C.S. (Pension) Rules, 1982 would not apply to the persons who are recruited on or after 01.11.2005 meaning thereby that the said Rule would not apply to the persons whose recruitment process had commenced after 01.11.2005. The M.C.S. (Pension) Rules, 1982 shall apply to persons recruited in government services prior to 01.11.2005 though appointment orders are issued subsequent to 01.11.2005."

8. Now the Government of Maharashtra has also taken decision as per the Notification dated 02/02/2024. The material part of the Notification is reproduced below –

“शासन निर्णय :-

दि. ०१.११.२००५ पूर्वी पदभरती जाहिरात/अधिसूचना निर्गमित झालेल्या प्रकरणी शासन सेवेत दि. ०१.११.२००५ रोजी किंवा त्यानंतर रुजू झालेल्या शासकीय अधिकारी/कर्मचारी यांना केंद्र शासनाच्या धर्तीवर महाराष्ट्र नागरी सेवा निवृत्तीवेतन नियम, १९८२, महाराष्ट्र नागरी सेवा (निवृत्ती वेतनाचे अंशराशीकरण) १९८४ व सर्वसाधारण भविष्य निर्वाह निधी व अनुषंगिक नियमाच्या तरतुदी लागू करण्यासाठी एक वेळ पर्याय (One Time Option) देण्यात येत आहे.

२. संबंधित राज्य शासकीय अधिकारी/कर्मचारी यांनी जुनी निवृत्ती वेतन व अनुषंगिक नियम लागू करण्याचा सदर पर्याय हा सदर शासन निर्णय निर्गमित केल्याच्या दिनांकापासून ६ महिन्यांच्या कालावधीत देणे बंधनकारक राहिल. जे राज्य शासकीय अधिकारी/कर्मचारी या ६ महिन्यांच्या कालावधीत जुनी निवृत्ती वेतन योजना लागू करण्याचा पर्याय देणार नाहीत, त्यांना राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) लागू राहिल. राज्य शासकीय अधिकारी/कर्मचारी यांनी प्रथम दिलेला पर्याय अंतिम राहिल.

३. जुनी निवृत्तीवेतन व अनुषंगिक नियम लागू करण्याचा पर्याय संबंधित राज्य शासकीय अधिकारी/कर्मचारी यांनी त्यांच्या नियुक्ती प्राधिकार्याकडे सादर करावा. सदर शासन निर्णयातील तरतुदीनुसार संबंधित राज्य शासकीय अधिकारी/कर्मचारी हा जुनी निवृत्ती वेतन व अनुषंगिक नियम लागू होण्यास पात्र झाल्यास तशा पद्धतीचे कार्यालयीन जापन संबंधित नियुक्ती प्राधिकार्याने पर्याय प्राप्त झाल्याच्या

दिनांकापासून दोन महिन्यांच्या आत निर्गमित करावे. तसेच संबंधित राज्य शासकीय अधिकारी/कर्मचारी यांचे राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) मधील खाते नियुक्ती प्राधिकाऱ्याने तात्काळ बंद करावे.

४. जे राज्य शासकीय अधिकारी/कर्मचारी जुनी निवृत्ती वेतन व अनुषंगिक नियम लागू करण्याचा पर्याय निवडतील त्यांचे भविष्य निर्वाह निधीचे (GPF) खाते उघडण्यात यावे व सदर खात्यात राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) च्या खात्यातील त्यांच्या हिश्याची रक्कम व्याजासह जमा करण्यात यावी.

५. जे राज्य शासकीय अधिकारी/कर्मचारी जुनी निवृत्ती वेतन व अनुषंगिक नियम लागू करण्याचा पर्याय निवडतील त्यांच्या राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) मधील राज्य शासनाच्या हिश्याची रक्कम व्याजासह राज्याच्या एकत्रित निधीत वळती करण्याची कार्यवाही करण्यात यावी.

६. सदर शासन निर्णय मा. मंत्रीमंडळाने दि. ०४ जानेवारी, २०२४ रोजीच्या बैठकीत घेतलेल्या निर्णयाच्या अनुषंगाने निर्गमित करण्यात येत आहे.

७. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संगणक सांकेतांक क्रमांक २०२४०२०२१८२९४५८६०५ असा आहे. हा शासन निर्णय डिजीटल स्वाक्षरीने साक्षांकित करून निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,”

9. Though the applicant was appointed on 16/03/2006, but the recruitment process was started long before the cut off date i.e. 01/11/2005. As per the decision of DPC / Appointing Committee dated 21/01/2005, the name of applicant was recommended for the post of Junior Clerk. Therefore, it is clear that the recruitment process was started before the cut off date i.e. before 01/11/2005. Hence, the applicant is entitled for pension from the date of his appointment as per the order dated 16/03/2006, if he is eligible and entitled for the same. The applicant has made several representations, but not

considered the same. The applicant has prayed for direction to consider his representations. The relief in respect of prayer clause no.(i) cannot be granted, because, the long gap of 9 years service cannot be condoned. Hence, the prayer clause no. (i) is rejected. Hence, the following order is passed –

ORDER

(i) The O.A. is disposed of.

(ii) In respect of prayer clause (ii), the respondents are directed to consider the representations of the applicant and grant pension as per the Government Notification dated 02/02/2024 from the date of his appointment, i.e., 16/03/2006 on the post of Junior Clerk, if he is eligible / entitled for the same.

(iii) The representations of applicant shall be decided within a period of three months after the receipt of the same.

(iv) No order as to costs.

Dated :- 11/03/2024.

(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/03/2024.