

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 760 of 2018 (S.B.)

Sheikh Sadulla s/o Shiekh Rehman,
Aged 67 years, Occ. Retired Circle Officer,
Permanent Resident of C/o Sheikh Farid Master,
Malipura, Nav Prabhat Square,
Yavatmal-445001, District Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
Minister of State for Revenue
Through its Chief Secretary,
Revenue and Forest Department,
Hutatma Rajguru Square,
Madam Cama Road, Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
- 2) The Commissioner, Amravati Division,
Amravati District Amravati.
- 3) The Collector Yavatmal, District Yavatmal.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

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

Dated :- 13/07/2023.

JUDGMENT

Heard Shri S.N. Gaikwad, learned counsel for the applicant and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The applicant has challenged the impugned orders dated 28/03/2018, 31/01/2015, 16/03/2015 and 29/06/2017. The applicant

was compulsorily retired and thereafter he was reinstated in service, but his joining period from the date of compulsory retirement till the joining is not regularized. Therefore, the applicant has challenged the impugned orders in prayer clause 10 (i). The applicant has prayed for direction to the respondents to regularize his service granting full back wages and salary for the period from the date of his compulsory retirement till the date of his reinstatement from 31/05/2003 to 11/03/2018.

3. During the course of submission, the learned counsel for applicant has pointed out the Rules 70 and 71 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (in short "MCS (Joining time-----) Rules,1981").

4. The Rule 71 (1), (2) (a) of the MCS (Joining time-----) Rules,1981 reads as under –

“(71) Regularisation of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside by a Court of Law and such Government servant is reinstated.

(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in

accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2) (a) *Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to provisions of sub-rule (7) of rule 70 be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period which in no case shall exceed 60 days from the date on which the notice has been served, as may be specified in the notice :*

Provided that any payment under this sub-rule to a Government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which the judgment of the Court was passed or the date of retirement on superannuation of such Government servant, as the case may be.

5. In view of the Rule 71 of the MCS (Joining time-----) Rules,1981, notice is to be issued to the employee before deciding the period from compulsory retirement till the date of reinstatement.

There is no dispute that no any notice was issued to the applicant by the respondents. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The impugned orders are hereby quashed and set aside.
- (iii) The matter is remanded back to the respondent no.3. The respondent no.3 is directed to issue notice to the applicant as stipulated in Rule 71 of the MCS (Joining time-----) Rules,1981. After giving sufficient opportunity to the applicant and after hearing him personally, decide the period from the date of compulsory retirement till the date of joining after reinstatement within a period of two months from the date of notice (as per rule 71). Notice be issued within a period of two months from the date of receipt of this order.
- (iv) No order as to costs.

Dated :- 13/07/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

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 : 13/07/2023.