

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.762/2016.

Ashok Charandas Nimsarkar,
Aged about 60 yrs.,
Occ-Retired,
R/o Nehru Nagar, Ghatanji,
District Yavatmal.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue and Forests,
Mantralaya, Mumbai-440 032.
- 2) The Divisional Commissioner,
Amravati.
- 3) The Collector,
Yavatmal.
- 4) The Sub-Divisional Officer,
Wani, Distt. Yavatmal.
- 5) The Tehsildar, Maregaon,
Distt. Yavatmal.

Respondents

ORIGINAL APPLICATION NO.763/2016.

Ramkrishna Raybhan Awtare,
Aged about 61 yrs.,
Occ-Retired,
R/o Professor Colony, Ghatanji,
District Yavatmal.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue and Forests,
Mantralaya, Mumbai-440 032.
- 2) The Divisional Commissioner,
Amravati.
- 3) The Collector,
Yavatmal.
- 4) The Sub-Divisional Officer,
Yavatmal, Distt. Yavatmal.
- 5) The Tehsildar, Babhulgaon,
Distt. Yavatmal.

Respondents

Shri A.S. Chakotkar, Ld. Counsel for the applicants.
Shri A.M. Ghogre & Shri V.A. Kulkarni, the learned P.Os for the
respondents in both the O.As.

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

JUDGMENT

(Delivered on this 15th day of June 2017.)

Heard Shri A.S. Chakotkar, the learned counsel for the applicants and Shri A.M. Ghogre and Shri V.A. Kulkarni, the learned P.Os for the respondents in both the O.As.

2. The applicant in O.A. No. 762/2016 Ashok Charandas Nimsarkar was serving as Resident Naib-Tehsildar at Zari Jamni, District Yavatmal at the time of his suspension on 7.10.2013. On 7.10.2013, he was kept under suspension by respondent No.2 i.e. the

Divisional Commissioner, Amravati. He was reinstated on 3.3.2014, but was again kept under suspension vide order dated 13.3.2015. A show cause notice was issued to him by respondent No.3 i.e. Collector, Yavatmal on 12.6.2013 wherefrom it seems that some departmental enquiry was proposed to be initiated against the applicant. He came to be retired on superannuation on 31.3.2015. Since then, no action has been taken against the applicant. A departmental enquiry has neither been initiated nor any penal action has been taken against the applicant.

3. In O.A. No. 763/2016, the applicant Ramkrishna Raybhan Awtare was serving as Supply Inspector (Aval Karkun), Tahsil office, Zari Jamni, District Yavatmal. Vide order dated 7.10.2013, he has been kept under suspension. On 18.6.2013, a show cause notice was served upon him to explain certain allegations. He got retired on superannuation on 31.10.2013. However since that date, no departmental enquiry is initiated against the applicant.

4. The applicants submitted that they are under suspension since long, no departmental enquiry is initiated against them and since they have retired on superannuation, an enquiry cannot be initiated against them and the applicants are claiming declaration to this effect. It is further stated that, the respondents have not released

pensionary and other retiral benefits to the applicants nor paid salary and arrears for the suspension period etc. and they are, therefore, claiming directions to the respondents to release these amounts.

5. In both the O.As, the respondents have filed separate affidavits-in-reply on behalf of respondent Nos. 2 and 3. The said affidavits-in-reply have been sworn in by Shri G.K. Hawand, Purchase Officer in the office of Collector, Yavatmal. Both the affidavits-in-reply are similar.

6. From the affidavits-in-reply, it is seems that the respondents have admitted the fact that since after issuance of show cause notices to the respective applicants, no departmental action has yet been initiated against them. The preliminary objection has also been taken that the application is barred by limitation. Since suspension orders which are challenged are of the year 2013 and 2015 and they were not immediately challenged. According to the respondents, the applicant in O.A. No. 762/2016 Ashok Charandas Nimsarkar was serving as Resident Naib-Tehsildar during the period from April 2012 to March 2013 and during the said period, he had granted grain permit without getting deposit from the ration holders and had committed misappropriation of grains in collusion with ration shopkeepers and, therefore, he was kept under suspension. It is an

admitted fact that he was reinstated subject to outcome of the departmental enquiry and that he has got retired on superannuation. It is submitted that the enquiry is required to be conducted under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules') against the applicants for which proposal for sanction for conducting such enquiry is pending. It is stated that the provisional pension has been granted to the applicants.

7. So far as the applicant in O.A. No. 763/2016 Ramkrishna Raybhan Awtare is concerned, it is stated by the respondents that the Accounts Officer has conducted inspection and after inspection, irregularities and misappropriation have been noticed in distribution of wheat and rice and, therefore, show case notices have been issued to the applicants. The respondent has also requested the competent authority to sanction initiation of departmental enquiry and the same is pending. It is stated that the provisional pension and GIS amount has been paid to the applicants. Similarly, GPF amount is also paid to the applicants, so also leave encashment and since the departmental enquiry is proposed, regular pension cannot be granted.

8. The learned counsel for the applicants submits that except issuance of show cause notices to the respective applicants, nothing has been done by the respondents and in fact at present, no departmental enquiry is pending or initiated against the applicants. The learned counsel for the applicants has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in case **of Balwant Mohan Badve V/s Ahmednagar Municipal Corporation, reported in 2016 (4) ALL MR-75.** In the said case, it has been held that the departmental proceedings cannot be initiated after retirement of the employee. In the said case also, though a show cause notice was issued during employment, it was observed that no provision was shown indicating that the departmental proceedings can be initiated on the basis of show cause notice.

9. It is true that as per the provisions of Rule 27 of the Pension Rules, action can be taken against a retired employee to withhold his entire or part pension even after retirement. However, for that purpose the employee must be found guilty of grave misconduct or negligence and such misconduct shall be during the period of four years prior to initiation of enquiry. It is admitted that, in the present case no departmental enquiry is yet initiated against both the

applicants and only show cause notices were issued before their retirement. The applicants have been allowed to retire on superannuation and there is no document to show that the competent authority has obtained permission to continue enquiry or passed orders regarding continuation of enquiry even after retirement.

10. In my opinion, even accepting the fact that some sanction is to be obtained for initiation of departmental enquiry and if such is received, the respondents will be at liberty to take action if permissible as per Rule 27 of the M.C.S. Pension Rules, 1982. The fact as it is admitted from record today is that except issuance of show cause notices, no action has been taken against both the applicants. The applicants have not been served with any chargesheet nor there is any order showing continuation of any departmental enquiry against both the applicants. In such circumstances, the respondents have no right to withhold the pension and pensionary benefits of the applicants. The respondents may not take any action as per Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules'). But they can definitely take action as per the provisions of Rule 27 of the Pension Rules, if permissible within the ambit of said rule. If the applicants are found guilty in the action as per Rule 27 of the M.C.S. Pension Rules, 1982

the respondents will be at liberty to withhold the pension either fully or permanently considering the circumstances against the applicants. But at present they cannot withhold or stop pension and pensionary benefits of the applicants. So far as the suspension of the applicants is concerned, it will be clear that the applicants have also got retired on superannuation and, therefore, there is no question of tampering with the evidence by them. They have been kept under suspension since long i.e. from 2013 and, therefore, in such circumstances and considering the fact that till today no departmental enquiry is initiated against the applicants, their suspension is not legal and it will not serve any purpose. In view thereof, suspension orders of the respective applicants are required to be set aside.

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

ORDER

1. The O.A. Nos. 762/2016 and 763/2016 are partly allowed.
2. Suspension orders of the respective applicants dated 7.10.2013 in O.A. Nos. 762/2016 and 763/2016 respectively and dated 13.3.2015 in respect of applicant in O.A. No. 762/2016 stand quashed and set aside.

3. The respondents are directed to release regular pension and other retiral benefits to the applicants to which they are entitled.
4. The respondents are also directed to consider to regularise suspension period of the applicants and to grant all arrears of retiral benefits to the applicants within three months from the date of this order.
5. It is needless to mention that the respondents may be at liberty to initiate action under Rule 27 of the M.C.S. (Pension) Rules, 1982, if otherwise legal against the applicants.
6. No order as to costs.

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