

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.325 OF 2019

DISTRICT:- BEED

Dr. Bapusaheb Bhimrao Chavre,
Age : 59 years, Occ. Retd. Govt. Servant,
R/o. 40/1, Barshi Road, Near Maruti
Suzuki Show Room, Beed,
Tq. & Dist. Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. The Upper Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
3. The District Health Officer,
Zilla Parishad, Beed,
Tq. & Dist. Beed.
4. The Regional Divisional Enquiry
Officer, Aurangabad Division,
Central Administrative Building,
2nd Floor, Circle Office,
Aurangabad, Dist. Aurangabad.
5. Deputy Director (Latur Circle),
Health Services, Latur Division,
Latur, Dist. Latur.
6. The Accountant General,
Nagpur, District Nagpur,
Pension Branch Office,
Post Box No.114, Nagpur,
District Nagpur.
7. Chief Executive Officer,
Zilla Parishad, Beed,
Tq. & Dist. Beed.

...RESPONDENTS

APPEARANCE : Shri N.L.Jadhav, Advocate for the
Applicant.
: Shri M.P.Gude, Presenting Officer
for the respondent authorities.
: Shri U.S.Mote, Advocate for
Respondent nos.3 & 7.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

Decided on : 29-09-2022

O R A L O R D E R
(PER: JUSTICE SHRI P. R. BORA)

1. Heard Shri N.L.Jadhav, learned Counsel for the applicant, Shri M.P.Gude, learned Presenting Officer appearing for the respondent authorities and Shri U.S.Mote, learned Counsel for respondent nos.3 & 7.

2. By filing the present O.A., applicant has sought quashment of the letter of memorandum dated 21-01-2000 and the action initiated by respondent no.2 vide letter dated 24-08-2018. Applicant served with the Government as a Medical Officer in its Public Health Department. In the year 2000, applicant was posted at Primary Health Centre, Naigaon, Dist. Beed. While applicant was so working there a memorandum dated 21-01-2000 was served upon him

thereby initiating departmental enquiry against him under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Total 4 charges were levelled against the applicant. After being served with the said memorandum, applicant submitted his reply to the same on 05-08-2000. The District Health Officer, Zilla Parishad, Beed vide his letter dated 13-06-2001 informed the Deputy Director, Health Services, Latur Region, Latur that the reply/explanation submitted by the applicant to the memorandum dated 21-01-2000 was contrary to the record available with his office and further that the reply so submitted was unacceptable. No further steps were, however, taken thereafter in furtherance of departmental enquiry.

3. On 30-06-2013, applicant retired from the Government service on attaining age of superannuation. After his retirement, proposal of pension was submitted to A.G. Nagpur for grant of pension. On 24-08-2018, respondent no.2 appointed an Enquiry Officer for conducting enquiry against the applicant. Since enquiry was commenced against the applicant by making appointment of Enquiry Officer, A.G.Nagpur informed the District Health Officer, Zilla Parishad, Beed by

communication dated 15-11-2018 that pension proposal of the applicant could not be processed due to pendency of the enquiry against the applicant. In the aforesaid circumstances, applicant has approached this Tribunal by filing the present O.A. thereby seeking quashment of the said enquiry proceedings.

4. It is the contention of the applicant that in view of the specific provision under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, no enquiry can be conducted/continued 5 years after his retirement. It is further contention of the applicant that since there was no substance in the charges levelled against the applicant, the departmental enquiry was not proceeded further, though the memorandum of charge was issued to the applicant way back in the year 2000. It is the further contention of the applicant that after about 5 years of his retirement, the enquiry proceedings are reopened with the only intention of causing harassment to the applicant. It is the further contention of the applicant that he has already denied the allegations levelled against him and he still maintains that the charges levelled in the memorandum of charge are false and baseless.

5. The contentions raised in the application are denied by the respondents. Though the Enquiry Officer has also filed affidavit in reply, that may not have any bearing on the subject matter. Respondent nos.1, 2 and 5 have filed the common affidavit in reply denying the contentions raised in the O.A. It is the contention of these respondents that since the departmental enquiry was initiated against the applicant while he was in service, the same can be continued and completed though the applicant has retired after attaining age of superannuation. The respondents have taken support of the provision under Rule 27(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. The respondents have, therefore, prayed for dismissal of the O.A.

6. Shri N.L.Jadhav, learned Counsel appearing for the applicant placing his reliance on the judgment of the Hon'ble Bombay High in the case of **Chairman/Secretary of Institute of Shri Acharya RatnaDeshbhusan Shikshan Prasarak Mandal & Another V/s. Bhujgonda B. Patil [2003 (3) Mh.L.J. 602]**, submitted that the departmental proceedings initiated for disciplinary action can be continued after the employee attains age of superannuation only for the purpose of reduction or

withdrawal of the pension and gratuity and not for the purpose of disciplinary action. Learned Counsel further argued that the memorandum of charge was served upon the applicant in the year 2000 and though for long 13 years thereafter the applicant was in the employment, no steps were taken for completing the enquiry into the said charges. Learned Counsel further submitted that no action was taken by the respondents in furtherance of the memorandum of charge served upon the applicant in the year 2000 till the year 2018 for the reason that the respondents are quite aware of the fact that the charges levelled against the applicant are false and baseless. Learned Counsel further submitted that when in normal course also the enquiry initiated against the employee is to be completed within reasonable period or else it loses its significance; in the present matter, the enquiry was not conducted for long 18 years after issuance of the memorandum of charge to the applicant and in the meanwhile the applicant was allowed to retire on attaining the age of superannuation.

7. Learned Counsel further submitted that though chargesheet seems to have been served in the year 2000, if the charges levelled against the applicant are seen, some of

them pertain to the year 1996. Learned Counsel further pointed out that the charges levelled against the applicant pertain to minor misconduct and those have been denied by the applicant. Learned Counsel further submitted that after retirement of a Government servant, enquiry can be continued further only for the purpose of withdrawal of pension either in full or in part and that too if in any departmental proceedings, the petitioner is found guilty of the grave misconduct or negligence during the period of his service.

8. Learned Counsel has relied upon the following judgments:

- (i) **State of Maharashtra V/s. Keshav Ramchandra Pangare & Anr. [AIR 1999 SC 3846],**
- (ii) **Dhairyasheel A. Jadhav V/s. Maharashtra Agro Industrial Development Corporation Ltd. [2010 (2) Mh.L.J. 618], and**
- (iii) **State of Maharashtra V/s. Ramesh Pandurang Bhangade [AIRONLINE 2021 BOM 48].**

9. Learned P.O. has reiterated the defense raised in the affidavit in reply filed on behalf of the respondents.

Learned P.O. submitted that the continuation of the enquiry initiated when the applicant was in service, even after his retirement is valid. Respondents have therefore prayed for dismissal of the O.A.

10. We have carefully considered the submissions advanced on behalf of the parties. We have also perused the documents on record. There is no dispute that the memorandum of charge was served upon the applicant on 21-01-2000. Further, there is no dispute that the applicant had given his reply to the said charges on 05-08-2000 wherein he has denied the charges levelled against him. There is further no dispute that the applicant retired from the Government service on 31-05-2013. Applicant was allowed to retire after attaining age of superannuation and while allowing the applicant to retire from the Government service, no right was reserved by the respondents to continue the enquiry against the applicant even after his retirement. It is also not in dispute that on 24-08-2018, the Enquiry Officer came to be appointed for conducting the enquiry against the applicant for the charges levelled in the year 2000. It is further not in dispute that the enquiry proceedings are continued after retirement of the applicant for imposing punishment upon him without reference to the

intention to deal with the issue of payment of pension alone.

11. In light of the undisputed facts as aforesaid, we have to consider the submissions made on behalf of the applicant as well as the respondents. Before advertng to the said submissions, we deem it appropriate to examine the relevant provisions to which reference has been made by both the parties. Rule 27 (1) of the Maharashtra Civil Services (Pension) Rules, 1982 pertains to right of the Government to withhold or withdraw pension. It reads thus:

“27. Right of Government to withhold or withdraw pension

(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final

orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.”

The aforesaid rule clearly provides that the Government may pass order withholding or withdrawing pension or part of it, if in any departmental or judicial proceeding pensioner is found guilty of grave misconduct or negligence during the period of his service.

12. In paragraph 12 and 13 of its judgment in the case of **Chairman/Secretary of Institute of Shri Acharya RatnaDeshbhushan Shikshan Prasarak Mandal & Another V/s. Bhujgonda B. Patil [2003 (3) Mh.L.J. 602]**, Hon'ble High Court has interpreted Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. We deem it appropriate to reproduce hereinbelow the discussion made therein:

“12. Rule 27(1) of the Pension Rules provides that:—

“Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or

part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement;

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.”

Apparently, the provision of law contained in sub-rule (1) of Rule 27 of the Pension Rules, therefore, empowers the Government to pass an order withholding or withdrawing a pension if in any departmental or judicial proceedings the pensioner is found to be guilty of grave misconduct or negligence either during the period of his service or during the period of his reemployment. Apparently, Rule 27(1) is comprised of two parts. The first part speaks of power of the Government to pass an order regarding reduction or withdrawal of pension. The second part deals with the circumstances in which such an order can be passed. The Rule nowhere empowers the Government to initiate or continue the disciplinary proceedings after the employee attains the age of superannuation. The Rule is meant for and confined to the power of Government to reduce or withdraw the pension of a pensioner on account of proved grave misconduct or negligence of such pensioner while he was in service. Besides, the Rule 2(a) of Rule 27 clarifies that the proceedings spoken of for the purpose of order relating to pension under Rule 27(1) though initially may be for disciplinary action while the pensioner was in service, those proceedings would be deemed to have been continued only for the purpose of action under Rule 27(1) relating to the

pension and not for disciplinary action. Sub-rule (2)(a) of Rule 27 of the Pension Rules reads thus:—

“The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner if the Government servant had continued in service.”

The above clause, therefore, in clear terms provides that the departmental proceedings initiated for disciplinary action can be continued after the employee attains the age of superannuation only for the purposes of reduction or withdrawal of the pension and gratuity and not for the purpose of disciplinary action. Further, clause (a) of sub-rule (6) thereof provides that “for the purpose of the said rule, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to be Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date.”

13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issue pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly sub-rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re-employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose

punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.”

13. Having considered the facts involved in the present matter in light of the observations made by the Hon'ble Bombay High Court in the aforesaid paragraphs, there remains no doubt that the respondents cannot be permitted to continue the enquiry against the applicant and the entire said action deserves to be quashed and set aside. As interpreted by the Hon'ble Bombay High Court, departmental proceedings initiated for disciplinary action can be continued after the employee attains age of superannuation only for the purpose of reduction or withdrawal of the pension and gratuity and not for the purpose of disciplinary action.

14. In the present matter, undisputedly, the statement of charge was served upon the applicant on 21-01-2000. It is further not in dispute that though the applicant denied all the charges levelled against him in the said memorandum of charge vide his reply submitted on 05-08-2000, the enquiry was not proceeded further immediately thereafter. Admittedly, no further steps were taken in furtherance of the said enquiry up to 24-08-2018. In the meanwhile, on 31-05-2013, the applicant retired from the Government service after attaining age of superannuation. Thereafter, on 24-08-2018 appointment of Enquiry Officer came to be made for conducting enquiry into the charges contained in the statement of charge served upon the applicant along with the memorandum of charge dated 21-01-2000. It is not in dispute that the said memorandum was served upon the applicant with an intention to take disciplinary action against the applicant. Though the said enquiry has been continued further by the respondents by making appointment of the Enquiry Officer on 24-08-2018, the respondents have not declared or clarified that the said enquiry is being continued with an intention to take appropriate decision in relation to the amount of pension to be paid to the applicant. As held by the Hon'ble Bombay

High Court in the judgment cited supra, after the employee attains the age of superannuation, disciplinary action can be continued only for the purposes of reduction or withdrawal of the pension and gratuity and not for the purposes of disciplinary action. Moreover, the fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains age of superannuation and in absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as proceedings within the meaning of said expression under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. In the instant matter, it is not the case of the respondents that after the applicant attained age of superannuation, he was immediately informed thereafter about continuation of the disciplinary proceedings pending against him only for the purpose of withholding or withdrawing his pension and not for the disciplinary action. In the aforesaid circumstances, the disciplinary proceedings continued by the respondents for imposing punishment upon the applicant without reference

to the intention to deal with the issue of payment of pension alone cannot be considered as a proceeding within the meaning of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 as has been held by the Hon'ble Bombay High Court in the case of **Bhujgonda Patil** cited supra.

15. For the reasons stated hereinabove, present O.A. deserves to be allowed. Hence, the following order is passed:

ORDER

- (i) Enquiry proceedings initiated against the applicant vide memorandum of charge dated 21-01-2000 are quashed and set aside.
- (ii) Consequently, orders dated 24-08-2018 whereby the respondents have made appointment of the Enquiry Officer and the Presenting Officer in relation to the departmental enquiry pending against the applicant also stand quashed and set aside.
- (iii) There shall be no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 29th September, 2022