

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 133/2022(S.B.)

Prabha Pralhad Kawale,
Aged 75 years, Occ.- Housewife,
R/o Flat No.2/5, Vishram Apartment,
Medical Square, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through Secretary,
Health Department,
Mantralaya, Mumbai-32.
- 2) Accountant General-II, Nagpur,
Maharashtra, CBI Colony,
Civil Lines, Nagpur, Maharashtra 440001.
- 3) District Civil Surgeon,
Mayo Hospital (Indira Gandhi Medical College),
Central Avenue Road Nagpur-440018.

Respondents

Shri A.Mardikar, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

Dated: - 5th July 2023.

JUDGMENT

Judgment is reserved on 28th June, 2023.

Judgment is pronounced on 5th July, 2023.

Heard Shri A.Mardikar, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. Facts leading to this O.A. are as follows.

By order dated 07.08.1970 (Annexure A-3) husband of the applicant was appointed as Medical Officer for a period of four months on a purely temporary basis. By order dated 18.05.1971 (Annexure A-4) extension of two years was granted again on a purely temporary basis. By order dated 26.05.1988 (Annexure A-5) he was promoted as Medical Officer Grade-I. An offence was registered against him under the provisions of the Prevention of Corruption Act. By order dated 02.01.1998 (Annexure R-2) he was placed under suspension. He was convicted by the Trial Court but conviction was set aside by the Hon'ble Bombay High Court by extending benefit of doubt. Thereafter, by order dated 05.06.2017 (Annexure R-3) period of his suspension from 02.01.1998 to 31.05.2000 was directed to be treated as duty period but only for the purpose of pension. He retired on superannuation on 31.05.2000. While fixing his pension date of his appointment was wrongly taken to be 16.12.1975 instead of 07.08.1970. In communication dated 09.10.2020 (Annexure A-10) respondent no.3 had conceded that the husband of the applicant was appointed as bonded

Medical Officer by order dated 07.08.1970. Yet, while fixing his pension date of his appointment was taken to be 16.12.1975 and increments falling due in suspension period were not taken into account. For redressal of these grievances instant O.A. is filed by widow of the pensioner who died on 27.05.2021 (Annexure A-2), for following relief-

II. to direct the District Civil Surgeon to correct the Date of Appointment and to include the two increments of the year 1998 and 1999 while computing Average Pay and then to prepare New Service Book accordingly;

III. to direct the Accountant General-II, Maharashtra, Nagpur to consider the New Service Book and then to revise the fixed Final Pension after making above mentioned correction;

3. According to respondent no.3 the O.A. is barred by limitation as order dated 16.08.2018 (Annexure A-1) is impugned. There is no merit in this submission since the cause of action is continuing one.

4. So far as other merits of the case are concerned, stand of respondent no.3 is that initially, on 07.08.1970, the applicant was appointed on a purely temporary basis and his pensionable service was rightly considered to have begun from the date of his regular appointment i.e. 16.12.1975. So far as increments falling due in

suspension period are concerned, respondent no.3 has relied on the order dated 05.06.2017 (Annexure R-3) which states-

ज्या अर्थी डॉ. प्रल्हाद किसन कवळे, सेवानिवृत्त, वैद्यकीय अधीक्षक, उत्तरवार शासकीय रुग्णालय, उमरखेड, जि. यवतमाळ यानी रिट याचिका क्र.२२५/२००५ दाखल करुन दाद मागितल्या प्रकरणी मा. उच्च न्यायालयाने त्यांना दि.११.१२.२०१४ च्या आदेशान्वये संशयाचा फायदा देऊन निर्दोष मुक्त केले आहे, त्याअर्थी त्यांचा निलंबन कालावधी फक्त सेवानिवृत्ती वेतनासाठी ग्राह्य धरून सदर कालावधीत ९० टक्के वेतन व भत्ते अदा करण्यात यावेत. डॉ. कवळे यांचा दि.०२.०१.१९९८ ते दि.३१.०५.२००० हा "निलंबन कालावधी" महाराष्ट्र नागरी सेवा (पदग्रहण अवधी. ..इ.) नियम १९८१ मधील नियम ७२ (५) व (७) अन्वये फक्त सेवानिवृत्ती वेतनासाठी ग्राह्य धरण्यास व त्यांना सदर कालावधीसाठी देण्यात आलेला निर्वाह भता समायोजित करुन उर्वरित वेतन व भत्ते अदा करण्यास शासन मान्यता देण्यात येत आहे.

4. Stand of respondent no.2 is as follows. The pension proposal was forwarded by the Respondent No.3 i.e. office of the District Civil Surgeon, General Hospital, Nagpur vide letter dated 20.07.2018. In Form 6 it was stated that the date of appointment was shown/mentioned as 16.12.1975 and the last pay prior to suspension was shown/mentioned as Rs.12,275/-. Accordingly, this Respondent office on the basis of proposal received from the Pension Sanctioning Authority/Department released on 16.08.2018 the pension Payment Order/Gratuity Payment Order. However, Respondent no.2 had vide letter dated 07.03.2022

requested PSA to verify the details and furnish the revised proposal, if admissible. Only on receipt of fresh proposal to the effect, further action could be initiated. The compliance was awaited.

5. The applicant has placed on record copy of letter dated 22.09.2022 (at page 82) written by respondent no.2 to respondent no.3.

This letter states-

Sir,

Please refer to your above cited letter, wherein as per para No.2, it is stated that this office, has mentioned the date of appointment as 16/12/1975 in form 25-B issued vide this office and accordingly your office had sent the pension proposal of Late Shri P.K.Kawale with noting of date of appointment as 16.12.1975 in form-6.

However, on verification of copy of form-25 8 (जोडपत्र १,२ एवं ३) available with this office the date of appointment is shown as 27.08.1970. A Xerox copy of the same is sent to you for verification and confirmation As per forwarding letter of the pension proposal sent vide your letter dated 20/07/2018, it is noticed that Dr.Prahlad Kisan Kawale is appointed vide depts. order dated-27-08-1970

It is therefore requested to confirm the date of appointment as 27-08-1970 and revised proposal with correct form-6 along with the service Book with the noting of correct date of appointment and pay of 1998 and 1999, if admissible, be sent to this office.

6. Having regard to the facts discussed hereinabove, following order shall be just and proper.

ORDER

The O.A. is allowed in the following terms-

The respondents 1 and 3 are directed to confirm the correct date of appointment of husband of the applicant and pay admissible to him for 1998 and 1999, and forward revised proposal, if found necessary, to respondent no.2 within two months from today. In case revised proposal is received by respondent no.2 from respondents 1 and 3, respondent no.2 shall do the needful with utmost expedition. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 05/07/2023
rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 05/07/2023.
and pronounced on