

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 268 / 2022 (S.B.)

Tejrao S/o Bhikaji Sarkate,
Aged about 78 years,
Occ. Retired Head Constable,
R/o Ward No. 12, Dr. Ambedkar Nagar,
Mehkar, Tal. Mehkar,
District Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.
- 2) Superintendent of Police,
Buldhana, District Buldhana.
- 3) Accountant General-2,
Having its office at Civil Lines,
Opp. to the office of Police Commissioner,
Nagpur.

Respondents

Shri K.V.Deshmukh, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 17th Mar., 2023.

Judgment is pronounced on 21st Mar., 2023.

Heard Shri K.V.Deshmukh, Id. counsel for the applicant and
Shri A.M.Khadatkar, Id. P.O. for the Respondents.

2. The applicant joined Police Department as Constable on 06.06.1962. He was promoted as Head Constable. In Departmental enquiry punishment of reduction in rank for six months w.e.f. 26.05.1992 was imposed on him. Since expiry of these six months he was working as Head Constable. A review committee reviewed cases of employees who had served for more than 30 years as on 31.12.1992. After taking review the committee issued a three months' notice of retirement dated 06.04.1993 to the applicant in public interest under Rule 65 (1) (b) of the Maharashtra Civil Services (Pension) Rules, 1982. The applicant challenged it initially before respondent no. 1 and thereafter before this Tribunal by filing O.A. No. 593/1995. However, validity of said notice was upheld. As per said notice the applicant stood retired on 18.07.1993. During pendency of O.A. No. 593/1995, for about six months, the applicant was paid provisional pension. The pension was then discontinued. He has been paid Gratuity. Without pension he cannot take care of even his basic needs. Hence, this O.A. to direct the respondents to release pensionary benefits with interest.

3. In his reply respondent no. 2 has averred as follows. Criminal court had passed an order directing the applicant to pay maintenance to his wife and their children. Wife of the applicant made a complaint to the police that the applicant was missing. The applicant subsequently turned up. He was repeatedly informed by the department to complete paper

work for release of pension. The last reminder was sent to him on 11.03.2022. He failed to comply.

4. Communication dated 28.08.2002 (A-R-4) made to respondent no. 1 by respondent no. 2 contains following details:-

“दिनांक ०५.१०.९९ च्या लेखी रिपोर्टनुसार व शासन निर्णयात नमुद केल्यानुसार बेपत्ता होण्याचा दिनांक ०५.१०.९९ हा धरून अर्जदार सुमन सरकटे यांना कुठंबनिवृत्तीवेतन देणेबाबत कार्यवाही केली आहे.

माहे ऑगस्ट २००० चे देयकावर कोषागार अधिकारी बुलडाणा यांनी आक्षेप घेतल्याने ठाणेदार मेहकर यांना पोहेकॉ. तेजराव सरकटे यांचेबाबत विचारणा केली असता स्वतः श्री तेजराव सरकटे ब.नं. २६ हेकॉ. हे पोलिस उपअधिक्षक (मुख्यालय) यांचे समक्ष दिनांक ३१.१०.२००० ला हजर झाले व त्यांनी कोषागारात देयकासोबत आवश्यक असणा-या प्रमाणपत्रावर स्वाक्ष-या केल्या त्यामुळे श्री तेजराव सरकटे यांचे निवृत्तीवेतन त्यांच्याच नांवाने काढण्यात येउन ठाणेदार मेहकर यांचेमार्फत त्यांना दरमहा अदा करण्यात येत आहे.”

5. By communications dated 26.06.2020 and 11.03.2022 (A-R-7 & R-8, respectively) the applicant was asked to furnish following documents:-

सोबत पती-पत्नीचे एकत्रित काढलेले १० पासपोर्ट साईज फोटो.

स्वतःचे, पत्नीचे व मुलाचे आधारकार्ड ची छायाकिंत प्रत

स्वतःचे पॅनकार्ड ची छायाकिंत प्रत

स्वतःचे भारतीय स्टेट बँकेतील खात्याने पासबुकाचे पहिल्या पानाची छायाकिंत प्रत.

(MICR, IFSC CODE सह)

जन्मदिनांकासाठी पत्नी व मुलांचे जन्म दाखले/ शाळा सोडल्याच्या दाखल्याची छायाकिंत प्रत.

रेशनकार्ड ची छायाकिंत प्रत.

निवासस्थानाचा संपूर्ण पत्ता पिनकोडसह.

6. In his rejoinder at PP. 68 to 71 the applicant has stated that since 1975, he and his wife are residing separately, their children are staying with their mother, before filing this O.A. the applicant had asked his wife to co-operate by furnishing documents in her custody but she flatly refused to do so.

7. In his written submission the applicant has raised following contentions:-

“3. The applicant in his rejoinder has stated in detail that he is unable to supply any document about his wife to the authorities and prayed this Hon'ble Authority that the directions needs to be given to release the pensionary benefits of the applicant without adhering to the documents of the wife of the applicant.

It is the submission of the applicant that under Rule 45 of the Pension Rules the past service of the government servant is forfeited when his services are dismissed or he is removed from the service or he tenders his resignation. The respondent cannot withhold or deny the pension of the retired government

*servant on the ground that he has strained relations with his wife and wife is residing separately from her husband. Right to get a pension is a right of the government servant and it does not depend upon the sweet will of the employer. The same has been reiterated by the Hon'ble High Court in its judgment reported in 2022 Volume II MHLJ, 72 in the case of **Leela Amrut S/o Narayan Karuu vs. Mormugaon Port Trust, Goa and others.***

*4. In another judgment of the Hon'ble Supreme Court reported in the 1980(4) SCC 306 in the case of **Jyotsingh Vs. Union of India**, it is held by the Hon'ble Supreme Court that the pension is payable to the government servant alone and so far as the family pension is concerned, that will have to be given to the family i.e. wife and minor children of the government servant that too after his death and the family members of the government servant are entitled to get the family pension only. It is also held in the said judgment that the government servant does not have any right to transfer the family pension to other members of the family by making any testamentary disposition. Therefore, it is clear from this judgment that the pension is payable to the government servant only and other family members are not entitled to get the same during his*

lifetime and the family pension shall be given to the wife, after his death and he cannot transfer the same to his parents by making any will or any testamentary disposition.

5. In the wake of the aforesaid judgments, it is clear that the right to get pensionary benefits during the lifetime of the retired government servant is his exclusive right and the same cannot be denied on the ground that the relationship with his wife is not cordial. Hence this cannot be a ground to deny the applicant to get pensionary benefits.

6. Rule 116 of the Pension Rules, deals with the family pension, 1964. Under this Rule, sub Rule 2 is material, which provides as under:-

Sub Rule 2: without prejudice to the provisions contained in Sub Rule 4, where a government servant dies,

(a) _____

(b) _____

(c) after retirement from service and was in receipt of pension on the date of death, the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with the table below;"

8. From pleading and submission of the applicant it is clear that direction will have to be issued to the respondents to release his pension. The respondents do not dispute entitlement of the applicant to receive pensionary benefits. They have not released pensionary benefits because the applicant has not furnished documents relating to his wife and their children. The applicant has explained why he could not comply with this direction. It may be mentioned that so far as amount of maintenance is concerned, wife of the applicant will have to take necessary steps in the concerned criminal court. On that count pension cannot be withheld. Hence, the order:-

O R D E R

The Original Application is allowed in the following terms:-

1. Respondent no. 2 shall call upon wife of the applicant to furnish necessary documents in her custody within one month from today, and to co-operate in furnishing photograph with the applicant. In case wife of the applicant does not comply within the stipulated time, pensionary benefits shall be released in his favour on his furnishing rest of the documents which are in his custody. This entire exercise shall be completed within two months from today.
2. Issue of interest is kept open.

3. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 21/03/2023.
aps

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 Member (J).

Judgment signed on : 21/03/2023.
and pronounced on

Uploaded on : 23/03/2023.