

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR**

ORIGINAL APPLICATION NO 521 OF 2016

DISTRICT : NAGPUR

Shri Ramesh M. Bhalerao,)
Occ : Pensioner, R/o: C/o: Shridharrao)
Adkar Chitnispora, Near Maroti Mandir,)
Mahal, Nagpur 440 018.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Department of Irrigation,)
Ministry of Irrigation, M.S,)
Mantralaya, Mumbai 400 032.)
2. State of Maharashtra,)
Through its Secretary,)
Finance Department, Ministry of)
Finance, M.S, Mantralaya, Mumbai.)
3. The Superintending Engineer,)
Nagpur Irrigation Department [South],)
Wainganga Nagar, Ajni,)
Nagpur 440 003.)

4. The Executive Engineer,)
 Nagpur Irrigation Department, [South],)
 Wainganga Nagar, Ajni,)
 Nagpur 440 003.)
5. The Accountant General,)
 Maharashtra, [Accounts &)
 Entitlement-II])
 Civil Lines, Nagpur 400 001.)
 Civil Lines, Deputy Director.) **Respondents**

Shri S.K Verma, learned advocate for the Applicant.

Shri P.N Warjurkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)

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

DATE : 11.08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri S.K Verma, learned advocate for the Applicant and Shri P.N Warjurkar, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 12.5.2016 rejecting the

Applicant's request to revise his pension as per the Sixth Pay Commission. The applicant has also challenged Government Circular dated 25.10.2011, which makes those who retired while on extraordinary leave after 1.1.2006, ineligible to get benefit of Maharashtra Civil Services (Revised Pay) Rules, 2009.

3. Learned Counsel for the Applicant argued that the recommendations of the Sixth Pay Commission was made applicable from 1.1.2006. The recommendations were given statutory form by notifying the Maharashtra Civil Services (Revised Pay) Rules, 2009. As per these rules, a Government employee, who was in service on 1.1.2006 is entitled to get his pay and pension fixed on the basis of recommendations of the Sixth Pay Commission. The Applicant retired on 31.10.2006 as such, his pension should be fixed in accordance with the Sixth Pay Commission. Learned Counsel for the Applicant argued that Rule 2(2) of the Maharashtra Civil Services (Revised Pay) Rules, 2009 (Revised Pay Rules of 2009) lists categories of Government servants to whom these rules do not apply. None of the categories listed in (a) to (g) of Rule 2(2) is applicable to the Applicant, who was a regularly appointed Government employee, working on a sanctioned post and paid from consolidated fund of the State. As such, the Applicant is eligible to get pension as per the scale of Sixth Pay Commission.

4. Learned Counsel for the Applicant argued that the Respondents have denied the claim of the Applicant citing Government Circular dated 25.10.2011. This Circular cannot

override the provisions of Statutory Rules, viz. Maharashtra Civil Services (Revised Pay) Rules, 2009. Learned Counsel for the Applicant further contended that this Circular is arbitrary and discriminatory as it discriminates, between employees on the basis of type of leave they were on, at the time of retirement. The Pension is based on the length of service and not the type of leave. This Circular is issued in violative of Article 14 and 16 of the Constitution and is liable to be quashed and set aside.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant is not eligible to get his pension fixed in accordance with the Maharashtra Civil Services (Revised Pay) Rules, 2009. All retired employees of the Government do not get benefits at par with employees who retire after implementation of the particular Pay Commission. Sixth Pay Commission was implemented from 1.1.2006 and pension of those who had already retired before 1.1.2006, was not to be fixed at par with those who retired after 1.1.2006. This can by no stretch of imagination can be called arbitrary or discriminatory. Recommendations of a Pay Commission are applied w.e.f a particular date.

6. Learned Presenting Officer further argued that Rule 2(2) of the Maharashtra Civil Services (Revised Pay) Rules, 2009 empowers the Government to specifically exclude Government servants from operation of these Rules. Government had decided to exclude those employees who were on extraordinary leave before 1.1.2006 and retired while on extraordinary leave. An employee on extraordinary leave

does not actually work nor does he get paid for that period. The Applicant was absent from duty from 7.6.1999 to 31.10.2006, the date on which he reached the age of superannuation. This period of more than 7 years was treated as 'dies-non'. Learned Presenting Officer argued that this Circular is based on 'intelligible differentia' and is not arbitrary at all. A person, who in fact never worked after the date of implementation of Sixth Pay Commission cannot claim that he should get salary and pension at par with the employees who worked and retired after that date. Learned Presenting Officer argued that there is no merit in this Original Application.

7. We find that the Applicant claims that he is not covered under Rule 2(2) of the Maharashtra Civil Services (Revised Pay) Rules, 2009 and therefore, his pension should be fixed according to the Sixth Pay Commission. Rule 2(2) *ibid* reads as follows:-

“2(2) These rules shall not apply to:-

(h) Government servants specifically excluded wholly or in part by the Governor of Maharashtra from the operation of these rules.”

The Government has kept this power to exclude certain categories of Government servants from the operation of these rules. Government has issued Government Circular dated 25.10.2011, which excludes the following from getting the benefits of these Rules. The relevant para reads:-

“शासनाने यावर विचार केला असून, शासन आता असा खुलासा करित आहे की, जे कर्मचारी दि.1 जानेवारी 2006 पुर्वीपासून असाधारण रजेवर किंवा निलंबनाखाली होते व जे प्रत्यक्षात दि.1 जानेवारी 2006 नंतर असाधारण रजेवर असताना सेवानिवृत्त किंवा मृत्यु पावले असतील किंवा निलंबनाधीन असताना सेवानिवृत्त झाले/करण्यात आले असतील तर अशा कर्मचा-यांना म.ना.से.(सु.वे.) नियम 2009 चा लाभ अनुज्ञेय नाही”.

This Circular does not supplant any provision of these rules. On the contrary, such circular can be issued by the Government under Rule 2(2)(h) *ibid.* This Circular is issued 'by order and in the name' of Governor of Maharashtra. The Applicant was absent from duty from 6.7.1999 to 31.10.2006. His date of superannuation is 31.10.2006. However, he had stopped working for the Government from 6.7.1999 onwards and the period of 6.7.1999 to 31.10.2006 was treated as 'dies-non'. He is clearly not eligible to get pension as per Sixth Pay Commission.

8. The Applicant has challenged this Circular as arbitrary and discriminatory. We find that the Circular is based on sound grounds and treats those who were actually working before the date of implementation of Sixth Pay Commission at par. Those who did not work after that date and were nominally on roll, cannot claim that such a stipulation is discriminatory. This Circular is neither discriminatory nor arbitrary. It is based on intelligible differentia and the request for quashing it is without any merit.

9. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.