

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
CIVIL APPLICATION NO.322/2017 AND
ORIGINAL APPLICATION NO.687/2016.

Wasudeo Namdeorao Raghorte,
Aged about 64 yrs.,
Occ-Retired,
R/o 82, In front of Pepsi Godown,
Mahakali Nagar, Nagpur-34.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of School Education & Sports,
Mantralaya, Mumbai-440 032.
- 2) The Director,
Maharashtra State Council of Education
and Research Training, (MSCERT),
Sadashiv Peth, Pune.
- 3) The Commissioner,
Department of School Education (M.S.),
Central Building, Pune.
- 4) The Principal,
District Institute of Education & Training,
Indala, Distt. Gadchiroli.

Respondents

Shri S. Lachalwar, Ld. counsel for the applicant .
Smt. S.V. Kolhe, the learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 19th day of July 2017.)

CIVIL APPLICATION NO.322/2017.

Heard Shri S. Lachalwar, the Ld. counsel for the applicant and Smt. S.V. Kolhe, the learned P.O. for the respondents.

2. The applicant has filed the C.A. No. 322/2017 for urgent hearing in view of the fact that he is aged about 64 years and is not keeping well and also on account of his family problems. With the consent of parties, it has been decided to hear the application on merit today itself. Hence, the C.A. No. 322/2-017 is allowed and the matter is taken for final hearing.

ORIGINAL APPLICATION NO.687/2016.

Heard Shri S. Lachalwar, Ld. counsel for the applicant and Smt. S.V. Kolhe, the learned P.O. for the respondents.

2. The applicant Wasudeo Namsdeorao Raghorte was appointed as Principal, District Institute of Education & Training, Indala, District- Gadchiroli. He stood retired on superannuation on 31.12.2012.

3. During his service, he was charged for misconduct and not handling books of account etc. The applicant appeared before the Enquiry Officer. The Enquiry Officer exonerated the applicant from all the charges. In spite of such clean chit given by the Enquiry Officer, the department did not grant regular pension to the applicant, so also pensionary benefits and arrears of annual increment etc.

4. The applicant made number of representations such as on 23.12.2014, 13.1.2015, 16.8.2015, 9.11.2015, 29.12.2015, 20.1.2016 and lastly on 5.3.2016. But no action is taken. Finally the applicant issued a registered notice through his counsel to the respondents on 4.4.2016. The applicant has claimed directions to the respondents to grant all retiral service benefits including pensionary benefits alongwith interest on delayed payment. He has also requested that the publication dated 20.4.2016 issued by Joint Secretary of the Govt. of Maharashtra, Mumbai (Annexure A-6) whereby a show cause notice was given to the applicant, be quashed and set aside. In the said show cause notice, respondent No.1 has stated in para No. 5 & 6 as under:-

५. याअथ पी.पी. राघोतयांनी दनांक २१.१.२०१६ या पत्रावये सादर केलेले आवेदन तपासांती आवीकाय असयाने तसेच यांयावध दोषारोप . १ व दोषारोप . २ या बाबत सध झालेले दोषारोपाचे वप वचारात घेऊन, महारा नागर सेवा (वृवीवेतन) जयम, १९८२ या जयम २७ अनुसार यांया सेवावृवीवेतनातून दरमहा ६ टके इतक रकम एक वषाळाठ कपात करयाची शा आदेशत करयाचा शासनाने तापुरता जण घेतला आहे.

६. याअथ पी. राघोतयांना जदशा देयात येते क, यांया सेवावृवीवेतनातून दरमहा ६ टके इतक रकम एक वषाळाठ कपात का करयात येऊ नये, याबाबतचे लेखी जवेदन यांनी ापण मळायापासून शासनास १५ दवसात सादर करावे.”

5. Respondent No.1 has filed reply affidavit and submitted that the enquiry under Rule of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (in short, 'Discipline and Appeal Rules') was initiated against the applicant. Report of the Enquiry Officer was, however, not accepted. It is stated that after going through the report of the Enquiry Officer, it was found that there was a room for doubt, as in the report, it was mentioned that the cashier was maintaining two cash books at a time which is a wrong practice and that new cash book must be opened by closing earlier

one. It was necessary to make payment by cheque for the amount more than Rs. 1,000/-. But on two occasions, the amount was paid by cash, though it ceased the limit. From the charges, the applicant was exonerated. The competent authority did not agree with the report of the Enquiry Officer and issued a show cause notice on 20.4.2016, disagreeing with the findings of the Enquiry Officer and calling upon the applicant to explain as to why action should not be taken. It is stated that action taken by the respondent is legal and proper.

6. The learned P.O. submitted that the O.A. filed by the applicant is premature. Admittedly, the enquiry was initiated when the applicant was very much in service and the enquiry was under Rule 8 of the Discipline and Appeal Rules. If the competent authority does not agree with the findings given by the Enquiry Officer, it may record its own reason for such disagreement and it has right to disagree with the Enquiry Officer. For that purpose, by recording such reasons for disagreement, the competent authority has to issue a show cause notice to the delinquent and after hearing the delinquent, it can pass necessary order. Even though enquiry has been initiated against the applicant under Rule 8 of the Discipline and Appeal Rules, a show cause notice has been issued under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules). In my

opinion, the respondent authority has every right to take action under Rule 27 of the Pension Rules, provided allegations against the applicant are grave as required under Rule 27 of the Pension Rules. It will be thus necessary to say whether reasons for disagreeing with the Enquiry Officer are recorded by the competent authority.

7. The learned counsel for the applicant submits that the applicant has retired in the year 2012 i.e. on 30.12.2012 and during his service period, final decision was not taken on the departmental enquiry. Even till today no final decision has been taken. There is no order regarding continuation of the departmental enquiry and charges on which the departmental enquiry is initiated, are minor and, therefore, even under Rule 27 of the Pension Rules, enquiry is not tenable.

8. I have perused the impugned show cause notice dated 20.4.2016 whereby the applicant was called upon to explain as to why the amount to the tune of 6% per month shall not be deducted from his pension. It is material to note that, the Enquiry Officer came to the conclusion that the charge Nos. 1 and 2 are proved. Charge Nos. 1 and 2 are as under:-

दोषारोप नं. १:- श्री. वा. ना. राघोतम ढाचायतम जिह्वा ढशाण व ढशाण संथा, चंपूर यांनी सवढ शाढा अभयान अंतगत कायढ माचे लेखे ढढनढ पढधतीने न

ठेवणे, दोन रोख पुतके ठेवणे व रोखवह व्रहत नमुयात न ठेवणे तसेच आथक बाबी वषयक नाद अधयावत करयामये पी. राघोत यांचेकडून हलगजप्रणा झालेला आहे.

दोषारोप . २:- बँक पासबुक व रोख शालक रकम यांचा ताळमेळ आहे क्वा नाह यावर पी. राघोत यांचे सदर कामाकडे संपूणदुल झालेले आहे.”

9. The learned counsel for the applicant has placed reliance on the judgment delivered by the Principal Bench of this Tribunal at Mumbai in **O.A.No.670/2016 in case of Dr. Chandrabhan Gunda Gaikwad V/s State of Maharashtra on 23.3.2017.** In the said case, there was an inordinate delay in completion of departmental enquiry and, therefore, the same was quashed and set aside.

10. The aforesaid charges seems to be very vague and in any case cannot be said to be grave as required under Rule 27 of the Pension Rules. Rest of the charges are not proved and the Government has not given reasons as to why it does not agree with the findings of the Enquiry Officer. The conclusion drawn by the Government as to why 6% amount shall not be deducted from the pension of the applicant per month are also vague. I am satisfied that the applicant has retired long back in the year 2012 and is now aged about 64 years. It has been told that no order was passed regarding continuation of the enquiry even after retirement of the

applicant and the applicant was allowed to retire on superannuation honourably. The allegations against the applicant cannot be said to be grave in nature as required for action under Rule 27 of the Pension Rules. Considering all these aspects, I am satisfied that it will be in the interest of justice and equity to quash and set aside the show cause notice issued by respondent No.1 and, therefore, the following order is passed:-

ORDER

- (i) The O.A. is allowed.
- (ii) The show cause notice dated 20.4.2016 issued by respondent No.1 through Joint Secretary, Govt. of Maharashtra, Mumbai shall stand quashed and set aside.
- (iii) The respondents are directed to release / grant regular pension and pensionery benefits to the applicant as early as possible and in any case within a period of **three months** from the date of this order.
- (iv) If the amount is not paid within three months, the applicant will be entitled to claim interest on the delayed payment from the date of superannuation till he receives the actual

payment as per the provisions of Rule 129-A and 129-B of the M.C.S. (Pension) Rules, 1982.

(v) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)