

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.759/2015.

(S.B.)

Dr. Sueshkumar Hariprasad Betharia,
Aged about 74 years,
Occ-Retired,
R/o 911, Clark Town, Bezon Bagh,
Nagpur-04.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Add. Chief Secretary,
Department of Public Health,
10th floor, Gokuldas Tejpal Hospital Campus,
Mumbai-32.

2. Director of Public Health (M.S.),
Arogya Bhavan, St. Georges Hospital Campus,
D' Mello Road, Fort, Mumbai-01.

Respondents

Shri N.D. Thombre, the Ld. Advocate for the applicant.

Shri M.I. Khan, the Ld. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 19th day of July 2018.)

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

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2. The applicant was appointed as Medical Officer and he finally retired as Additional Director of Health Services (Family Welfare) on 31.12.1999 on superannuation. On 16.4.2013, no enquiry certificate was issued against him. On 16.4.2013, it was certified that only an amount of Rs. 56,758/- towards interest on the house loan was due against the applicant and all other emoluments have been paid to him. A provisional pension was granted to the applicant on 12.2.2004. But no regular pension was sanctioned. The applicant filed representation as per Annexure A-2 and claimed regular pension with interest. It was also stated that he was getting less amount of pension and, therefore, he may be given proper regular pension alongwith interest. He was, however, not given regular pension. Hence, the applicant has filed this O.A. He was intimated vide letter dated 7.4.2015 that the entire amount has been paid to him. The said communication is not legal and proper. The applicant has, therefore, prayed that the communication dated 7.4.2015 issued by respondent No.1 i.e. Additional Chief Secretary,

Department of Public Health, Mantralaya, Mumbai (Annexure A-4) be quashed and set aside and the respondents be directed to pay to the applicant pensionary benefits alongwith interest.

3. The respondent Nos. 1 and 2 resisted the claim and denied the claim for interest. It is stated that, though the applicant got retired on 31.12.1999, a departmental enquiry was contemplated against him and, therefore, he was paid provisional pension only as per Rules 27 and 113 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "Pension Rules"). Since the departmental enquiry was initiated on the date of retirement, the respondent was authorized to withhold a regular pension. The applicant has been granted regular pensionary benefits as soon as the departmental enquiry was over.

4. From the facts on record, it seems that admittedly the applicant got retired on superannuation on 31.12.1999 and regular pension was not granted to him, on the ground that the departmental enquiry was pending against him. From the record, however, it seems that no departmental enquiry was initiated against the applicant.

5. The applicant has placed on record one communication which is addressed to the Principal Secretary,

Department of Public Health, Mantralaya, Mumbai by the Director of Health Services, Mumbai. The same is at Annexure A-3, Page Nos. 32 & 33 (both inclusive). From the said communication, it seems that no departmental enquiry was initiated against the applicant and it was suggested that the disciplinary action shall be taken against the erring officer not initiating departmental enquiry. Relevant para in this regard in the said communication is as under:-

“उपरोक्त वस्तुस्थितीनुसार डॉ. बेथारीया यांना प्रस्तावित असलेल्या विभागीय चौकाशिप्रकरणी शासनाचे अंतिम आदेश प्राप्त झालेनंतर त्यांना सेवानिवृत्ती वेतन व उपदान या लाभांचे प्रदान करणेत आलेले आहेत. तसेच, प्रकल्पग्रस्त व स्वातंत्र्य सैनिक नियुक्ती देणेबाबत मोठ्या प्रमाणावर गैरव्यवहार प्रकरणी शासनाचे विभागीय चौकशी प्रकरणी प्राप्त अंतरिम आदेश दि. १९.७.२०११ चे पत्रानुसार प्राप्त झाले. तद्वत, डॉ. बेथारीया यांचे विभागीय चौकाशिचा प्रस्ताव वारंवार पाठपुरावा करूनही शासनास विहित वेळेत सादर न करणाऱ्यास जबाबदार असणाऱ्या संबंधितांवर कारवाई करून त्याच अनुपालन अहवाल सादर करणेबाबत सूचित केलेले तदनुसार सह. संचालक आरोग्य सेवा (क्षयरोग व कुष्ठरोग) पुणे यांचेकडून संचालनालयाचे दि. ८.८.२०११, १२.१.२०१२, २१.५.२०१२, १.१२.२०१२, १२.४.२०१३, १२.७.२०१४ च्या पत्रान्वये तो मागविण्यात आलेला असून तो अप्राप्त आहे.”

6. The respondents could not place on record any documentary evidence to show that, any departmental enquiry was either initiated against the applicant or that he was exonerated or punished in the departmental enquiry. In such circumstances, there

was absolutely no reason for the respondents to withhold regular pension. Withholding of regular pension for six months after retirement can be considered, but not thereafter and, therefore, the applicant cannot be held responsible for not getting regular pension. The respondents, therefore, ought to have considered the applicant's claim for interest on pensionary benefits.

7. The learned counsel for the applicant has placed reliance on the judgment reported in **(1985) 1 SCC-420 State of Kerala and others V/s M. Padmanabhan Nair.** In the said case, the Hon'ble Apex Court has held that prompt payment of pension is the Government's duty, failing which the Government is liable to pay penal interest to the petitioner. In my opinion, in this particular case; the applicant got retired on 31.12.1999 and, therefore, regular pension should have been paid to him within six months from the date of retirement. However, the same was withheld on the ground that, the enquiry was contemplated against the applicant and admittedly; the said enquiry was never initiated. In such circumstances, the applicant is entitled to claim interest on the delayed payment, i.e. from the date of retirement on superannuation till he actually receives the amount as per the provisions of Rule 129 (A) and 129 (B) of the Pension Rules, 1982.

8. The learned P.O. submits that the applicant got retired in 1999 and he is claiming interest in 2015, though regular pension was already paid to him in 2015 and, therefore, application is barred by limitation. This argument cannot be accepted, as the payment of pension is a continuous process and grant of proper pension is a right of a retired employee. It was the duty of the Government to pay proper pension to the applicant.

9. In view of discussion in foregoing paras, I proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communication dated 7.4.2015 issued by respondent No.1 i.e. Additional Chief Secretary, Department of Public Health, Mantralaya, Mumbai stands quashed and set aside.
- (iii) The respondents are directed to pay interest as per the provisions of Rules 129 (A) and 129 (B) of the Pension Rules, 1982 to the applicant for the period from the date of retirement on superannuation on 31.12.1999 till regular pension was paid to the applicant as per admissible rate of interest.

- (iv) The said amount shall be paid within two months from the date of this order.
- (v) The respondent No.1 shall also pay cost of Rs. 5,000/- to the applicant, considering the fact that the applicant is aged about 77 years.
- (vi) No order as to costs.

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

Dt:- 19th July 2018

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