

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.4655 OF 2014**

Motilal s/o Babulal More

Age: 59 Yrs., occu. Nil

Pensioner, r/o Plot No. 10-A,

Saraswati Nagar, Near Wagheshwari

Mata Mandir, Nandurbar-425412.

- PETITIONER

VERSUS

1) The Zilla Parishad,  
Through its Chief  
Executive Officer,

2) The State of Maharashtra  
Through the Secretary,  
Rural Development &  
Water Conservation  
Department, Mantralaya,  
Mumbai.

- RESPONDENTS

\*\*\*\*\*

Mr. Ajay S. Deshpande, Advocate for Petitioner;

Mr. PS Patil, Advocate for Resp.No.1;

Mrs. SK Kadam, AGP for Resp.No.2.

-----

**CORAM : S.S.SHINDE &  
P.R.BORA, JJ.**

**DATE : 15<sup>th</sup> September, 2015.**

**ORAL JUDGMENT (PER:-S.S.SHINDE,J.)**

1) Heard. Rule. Rule returnable forthwith by consent of learned Counsel appearing for the respective parties.

2) It is the case of the petitioner that on 31st May, 2013, he stood retired from services on attaining the age of superannuation. The petitioner has been already paid pension and pensionary benefits save and except Gratuity of Rs.3,65,310/- and commutation amount of Rs.4,44,802. After waiting for more than six months' period, the petitioner has submitted a representation requesting to release gratuity and commutation amount by referring to the provisions of Rule 27 of The Maharashtra Civil Servoces (Pension) Rules, 1982 (for short, the Rules of 1982), however, there was no response from Respondent No.1.

3) On 29.1.2014, Respondent No.1 issued a show cause notice to the petitioner as to why disciplinary action should not be initiated against him notwithstanding express bar imposed by Rule 27 of MCS

(Pension) Rules, 1982. The petitioner immediately replied the said show cause notice. Aggrieved by the said intended disciplinary proceedings sought to be initiated against the petitioner, the present petition is filed.

4) Learned Counsel appearing for the petitioner invited our attention to the provisions contained in Rule 27 of The Rules of 1982, and submits that such disciplinary inquiry cannot be initiated in respect of any event, which took place more than four years before such institution of inquiry. According to the learned Counsel for the petitioner, for the first time, a copy of the charge sheet was issued to the petitioner on 11.3.2015 for the alleged irregularities committed during the year 2002 to 2005 and, therefore, it was not permissible for the respondents to initiate the disciplinary proceedings for the events, which have been taken place prior to more than four years from institution of such proceedings.

5) The learned Counsel for the petitioner also invited our attention to sub-rule (6) of Rule 27 of

the Rules of 1982, and submits that the departmental proceedings shall be deemed to be instituted on the date on which statement of charges was issued to the employee. In the present case, the charge sheet has been issued on 11.3.2015 and, therefore, in view of provisions contained in sub-rule (6) of Rule 27 of the Rules of 1982, date of issuance of charge sheet is important so as to reckon the period of alleged irregularities/illegalities from issuance of such charge sheet by the respondents. During the course of arguments, he placed reliance on unreported judgment of this Court in the case of Bhagwan Manikrao Chavan Vs. The Zilla Parishad, Aurangabad and Ors. (WP No.4807/2014, decided on 10.09.2014) and submits that, similar fact situation was considered and on interpretation of provisions of Rule 27 of the Rules of 1982, the Division Bench has held that taking into consideration the events, which happened prior to four years of institution of such inquiry, the departmental inquiry cannot be proceeded further, and same was quashed.

6) On the other hand, learned Counsel appearing for the respondents submits that so far as sanction

from the Government is concerned, in the present case it was not necessary, since the petitioner was serving as Class-III employee. The learned Counsel further invited our attention to para 27 of the judgment in the case of U.P. State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon - IR 2008 SC 1235(1) and submits that no rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. It is submitted that along with the petitioner, there are other employees also to whom charge sheet was issued and, therefore, outcome of the present petition will affect on the fate of the cases of other employees, wherein charge sheet is already issued.

7) We have heard the learned Counsel for the parties. With their able assistance, we have perused the contents of the petition, grounds raised, annexures thereof and the affidavit in reply filed on behalf of Respondent No.1.

8) Certain undisputed facts are, that the petitioner stood retired from service on 31st May,

2013. Charge sheet has been issued to the petitioner on 11th March, 2015. The irregularities and illegalities alleged to have been committed by the petitioner during 2002 and 2005. Pensionary benefits are already released in favour of the petitioner on his retirement and the amounts towards gratuity and commutation are not released. On these undisputed facts, if the case of the petitioner is examined, same is squarely covered by sub-rule (2)(b)(ii) and sub-rule (6) of Rule 27 of the Rules of 1982. As already observed, admittedly, charge sheet is issued on 11.3.2015. In this view of the matter, the case of petitioner squarely comes within the ambit of aforesaid rule and covered by the ratio laid down by the Division Bench judgment of this Court in the case of Bhagwan Manikrao Chavan Vs. The Zilla Parishad, Aurangabad and Ors. (cited supra).

9) In the light of the aforesaid discussion, the departmental enquiry proceedings, sought to be initiated against the petitioner, do not deserve to be continued further. In the result, the writ petition is allowed in terms of prayer clause (A). So far as prayer clause (B) of the petition is

concerned, the respondents to take necessary steps, keeping in view the date of retirement of the petitioner, as expeditiously as possible and preferably within a period of three months from today.

10) Rule is made absolute in the aforesaid terms with no order as to costs.

**sd/-**  
**(P.R.BORA)**  
**JUDGE**

**sd/-**  
**(S.S.SHINDE)**  
**JUDGE**

bdv/