

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 721/ 2021 (S.B.)**

Premrao S/o Dattatraya Wadgire,  
Aged about 66 years,  
Occ. Govt. Retired Servant,  
R/o Fulsawangi, Tah. Mahagaon,  
Dist. Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Chief Secretary,  
Revenue Department, Mantralaya,  
Mumbai- 32.
- 2) Commissioner of Revenue,  
Commissioner Office, Amravati,  
District Amravati.
- 3) The Collector, Collector Office,  
Yavatmal, Dist. Yavatmal.
- 4) Tahsildar, Tahsil Office,  
Umarkhed, Dist. Yavatmal.
- 5) The Accountant General,  
Maharashtra-II, Civil Lines,  
Nagpur.

**Respondents**

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**Shri J.S.Wankhede, Id. Advocate for the applicant.**

**Shri S.A.Sainis, Id. P.O. for the Respondents.**

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

**Dated :- 17.07.2023.**

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**JUDGEMENT**

Heard Shri J.S.Wankhede, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicant in short is as under. The applicant was initially appointed as Muster Assistant on 25.08.1981. As per the Government notification he was absorbed in regular service on 01.09.1999. Thereafter, he was promoted as Junior Clerk on 03.05.2000. On 31.07.2008 applicant was put under suspension on the basis of one criminal complaint no. 60/2008 registered with Police Station, Mahagaon, under Section 409 r/w Section 34 of I.P.C. On 22.01.2013 suspension of the applicant was revoked and was reinstated by respondent no. 3. Applicant joined at Headquarter of respondent no. 4. Suspension period of four years, four months and twenty five days are not regularized. On 31.07.2023 the applicant superannuated after completion of age of 58 years without any departmental enquiry and without any show cause notice. As per Rule 27 of Maharashtra Civil Service (Pension) Rules 1982, pension and pensionary benefits cannot be denied, if the departmental enquiry is not initiated within a period of four years from the date of incident.

3. The applicant is not paid any provisional/ regular pension on the ground that his suspension period is not decided. As per letter dated 31.07.2013 the applicant was permitted to retire subject to the decision of departmental enquiry.

4. It is the case of the applicant that no any show cause notice was issued and no any departmental enquiry was initiated. The suspension order was already revoked. Respondents have not counted suspension period as a duty period and, therefore, he approached to the Tribunal with the following relief:-

*A. Direct the respondents to regularize the suspension period of applicant from 29.08.2008 to 22.01.2013 and consider the said period as duty period for all purposes.*

*B. Direct the respondents after regularizing the suspension period release all pensionary benefits and interest thereon with annual increments and hardship allowances for period from 29.08.2008 to 22.01.2013.*

*C. Direct the respondents to complete the aforesaid exercise within the period of one month from the date of issue of order of this Hon'ble Tribunal.*

*D. Grant any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

5. Reply is filed by all the respondents. In the reply it is submitted that one criminal case was pending against the applicant. Because of the pendency of criminal case departmental enquiry was not

initiated. The respondents have stated in the reply that they are not aware as to whether any show cause notice/any departmental enquiry was initiated against the applicant. It is surprise to note that the applicant was working with the respondents and they are not aware about the misconduct of the applicant. Nothing is on the record to show that any departmental enquiry was initiated against the applicant.

6. The Id. Counsel for the applicant has pointed out decision of **Bombay High Court in Keshav Ramchandra Pangare Vs. State of Maharashtra & Another, 1998 (3) Mh.L.J. 836**. As per this decision, it is clearly laid down that the prosecution if at all to be launched before the court against a retired government servant, for any offence committed while he was in service, it should be done within four years from the date of commission of the offence. In the case of **Ratnakar Bhagwanrao Mahajan vs. District & Session Judge, Jalna & Another the Bombay High Court, Bench at Aurangabad** it is held that in case of retired employee if the departmental enquiry is to be initiated then the sanction of the State Government is necessary. Rule 27 of the Maharashtra Civil Service (Pension) Rules 1982 is very clear. In the case of **Suvarna D/o Bhimrao Kamble Vs. State of Maharashtra & Ors., 2015 ALL MR (Cri) 1122**. Hon'ble Bombay High Court, Bench at Aurangabad has held that:-

*"7. So far as the first prayer of the petitioner in regard to initiation of the departmental inquiry against respondent no.3 is concerned, respondents have filed affidavit in reply on record stating that respondent no.2 - Superintendent of Police, vide communication dated 19th/20th March, 2013, had forwarded the report submitted by the Sub-Divisional Police Officer, Osmanabad, dated 5th May, 2011 to the Director General of Police, Mumbai, recommending initiation of departmental inquiry against respondent no.3. The said communication of respondent no.2 to the Director General of Police is placed on record. Further affidavit is filed on behalf of respondent no.2, pointing out that after receipt of the proposal referred supra, forwarded by respondent no.2 - Superintendent of Police, the Director General of Police has passed an order on 5th July, 2013 and observed that, having regard to the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules"), no disciplinary proceedings can be initiated against respondent no.4 and as such, has closed the matter.*

*It is reflected in the communication dated 5th July, 2013 issued for respondent no.1 State, that respondent no.3 stood retired from service on 30<sup>th</sup> November, 2012 and alleged event*

*of misconduct took place in 2007, i.e. almost four years prior to the date of retirement of respondent no.3. Hence, in view of provisions of Rule 27 (2) (b) (ii) of Pension Rules, the disciplinary proceedings can not be initiated.”*

7. The applicant is retired employee and there is nothing on record to show that the departmental enquiry was initiated/pending against the applicant. Without any reason suspension period of applicant is not regularized. There is no dispute that suspension of the applicant was revoked and he was reinstated in service.

Therefore, it was the duty of the respondents to treat the suspension period as duty period. If that period is counted as duty period then applicant is eligible for pension and pensionary benefits.

8. In view of the cited judgments and as per Rule 27 of the Maharashtra Civil Service (Pension) Rules 1982, the departmental enquiry is to be initiated within four years after retirement. The respondent authority is required to get sanction from the government for initiating departmental enquiry but no such exercise is done by the respondents. It is clear that no any departmental enquiry is initiated against the applicant. It is mentioned in the letter dated 28.10.2013 that suspension period is not counted therefore his service is short. Therefore, he is entitled for pension and pensionary benefit. Looking to

the submission that respondents have not initiated departmental enquiry. Without any departmental enquiry the suspension period cannot be treated as without duty period. Hence, the following order:-

- A. The O.A. is allowed.
- B. Respondents are directed to regularize the suspension period of applicant from 29.08.2008 to 22.01.2013 and consider the said periods as duty period for all the purposes including the pensionary benefits.
- C. The respondents are directed to pay the financial benefits of the suspension period of the applicant and also the pension and pensionary benefits within a period of three months from the date of receipt of this order.
- D. No order as to costs.

**(Shri Justice M.G.Giratkar)**  
**Vice Chairman**

**Dated :- 17/07/2023.**  
**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 Vice Chairman.

Judgment signed on : 17/07/2023.  
and pronounced on

Uploaded on : 18/07/2023.