

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 172/2023 (S.B.)

Bhaskar Ramraoji Wankhade,
Aged 64 years, Occu. Retired,
R/o Plot No. 14, Ekta Nagar,
Near Borgaon Chowk, Nagpur-13.

Applicant.

Versus

- (1) The State of Maharashtra,
Through its Home Department,
Mantralaya, Mumbai.
- (2) The Director General of Police,
MS. Old Vidhan Bhavan, Coilaba, Mumbai.
- (3) The Commissioner of Police,
Nagpur City, Nagpur.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

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

WITH

ORIGINAL APPLICATION NO. 173/2023 (S.B.)

Ashok Amrutrao Paradkar,
Aged 64 years, Occu. Retired,
R/o Plot No. 95, Date Layout,
Jaitala Road, Nagpur.

Applicant.

Versus

- (1) The State of Maharashtra,
Through its Home Department,
Mantralaya, Mumbai.
- (2) The Director General of Police,
MS. Old Vidhan Bhavan, Coilaba,
Mumbai.
- (3) Commissioner of Police,
Nagpur City, Nagpur.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

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

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

COMMON JUDGMENT

Judgment is reserved on 21st February,2024.

Judgment is pronounced on 26th February, 2024.

Heard Shri N.R. Saboo, Id. counsel for the applicants and Shri
A.M. Khadatkar, Id. P.O. for the Respondents.

2. These connected O.As. are being decided by this common
judgment.

3. By orders dated 01.08.2009 (A-1) and 04.02.2008 [A-1(a)] the applicant in O.A. No. 172/2023, was promoted temporarily for a period of three months and eleven months, respectively as Police Sub-Inspector. Again by order dated 11.01.2013 (A-2) the applicant was promoted as Police Sub Inspector and he worked on this post till his retirement on superannuation on 30.04.2016 (A-3).

4. By orders dated 01.08.2019 (A-1) and 04.02.2010 (A-2) the applicant in O.A. No. 173/2023 was temporarily promoted as Police Sub-Inspector for three months and eleven months, respectively. Till his date of retirement on superannuation on 31.07.2016 he continued to work on the post of Police Sub Inspector.

5. Grievance of both the applicants is that their pension which ought to have been fixed on the basis of last pay of Police Sub Inspector drawn by them was not so fixed and instead it was fixed on the basis of pay of Assistant Sub Inspector. Hence, these Original Applications.

6. The respondents have resisted the O.As. on the following grounds. Ad-hoc promotions were given to the applicants to overcome administrative exigency. They were informed that on account of such ad-hoc promotions they could not claim any benefits. For these reasons the O.As. are liable to be rejected.

7. The applicants have relied on common judgment dated 07.06.2019 passed by Principal Bench of this Tribunal in a batch of Original Applications wherein it is held:-

"16. At this juncture it would be apposite to refer certain Rules of MCS Pension Rules. In Pension Rules, Rule 9 Clause 36 defines 'pay' as follows:

"36. "Pay means the amount drawn monthly by a Government servant as-

(i)

(ii)

(in)

(iv)

(v) In the 6th Pay Commission, the pay drawn in the prescribed pay band plus applicable grade pay but does not include any other type of pay like special pay, which the Government Servant was receiving immediately before his retirement or on the date of his death."

15. Rule 9 Clause 38 defines 'Pensionable pay' as follows:

"38. Pensionable pay means the average pay earned by a Government servant during the last ten months service [or last month's pay, whichever is more beneficial to the Government Servant]"

16. Rule 9 Clause 39 defines 'Pensionable Service' as follows:

39. Pensionable Service means service which qualifies the Government servant performing it to receive a pension from the Consolidated Fund."

17. At this juncture, it would be also apposite to refer G.R. No.PEN1009/CR33/SER-4, dated 30th October, 2009 issued by Finance Department, Government of Maharashtra in view of recommendation of 6th Pay Commission whereby modification has been made in Pension Rules for the purpose of grant of pension and family pension, gratuity, commutation, etc. Here, Clause 5.2 of Resolution is material, which is as follows:

"5.2 Linkage of full pension with 33 years qualifying service as per Rule 110(2) of Maharashtra Civil Services (Pension) Rules, 1982 is dispensed with from 27th February, 2009 (the date from which recommendations of Hakim Committee have been accepted). Once a Government Servant has rendered the minimum qualifying service of twenty years, pension shall be paid at 50% of the last basic pay or 50% of average basic pay received during the last 10 months, whichever is more beneficial to him. Therefore, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) rules, 1982 is deleted from 27th February, 2009. Retiring benefits to the Government servant in

such cases are explained in Annexure III. Accordingly, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent."

18. Subsequently, the Government of Maharashtra has issued Corrigendum dated 9th June, 2016, which is as follows:

"Following changes are made in para 5.1. & 5.2 of the Government Resolution dated 30th October, 2009 referred to above regarding revision of pension/ family pension of post 1st January, 2006 pensioners.

For the sentence "of the last basic pay", the sentence "the basic pay fixed for the post from which an employee has been retired' shall be substituted."

19. Thus, the conjoint reading of G.R. dated 13th October, 2009 and Corrigendum dated 9th June, 2016 makes it abundantly clear that, for the purpose of pension, the basic pay fixed for the post from which an employee has been retired is the criteria."

28. Now, turning to the facts of the present case, admittedly, the Respondents have extracted the work of PSI from the Applicants. On the cost of repetition, I would again like to mention that, there is no defence of non-eligibility or absence of substantive post. Therefore, harmonious construction of the Pension Rules in the light of aforesaid Judgment of Hon'ble Supreme Court clearly spells that, even if the promotion was under the garb of temporary promotion, the Respondents cannot deny retiral benefits to the Applicants on the basis of last drawn pay from which they stand retired. Needless to mention that the pension is not charity or bounty. It is the right of Government employee. The principle enunciated by Hon'ble Supreme Court in various decisions referred to above, are clearly attracted to the present set of facts. Therefore, it would be highly unjust and iniquitous to deny the pensionary benefits to the Applicants. Such pensionary benefits conferred upon them by statute cannot be taken away under the guise of temporary promotion for no fault on the part of Applicants, particularly after extracting the work of promotional post from them. This conclusion is again fortified in view of the corrigendum issued by State of Maharashtra on 09.06.2016, which specifically provides to consider basic pay fixed for the post from which an employee has been retired for the purposes of grant of pension.

8. The applicants have also relied on judgment of this Bench dated 21.12.2022 in O.A. No. 235/2021 wherein para 28 of judgment of Principal Bench dated 07.06.2019 is extracted.

9. In view of above referred legal position laid down by this Tribunal, I pass the following order:-

ORDER

- i) The O.As. are allowed.
- ii) The respondents are directed to grant retiral benefits to the applicants on the basis of last drawn pay of the post from which they stood retired, and release all consequential benefits to them **within a period of three months** from the date of receipt of this order.
- iii) No order as to costs.

Member (J)

Dated :- 26/02/2024
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 : 26/02/2024.
and pronounced on

Uploaded on : 27/02/2024.