

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 638/2017 (D.B.)

Purushottam S/o Vishnupant Lute,
Aged about 59 years,
Occ. Retired Government Servant,
R/o Behind Ganeshpeth Police Station,
Model Mill Road, Ganeshpeth,
Nagpur-440 009.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development & Water Conservation Department,
Bandhkam Bhawan,
25, Marzban Road, Fort,
Mumbai-400 001.
- 2) Zilla Parishad, Gadchiroli,
Through its Chief Executive Officer.
- 3) The Deputy Accountant General,
Pension Branch Office,
P.O. Box No. 114,
Office of Accountant General (II),
Nagpur-440 001.

Respondents

Shri R.Joshi, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents 1 & 3.

Shri A.R.Fule, Id. Advocate for the respondent no. 2.

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

JUDGMENT

(Per:-Shri Justice M.G.Giratkar)
30th Jan., 2023.

Heard Shri R.Joshi, learned counsel for the applicant, Shri M.I.Khan, learned P.O. for the respondents 1 & 3 and Shri A.R.Fule, ld. counsel for the respondent no. 2.

2. The case of the applicant in short is as follows. The applicant was working as a Child Development, Project Officer at Chamorshi. Some irregularities had occurred in the selection process for appointment of Anganwadi Sevika, Mini Anganwadi Sevika and Helper under the integrated Child Development Services Scheme, Project Chamorshi. It is alleged that claim of eligible candidates was dislodged and appointment orders were issued in favour of ineligible candidates. The said selection procedure had commenced pursuant to an advertisement dated 19.01.2013. Thereafter, screening of candidates was done from 11.02.2013 to 25.02.2013. Interviews were held on 08.04.2013 and appointment orders were issued in favour of selected candidates. However, a few candidates had preferred appeals before the Zilla Parishad, Gadchiroli. The appeals were taken up for hearing by the Zilla Parishad and most of the appeals were rejected, a few appeals were allowed.

3. On 16.09.2013, by issuing show cause notice, respondent no. 2 has called explanation from the applicant regarding irregularities in

the selection procedure. On 30.09.2013, applicant had given explanation denying all the allegations. Thereafter, nothing was heard in the matter for long period. On 03.08.2013 applicant came to be promoted as Block Development Officer. Applicant superannuated from service from the post of Block Development Officer on 31.07.2016.

4. Ld. Counsel for the applicant submits that before retirement respondent no. 2 issued a communication dated 21.07.2016 to respondent no. 1 forwarding proposal for initiation of departmental enquiry against the applicant.

5. Applicant has received chargesheet dated 02.03.2017 issued by the respondent no. 1 along with the covering letter dated 16.05.2017. The chargesheet is accompanied by the charges, statement of allegations list of witnesses and list of documents. Chargesheet pertains to selection of two posts of Angawadi Helpers at Village-Lakhnapur Bori and Village Thakri. It is alleged that marks were not properly allotted to the candidates, as a consequence of which, the deserving candidates were not selected and appointment orders were issued in favour of another candidates dislodging the claim of most meritorious candidates. It is alleged that applicant had committed breach of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

6. The incident regarding which the chargesheet is issued, had occurred on 08.04.2013. On 24.05.2017, the respondent no. 2 forwarded

proposal of releasing pension of the applicant and accordingly applicant is getting provisional pension. However, pension papers are not prepared in view of initiation of departmental enquiry.

7. Ld. Counsel for the applicant pointed out Rule 27(2)(b)(ii) and Rule 27 (6) of Maharashtra Civil Services (Pension) Rules, 1982.

8. Original application is strongly opposed by filling reply by respondent no. 1. The contention of the respondent no. 1 is that the respondent no. 1 has served the chargesheet to the applicant within four years from the date of retirement. Now, enquiry officer is appointed, enquiry is going on. Hence, O.A. is liable to be dismissed.

9. During the course of argument the ld. P.O. Shri Khan has filed letter dated 09.12.2022 along with this letter he has also filed letter dated 08.12.2022 which are marked Exh. 'X' and Exh. 'X-1' for the purpose of identification.

10. As per the submission of ld. Counsel for the applicant Shri R.Joshi, the applicant is retired on 31.07.2016, incident took place on 08.04.2013, chargesheet is dated 02.03.2017, it was issued by the Zilla Parishad on 16.05.2017 to the applicant and, therefore, it is not within four years from the date of the incident. In support of his submission, he has pointed out decision of Hon'ble Supreme Court in the case of **Delhi Development Authority Vs. H.C.Khurana, AIR 1993, SCC 1488**. The ld. Counsel for the applicant has pointed out Rule 27(2)(b)(ii) and sub rule

6 of the Maharashtra Civil Services (Pension) Rules, 1982. Ld. Counsel for the applicant submits that case of the applicant is squarely covered as per Rule 27(2)(b)(ii) and Sub Rule 6 of the Maharashtra Civil Services (Pension) Rules, 1982. In support of his submission he has relied on judgment in O.A. No. 402/2014 of M.A.T., Nagpur Bench delivered on 03.03.2015.

11. Ld. P.O. Shri Khan submits that sanction was granted by the Government on 02.03.2017 and chargesheet was issued on the same date i.e. on 02.03.2017, therefore, it is within limitation of four years from the date of incident. As per his submission incident took place on 08.04.2013, therefore, chargesheet was issued by respondent no. 1 under Rule 27 of Pension Rule after giving sanction as per the provision in the rule. Ld. P.O. has submitted that applicant himself is not co-operating in the enquiry, he remain absent for a considerable long period and, therefore, enquiry is not completed. Hence, O.A. is liable to be dismissed.

12. Applicant is retired on 31.07.2016. Incident took place on 08.04.2013, though chargesheet is dated 02.03.2017 but it was issued by Zilla Parishad on 16.05.2017. Therefore, it is not within four years. Rule 27 is as under:-

“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 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.

(2) (a) 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 e.mployment, 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 as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment

(i) shall not be instituted save with the sanction of the Government,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in

respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of Superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

(5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government

servant has been placed under suspension from an earlier date, on such date: and

(b) judicial proceedings shall be deemed to be instituted

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance in made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

13. In the present matter though chargesheet is dated 02.03.2017 but it was issued on 16.05.2017, therefore, institution cannot be said on 02.03.2017 but it was on 16.05.2017. As per 27(2)(b)(ii), the chargesheet shall not be in respect of any event which took place more than four years before such institution. The incident took place on 08.04.2013 and chargesheet was issued by Zilla Parishad on 16.05.2017. Therefore, it is not within four years from the date of incident.

14. Hon'ble Supreme Court in the case of **Delhi Development Authority Vs. H.C.Khurana, AIR 1993, SCC 1488** in which para nos. 14 & 15 are under:-

“14. 'Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it

does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman (AIR 1991 SC 20 10) which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee is emphasised in para 17 of the decision. Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is

used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; to give or send out authoritatively or officially; to send forth or deal out formally or publicly, to emit, put into circulation'. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

15. Para no. 7 of O.A. No. 402/2014 delivered on 30.03.2015 of this Tribunal is as under:-

"7. In view of the aforesaid provision, it cannot be said that the departmental proceedings have been initiated against the applicant. It has been merely proposed or only sanction to initiate departmental proceedings, has been granted by the competent authority. That being so, Rule 130 of the Pension Rules is not attracted and the case is squarely

governed by Rule 27 of the Pension Rules. On the date when the Government servant retires, if no departmental or judicial proceedings are pending against him, course of action laid down under Rule 27 of the Pension Rules is required to be followed. Only when in such a departmental or judicial proceedings, the Government servant is found guilty of grave misconduct or negligence during the period of his service, the Government can, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period. Put it differently, the condition precedent for withholding or withdrawing a pension is that, either in a departmental or judicial proceedings, the Government servant has to be found guilty of grave misconduct. Admittedly this stage has not arisen. On the contrary, what appears is that on or about 31.01.2013, no chargesheet was served on the applicant. Therefore, question of withholding his regular pension and other retiral benefits, did not arise. So also, there was no reason to follow the course of action provided under Rule 130 of the Pension Rules."

16. The applicant is retired on 31.07.2017, since then the applicant is getting only provisional pension. The respondents have not

granted any pensionary benefits. In view of Rule 27(2)(b)(ii) chargesheet issued by the respondent no. 1 after the four years from the date of retirement is not legal. Therefore, the impugned chargesheet is liable to be quashed and set aside. Hence, the order:-

O R D E R

- A. The O.A. is allowed.
- B. Chargesheet dated 02.03.2017 is hereby quashed and set aside.
- C. Respondents are directed to finalize the pension of the applicant and pay the regular pension and other pensionary benefits to the applicant **within a period of four months from the date of receipt of this order.**
- D. No order as to costs.

(M.G.Giratkar)
Vice Chairman

aps
Dated - 30/01/2023

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Vice Chairman.

Judgment signed : 30/01/2023.
on and pronounced on

Uploaded on : 31/01/2023.