

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

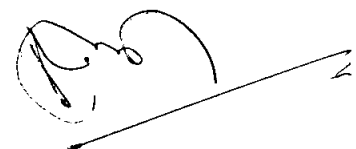
ORIGINAL APPLICATION NO.139 OF 2013

DISTRICT : BEED

1. Jaishri w/o Bhujangrao Sathe.)
Age : 45 Yrs., Occu.: Household.)
2. Dhananjay s/o Bhujangrao Sathe.)
Age : 25 Yrs., Occu.: Education.)
3. Joti D/o Bhujangrao Sathe.)
Age : 28 Yrs., Occu.: Education.)
4. Dhanshri W/o Anil Shinde.)
Age : 28 Yrs., Occu.: Household.)
)
All R/o. Morewade, Tal.: Ambajogai,)
District : Beed.)...Applicants

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Education & Social Welfare Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Director.)
Higher Education Department,)
State of Maharashtra, Central Bldg.,)
Pune - 411 001.)
3. The Government College of Education)
Through its Principal,)



Near Mumbai-Pune Highway,)
St. Bus Stand, Panvel, Dist : Raigad,))
Maharashtra - 410 206.)

4. Indian Audit & Accountants Dept.)
Office of the Accountant General)
(A & E) I, Maharashtra, Mumbai.)...**Respondents**

Shri A.V. Patil, Advocate for Applicants.

Shri A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 26.07.2016

JUDGMENT

1. The issue in this Original Application (OA) is as to whether the entitlement to the Family Pension after the demise of the Government servant who was facing departmental enquiry (DE) and was under suspension could be denied for the said reason and more particularly because despite having put in more than 20 years of service, his services were not regularized. Therefore, the crux of the matter is to determine as to whether in such set of facts, the crucial factor is regular permanent service or pensionable service.

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2. The late Shri Bhujangrao Sathe was a Professor in the Government College. He shall be hereinafter called the said deceased. The 1st Applicant is his widow and the Applicants 2, 3 & 4 are their children. The 1st Respondent (post amendment) is the State of Maharashtra in the Department of Social Justice and Welfare. The 2nd Respondent is the Director, Higher Education Department, Pune. The 3rd Respondent is the Government College of Education through its Principal and the 4th Respondent is the Indian Audit & Accountants Department. The final draft of the OA was not properly corrected before it was lodged in this Tribunal, and therefore, it is with some difficulty that the salient features of the matter could be deciphered. I had the benefit of the perusal of the record and hearing the arguments of Mr. Anup Patil, the learned Advocate for the Applicants and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

3. The said deceased came to be appointed on temporary basis as a Lecturer in the Government Education College at Ambejogai on 28.8.1987. Exactly 10 years thereafter, he was transferred to Panvel. It is very pertinent to note that his temporary status was just for the name sake because otherwise he was being treated as any other Government employee. His Service Book was opened



and the events and non-events good bad and indifferent were all incorporated therein. He was the recipient of increments, etc. just as any other Government employee. Admittedly, there were serious allegations of misconduct against him. Now, he is no more, and therefore, it may not be congruous to examine the disciplinary aspect in great details. One aspect of the matter appears to be that his mental functioning may not be quite normal which would become clear from a certain communication which is there on record in which he made some kind of, "posting" of a senior lady Professor. Be that as it may and to continue the narration of the career of the said deceased, he was placed under suspension by the Government by an order, a copy of which is at Exh. 'B' (Page 32 of the Paper Book) dated 20th January, 2004. He continued under suspension and under the shadow of a DE which in fact never got going with any degree of seriousness ever till the said deceased died natural death on 28th August, 2011. The Applicant No.1 on 11.10.2011 made an application for appointment on compassionate ground and for the Family Pension and retiral benefits admissible to them as heirs and LRs of the said deceased.

4. The 2nd Respondent – Director, Higher Education addressed a communication to the Principal of the College



- Respondent No.3 informing him *inter-alia* that the said deceased died while still under suspension. However, since the compassionate appointment could be made only in case of the dependants of employees of Group 'C' and Group 'D', the said deceased being a Group 'A' employee and his services having not been regularized, the compassionate appointment could not be given and so also, the pensionary and other benefits were not admissible to the Applicants which needed to be communicated to them under intimation to the Directorate. Thereupon, the 3rd Respondent addressed a communication dated 30.11.2011 (Page 37 of the P.B.) intimating to the said Applicant that the services of the said deceased having not been regularized and he having died while still under suspension, the Applicants were not entitled to any relief both as to the compassionate appointment as well as the pensionary benefits, etc. It is this particular communication which is the subject matter of challenge in this OA.

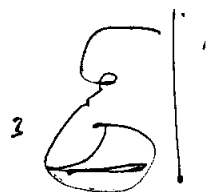
5. Be it noted that I am not called upon to decide the issue of appointment on compassionate ground because that was not pressed. The dispute resolution is restricted to pensionary and other post retiral benefits.

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6. It, in fact, needs to be recorded that when the matter came up before me on 7.6.2016, I found when I was in the midst of arguments of Mr. Patil, the learned Advocate for the Applicants that even the Provident Fund payable to the said deceased was held up. I gave necessary instructions in the language that was not exactly soft. It appears that things began moving in that direction. If the final order goes in the manner of speaking in favour of the Applicants, even that aspect of the matter will be covered.

7. The above discussion must have made it very clear that for about 7 years before his demise, the said deceased was being proceeded against departmentally. He was under suspension, but by the time he was placed under suspension, in the year 2009 itself, he had completed the service in whichever capacity for 20 years. The DE remained pending forever. Now, Rule 13(1)(iv) added by the Notification No.CDR 1199/CR-13/99/11, dated 23rd February, 2000 (MGG-2000 Part IV-A, Page 1038) laid down the Rule of abatement in the language which on the face of it is more compelling and clearer than in some other traditional branches of law. Let me reproduce the same.

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“13(1)(iv): Disciplinary proceedings come to an end immediately on the death of the Delinquent Government Servant. No disciplinary proceedings under these rules, can therefore, be continued after the death of the concerned Government Servant.”

8. It is, therefore, very clear that the said disciplinary proceedings came to an end, “immediately on the death of the said deceased” and the same could not have been continued after his death. The issue, therefore, is as to whether the Family Pension is admissible to the Applicants or there is some substance in the case of the Respondents that since the services of the said deceased had not been regularized, they would be disentitled thereto. Now, if the disciplinary proceedings came to an end with the death of the said deceased, the Applicants obviously could not be made to suffer the aftereffects of pending DE, and therefore, on a plain language of the provision above quoted, a finding for the Applicants will have to be entered and as mentioned just now, only the entitlement to the pensionary and other post retiral benefits of the Applicants by way of Family Pension by virtue of they being the heirs and LRs of the said deceased would remain to be determined.

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9. The entitlement to pension in respect of an employee who was not technically regularized despite having put more than 20 years of service, will have to be considered in the background of Rules 30 and 31 of the Maharashtra Civil Services (Pension) Rules, 1982.

10. I was part of the 2nd Bench when it spoke through me in **OA 308/2012 (Shri Sunil Sadashiv Padave Vs. The Commissioner, State Intelligence Department, dated 19.6.2015)**. There the concept of pension was explained by reference to a judgment of a Full Bench of the Hon'ble Bombay High Court in **Writ Petition No.1216/1991 (Bankerai A. Sharma Vs. State of Maharashtra & 3 others, dated 20th October, 2006)**. The 2nd Bench observed in Para 29 as follows :

“29. What is significant, however, is that Their Lordships in the Full Bench were pleased to observe in Para 20 and a few subsequent Paragraphs that the pension was neither a bounty not a matter of grace depending upon the sweet will of the employer. The right of pension was always subject to the Rules. Having said this much, for facility we would

reproduce Para 20 from the judgment of the Full Bench.

20. It is true that the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. However, the right of pension is always subject to the rules. It is not inherent in the employment. Though pension is a payment for a past service rendered and it is a social welfare measure, but it is well settled that an employee is not entitled to pension *de hors* the rules. We have already referred to the Government Resolution dated 21st July, 1983 and held that the said Scheme is only applicable to the employees covered therein. A part-time teacher, unfortunately, is not covered by the said Scheme and, therefore, not entitled.”

11. That was a matter where the Applicant came to be appointed in a manner which was not regular for one month in a leave vacancy, but then he continued forever almost for a quarter of a century. He decided to give notice of voluntary retirement which was in effect rejected on the ground that his services had never been regularized, and therefore, he could not be given the facility of voluntary retirement. He ultimately ended up before this Tribunal. In Paras 15, 16 and 19, Rules 30, 57 and 31 of the Pension Rules came to be reproduced. I may as well reproduce them.

“15. In the above background, turning now to certain Rules from Pension Rules cited by Mr. Bandiwadekar, the point is and we must repeat, if the kind of service that the Applicant has had, he could qualify for pension. If he could, then regardless of whether technically he could be considered temporary or whatever he would be entitled to pensionary benefits. All aspects of pensions are governed by the Pension Rules. One of the essential issues would be as to whether a temporary employee by the very nature of things would be outside the benedictory ambit of pension. Mr. Bandiwadekar referred us in this behalf to Rule 30 of the Pension Rules.

“30. Commencement of qualifying service.- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency :

(Provided further that, in cases where a temporary Government servant retires on

superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation. Invalid or, as the case may be. Retiring Pension : Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.)

(emphasis supplied)

16. Rule 57 of the Pension Rules is an exception to Rule 30 above quoted. The services mentioned in Rule 57 would not be pensionable service. Rule 57 reads as under:

“57. Non-pensionable service.- As exceptions to Rule, the following are not in pensionable service:-

- (a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service,
- (b) Government servants who are not in receipt of pay but are remunerated by honoraria,
- (c) Government servants who are paid from contingencies,
- (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,



- (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government."

19. Rule 31 of the Pension Rules is relevant. It reads as follows :

"31. Conditions subject to which service qualifies.- (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.

(3) In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, following interruption by substantive appointment, or the continuous service

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rendered under that Government is an officiating or temporary capacity, as the case may be, shall qualify :

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.”

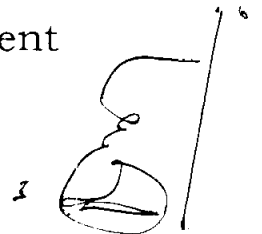
12. Thereafter, by a detailed discussion, it was found that the Applicant thereof just as the deceased Applicant herein could not be accused of having played any sharp or dishonourable practice in securing the job. He may have been described as temporary or by whatever nomenclature, but there as well as here, the posts that the Applicant there and the deceased Applicant here came to be appointed to, were permanent posts, and therefore, it could not be said that they were backdoor entrants and should be forced to seek the same route for exit. In that connection, **A. Umarani Vs. Registrar, Cooperative Societies & Ors. (2004) 7 SCC 112, Dr. Smt. Chanchal Goyal Vs. The State of Rajasthan in Civil Appeal No.7744/97 rendered by the Hon'ble Supreme Court on 18.2.2003** and the principles from the case **The State of Karnataka and others Vs. Umadevi and others, AIR 2006 SC 1806** came to be considered in the light of **State of Karnataka and ors. Vs. M.L. Kesari and others (2010)**

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9 SCC 247 and it was held in effect that the Applicant therein was entitled to the pensionary benefits. In a separate concurring observation, the Hon'ble Vice-Chairman referred to the Government's power enshrined in Rule 4 of the Pension Rules to relax any Rule for the purposes of facilitating the grant of pension.

13. **Sunil Padave's** case (supra) was carried to the Hon'ble Bombay High Court in **Writ Petition No.163/2016 (The Commissioner, State Intelligence Department Vs. Sunil Sadashiv Padave, dated 2nd March, 2016)**. The Division Bench of the Hon'ble the Chief Justice quoted Rules 30 and 31 of the Pension Rules which I have already quoted above. Their Lordships were told on behalf of the State that the employee having not been made permanent and his services having not been regularized, he was not entitled to any pension. Their Lordships were pleased to observe as follows in Para 6, which I reproduce hereinbelow.

“Evidently Rule 30 envisages and takes within its sweep the services rendered in temporary capacity. It is by way of a proviso that it is provided that at the time of retirement, the employee should hold substantively a permanent



post in Government service or hold a suspended lien or certificate of permanency. It is nowhere asserted or established as a fact that the Respondent was, at the time of seeking retirement, not holding the post which was substantively a permanent post in Government service. The second proviso to Rule 30 of Pension Rules makes it clear that in cases where a temporary Government servant retires voluntarily after completion of twenty years qualifying service, he shall be eligible for grant of retirement pension, retirement gratuity and family pension at the same scales as admissible to a permanent Government servant. Therefore, the stand adopted by the Petitioner even before the Respondent was allowed to retire, does not appear to be proper or valid.”

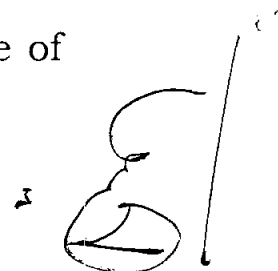
14. The entitlement to the pensionary benefits, is therefore, quite clearly established by the authority of the Hon'ble High Court. I have gone through some other provisions of the Pension Rules and while it is not necessary to meander into the fruitless academics, a tangential reference thereto would be appropriate to fortify the conclusion. Chapter VII contains fasciculus of Rules

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beginning with Rule 62 and thereafter, of the Pension Rules, Rule 62(7) defines the word, "Family Pension" by reference to Rules 116 and 117 of the Pension Rules. Rule 116 is an extremely lengthy, but detailed Rule containing various aspects of the Family Pension 1964 while Rule 117 deals with the Family Pension 1950. Chapter XII of the Pension Rules of which Rule 144 is the inaugural one deals with the issue of sanction of Family Pension and residuary gratuity on death of the pensioner.

15. The above discussion would, therefore, make it clear that even if the services of the said deceased were not regularized, that by itself will be no ground to negate to the Applicants the benefit of Family Pension and other dues.

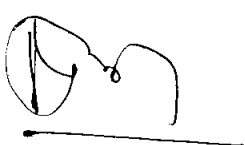
16. The learned P.O. relied upon **Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, Appeal (Civil) 7744 of 1997, dated 18.2.2003 (S.C)**. I have carefully perused the said Judgment and I find therein that while dealing with the relevant Rules of Municipal Services of State of Rajasthan, the Hon'ble Supreme Court noted the fact that in the context of those Rules, the fact that the Applicant was not a permanent employee would adversely affect him. Now, it is quite clear that the present facts are governed by entirely different set of Rules and take care of



entirely different set of facts. The present OA deals with the issue of pensionary benefits admissible to the dependants of a deceased employee in whose case in the matters related to the pension, the fact that he was not regularized would be immaterial. Mr. Patil, the learned Advocate for the Applicants referred me to **P.L. Shah Vs. Union of India and another, (1989) 1 SCC 546** which held that suspension should not be prolonged unnecessarily.

17. A few other Judgments of this Tribunal were cited which I have carefully perused. They turned on their own facts and that being the state of affairs and noting the principles therein, I hold that the Applicants are entitled to the benefits accruing in the matter of pension, etc. after the demise of the said deceased. The impugned order, therefore, will have to be quashed and set aside.

18. The impugned order is hereby quashed and set aside. The Applicants are held entitled to the benefit of the Family Pension and all other benefits arising out of the service of the said deceased which was more than 20 years. The concerned Respondent shall work out the emoluments payable to the Applicants and make the actual payment within a period of three months from today and then

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regularly pay the pension to them after completing the legal formalities in that behalf. The entitlement of the Applicants and the formalities and procedures to be adopted shall be exactly like any other case of the heirs and LRs of any Government employee dying in harness. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R. B. Malik)
Member-J
26.07.2016

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Mumbai
Date : 26.07.2016
Dictation taken by :
S.K. Wamanse.

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