

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 699 of 2022 (D.B.)

Dr. Balkrishna S/o Narayan Bangde,
Aged 69 years. Occu.: Retired, R/o Ruikar Wadi,
Civil Lines, Yavatmal-445001.

Applicant.

Versus

1) State of Maharashtra,
Through its Principal Secretary,
Medical Education and Drugs Department,
9th Floor, G.T. Hospital Complex Building,
Lokmanya Tilak Marg, New Mantralaya, Mumbai- 400001.

2) Commissioner,
Medical Education and Research,
Directorate of Medical Education and Research 4th Floor,
Dental College Building, St. Georges Hospital Compound, CST,
Mumbai-400001.

3) Dean,
Shri Vasantrao Naik Government Medical College,
Yavatmal.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman and
Hon'ble Mrs. Medha Gadgil,
Member (A).**

Date of Reserving for Judgment : 20th June,2024.

Date of Pronouncement of Judgment : 9th July,2024.

JUDGMENT

(Delivered on this 9th day of July,2024)

(The matter is heard through Video Conference)

Heard Shri N.D. Thombre, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was working on the establishment of respondent no.3 on the post of Professor (Ophthalmology). He was also holding the charge of Chairman, Medical Board along with two other members. Some allegations were made against the Medical Board regarding issuance of Medical Certificate. The departmental inquiry was initiated by the Government Memorandum / Charge sheet dated 22/08/2013. Inquiry Officer completed the said inquiry and report was submitted to respondent no.1 on 16/01/2017. Inquiry report was forwarded to the applicant by respondent no.1 and he was directed to submit his representation in defence within a period of 15 days. After the receipt of copy of inquiry report, the applicant submitted his detailed representation on 15/03/2017. The respondent no.3 forwarded the said representation by letter dated 16/03/2017 to respondent nos.1 and 2.

3. After the receipt of representation in defence of applicant, respondent no.1 by final show cause notice dated 10/07/2019 proposed the punishment of 20% deduction from the monthly pension of the applicant permanently. The applicant was directed to submit his detailed submission. Upon receipt of the letter dated 10/07/2019, the

applicant had submitted his detailed reply to respondent no.1 by letter dated 22/07/2019. Again the respondent no.3 by letter dated 26/07/2019 directed the applicant to submit his representation against the proposed punishment. The applicant on 09/08/2019 informed respondent no.3 that he has already submitted the same to respondent no.1 directly and is having acknowledgement of the same.

4. During the period of pendency of departmental inquiry, the applicant is retired, from the post of Professor (Ophthalmology) on 30/09/2017, after completion of the age of superannuation. Respondent no.3 issued Certificate on 31/10/2017 in which it is stated that the applicant is entitled for pensionary benefits.

5. The applicant retired on superannuation, the respondents have not completed the departmental inquiry pending against the applicant. The respondents are not paying the pension and pensionary benefits. The applicant is also not getting provisional pension, therefore, the applicant is compelled to file the represent O.A. for the following reliefs –

“(i) Quash and set aside the impugned enquiry initiated against the Applicant vide Office Memorandum dated 22/8/2013 being delayed and on the ground of delay and latches;

(ii) Direct the Respondents to release the full pension and pensionary benefits to the Applicant within stipulated period of 3 months from the date of order;

(iv) Direct the Respondents to pay the compensation to the tune of Rs. 20,00,000/- for the mental harassment to the Applicant as the pension and pensionary benefits are delayed.

(11) Direct the respondents to pay provisional pension to the applicant and admissible pensionary benefits as admissible under the Rules, during the pendency of the O.A. ”

6. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has committed misconduct when he was Incharge of Medical Board. The applicant has issued some Certificates without consultation of the concerned Specialists.... etc. Therefore, inquiry was started against him. During the inquiry, charges are proved. The Inquiry Officer submitted his report to respondent no.1. Final show cause notice was given to the applicant. Respondent nos.1 and 2 have taken decision to deduct 20% amount from the pension of the applicant. It is submitted that as per the G.R. dated 07/04/2008, respondent no.1 has to take sanction of the Maharashtra Public Service Commission (M.P.S.C.). The respondents have not obtained sanction from the M.P.S.C. Hence, the O.A. is liable to be dismissed.

7. During the course of submission the learned counsel for applicant has submitted that the applicant is retired in the year 2017. Inquiry report was submitted in the year 2017. The decision was taken by respondent no.1 to deduct 20% amount from pension. On

10/07/2019, the applicant had submitted his representation. Till date it is not decided. The learned counsel for applicant has submitted that the applicant is not getting any pension and pensionary benefits or provisional pension. He has pointed out various letters submitted by the applicant from 2020 to respondent no.3. No any action is taken by the respondents.

8. The learned counsel for applicant has pointed out the orders passed by this Tribunal dated 16/01/2024, 19/01/2024, but till date the respondents have not finalised the inquiry proceedings, therefore, inquiry is liable to be quashed. In support of his submission pointed out the G.R. dated 07/04/2008. The learned counsel for applicant has pointed out the Judgment of the Hon'ble Bombay High Court in W.P. No.7068/2023, decided on 19/10/2023 and the Judgment of the Hon'ble High Court in W.P.No.3656/2021, decided on 12/01/2023. The learned counsel for applicant has submitted that in view of the Judgment departmental inquiry is liable to be quashed and set aside. Hence, the O.A. be allowed.

9. Heard learned P.O. Shri V.A. Kulkarni. He has pointed out the G.R. dated 07/04/2008 and submitted that respondent no.1 cannot finalise the punishment order without the sanction of M.P.S.C. The departmental inquiry is still pending. It is not finalised. Hence, in view of the Rule 27 of the Maharashtra Civil Services (Pension) Rules,

1981, the applicant is not entitled to get pension and pensionary benefits. Therefore, the O.A. is liable to be dismissed.

10. We have patiently heard learned counsel for both the sides. From the perusal of documents and submission, it is clear that the applicant is retired on 30/09/2017. There is no dispute that the departmental inquiry was initiated in the year 2013. Since last 11 years, departmental inquiry is not finalised. The applicant is not getting any provisional pension. The respondents have not paid any amount of pension or pensionary benefits. Letters filed by the applicant show that he was / is in dire need of pension amount. His daughter is learning and he also wants the said benefit for his day to day expenditure.

11. The learned P.O. has relied on the G.R. dated 07/04/2008. Para-2&3 of the G.R. is reproduced below –

“२. विभागीय चौकशी सुरु करण्याचा निर्णय होऊन पाच वर्षे किंवा त्यापेक्षा जास्त कालावधी झालेला आहे, अशा प्रकरणी विभागीय चौकशी दीर्घकाळ प्रलंबित राहण्यासाठी कोण जबाबदार आहे याची निश्चिती विभाग प्रमुखांनी करावी तसेच आवश्यकतेनुसार संबंधितांविरुद्ध शिस्तभंगाची कार्यवाही करावी.

३. विभागीय चौकशीचा अहवाल शिस्तभंगविषयक प्राधिकाऱ्याकडे प्राप्त झाल्यानंतर ज्या प्रकरणात महाराष्ट्र लोकसेवा आयोगाचा सल्ला आवश्यक नाही अशा सर्व प्रकरणात विभागाने दोन महिन्यांच्या कालावधीत अंतिम निर्णय घ्यावा. ज्या प्रकरणात महाराष्ट्र लोकसेवा आयोगाचा सल्ला आवश्यक आहे अशा प्रकरणी तो प्राप्त झाल्यानंतर एक महिन्यांच्या कालावधीत अंतिम आदेश काढण्यात यावेत.”

12. The said G.R. clearly shows that the departmental inquiry shall not be kept pending more than 5 years. The responsible officer shall be held responsible for pendency of the departmental inquiry and necessary action shall be taken against him. From the perusal of G.R. (para-2), it is clear that the departmental inquiry shall not be kept pending for more than 5 years. In the present O.A., departmental inquiry against the applicant is pending from 2013, i.e., since last more than 11 years. As per the Clause-3 of the G.R., the permission of M.P.S.C. is required to take the final decision. But it appears that till date the respondents have not submitted any proposal to the M.P.S.C.

13. This Tribunal passed the order dated 16/01/2024. It is reproduced below –

2. The applicant is aggrieved by prolonged pendency of departmental enquiry against him. He has inter alia relied on G.R. dated 07.04.2008 issued by G.A.D., Government of Maharashtra. In this G.R. para no. 3 states as under:-

3. विभागीय चौकशीचा अहवाल शिस्तभंगविषयक प्राधिकाऱ्याकडे प्राप्त झाल्यानंतर ज्या प्रकरणात महाराष्ट्र लोकसेवा आयोगाचा सल्ला आवश्यक नाही अशा सर्व प्रकरणात विभागाने दोन महिन्यांच्या कालावधीत अंतिम निर्णय घ्यावा. ज्या प्रकरणात महाराष्ट्र लोकसेवा आयोगाचा सल्ला आवश्यक आहे अशा प्रकरणी तो प्राप्त झाल्यानंतर एक महिन्यांच्या कालावधीत अंतिम आदेश काढण्यात यावेत.

3. Respondent no. 3 has filed reply to the O.A. on 09.03.2023. In para no. 5 of said reply it is mentioned that proposal was to be submitted to M.P.S.C. for their approval. It is submitted that instructions will be taken in respect of further steps taken by the

department, if any, to conclude the enquiry pending against the applicant.

4. *Ld. counsel for the applicant states that the enquiry, on account of its inordinately long pendency, is required to be quashed. Ld. P.O. shall make statement regarding further progress made in the matter. It would be open to the applicant to raise all contentions including his principal contention regarding prolonged pendency of departmental enquiry being fatal.*

5. *On oral request of Id. P.O., **S.O. 19.01.2024 for final hearing.***

14. On 19/01/2024 following order was passed –

“2. Ld. P.O. has placed on record communication dated 19.01.2024 (marked X for the purpose of identification). He seeks two months time.

3. The concerned shall make every endeavour to ensure that the decision in respect of quantum of punishment to be imposed on the applicant shall be taken within four weeks from today.

*4. On oral request of Id. counsel for the applicant, **S.O. four weeks.”***

15. Even after passing abovestated orders, the respondents have not taken any final decision of the departmental inquiry. The applicant is not paid any pension and pensionary benefits. On the other hand, the respondent no.1 (Under Secretary) sent one letter to the C.P.O. The material contention of the letter is reproduced below –

“महोदय,

डॉ. बी. एन. बांगडे, सेवानिवृत्त प्राध्यापक, नेत्रशल्यचिकित्साशास्त्र, श्री. वसंतराव नाईक शासकीय वैद्यकीय महाविद्यालय, यवतमाळ यांच्या विभागीय चौकशी प्रकरणी सामान्य प्रशासन विभागाने डॉ. बी. एन. बांगडे यांना बजावण्यात आलेल्या दुसऱ्या कारणे दाखवा नोटीशीस अनुसरून सादर केलेल्या निवेदनात उपस्थित केलेल्या मुद्द्यांबाबत विभागाने पुन्हा तपासावे असे अभिप्राय दिले आहेत. डॉ. बांगडे यांनी दुसऱ्या कारणे दाखवा नोटीशीस अनुसरून सादर केलेल्या निवेदनातील मुद्द्यांची तपासणी करून आवश्यक असल्यास त्याप्रमाणे शिक्षेचे आदेश सुधारीत करून त्यास सामान्य प्रशासन विभागाच्या मान्यतेनंतर ते महाराष्ट्र लोकसेवा आयोगास मान्यतेस्तव सादर करावे लागेल. आयोगाच्या मान्यतेनंतर शिक्षेत बदल झाल्यास सदर प्रस्तावास सक्षम प्राधिकारी यांची मान्यता घ्यावी लागेल. सदर प्रक्रिया साधारणतः २ महिन्यात पूर्ण करण्यात येईल ही बाब मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, खंडपीठ नागपूर यांच्या निदर्शनास आणण्यात यावी, ही विनंती.”

16. It appears that the respondents are not deciding the departmental inquiry finally. They are not paying pension and pensionary benefits to the applicant. Even during the pendency of departmental inquiry, the employee is entitled to get provisional pension. The respondents are not paying any provisional pension to the applicant.

17. The learned counsel for applicant has pointed out the decision of the Hon'ble Bombay High Court, Bench at Nagpur in W.P. No.7068/2023, decided on 19/10/2023. The Hon'ble High Court in para-14 & 15 held as under –

“ (14) The delay in conducting the enquiry which has occurred in this case has naturally caused sufferings to the respondent who retired way back on 31st August, 2015. As held by the Hon'ble Supreme

*Court in the case of **Prem Nath Bali** (supra), it is the duty of the employer to ensure that the departmental enquiry initiated against a delinquent employee is conducted within the shortest possible time by taking priority measures. Such observations of the Hon'ble Supreme Court assume more significance in case the departmental proceedings are to be drawn against a retired employee, that too, for enquiring into the allegations which are not so grave rather are minor in nature.*

15. For the aforesaid reasons, we do not find any good ground to interfere with the judgment passed by the Tribunal, which is under challenge in this writ petition.

18. In W.P. 3656/2021, the Hon'ble Bombay High Court, Bench at Nagpur has held in para-6 as under –

“(6) The learned Assistant Government Pleader has filed the reply and opposed the application stating that the order passed by the Maharashtra Administrative Tribunal is without jurisdiction as the petitioner is transferred to Nashik and the Enquiry Officer from the Regional Departmental Enquiry Office, Nashik had conducted and completed the departmental enquiry. The petitioner would not have invoked the jurisdiction of the Administrative Tribunal at Nagpur. In the affidavit, respondent No.2 has stated that the enquiry is conducted in the stipulated time and submitted detailed enquiry report on 06.11.2020 to the respondent No.1 and has supported the order passed by the learned Maharashtra Administrative Tribunal on 19/07/2021.”

19. The learned P.O. has pointed out the Judgment in O.A.No.740/2018. Relying on the decision of the Hon'ble Supreme Court in the case of **State of M.P. and Ano. Vs. Akhilesh Jha and**

Ano.,2022 (1) Mh.L.J.,557, this Tribunal has directed to decide the inquiry expeditiously. The said orders were already passed by this Tribunal on 16/01/2024 and 19/01/2024. Those orders are reproduced above. It appears that the respondents are not following the direction of this Tribunal. They are not taking any final decision. Hence, cited decision in O.A.No.740/2018 is not applicable. Another Judgment of C.A.T. in O.A.No.2464/2016 is also on the same footing.

20. The Judgment of the Hon'ble Supreme Court in the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi, AIR 2016 SC 101** is considered in Writ Petition No.7068/2023. As per the Judgment of the Hon'ble Supreme Court in the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi (cited supra)**, it is clear that the employer shall complete the departmental inquiry within six months and outer limit is given one year. The respondents are keeping the departmental inquiry pending against the applicant since last 13 years. The letter sent to the C.P.O. dated 19/01/2024 clearly shows that till date respondent no.1 has not submitted any proposal to the M.P.S.C. for approval. Therefore, it is clear that the respondents are lingering the departmental inquiry only to harass the applicant. Hence, in view of the Judgment of the Hon'ble High Court in the above referred Writ Petitions, it is clear that the departmental inquiry needs to be quashed and set aside. Hence, we pass the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The departmental inquiry initiated vide office memorandum / charge sheet dated 22/08/2013, is hereby quashed and set aside.
- (iii) The respondents are directed to release the full pension and pensionary benefits to the applicant within a period of three months from the date of receipt of this order.
- (iv) No order as to costs.

(Medha Gadgil)
Member(A).

(Justice M.G. Giratkar)
Vice Chairman.

Dated :- 09/07/2024.

*dnk...

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman & Member (A).

Judgment signed on : 09/07/2024.