IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3582 OF 2013

Gopal s/o Digambarrao Baride,
Age: 67 years, Occu: Retired,
R/o: Dhondipura, Beed,
Taluka & District Beed ...PETITIONER

VERSUS

The Municipal Council, Beed
Through its Chief Officer,
R/o : Beed …RESPONDENT

Mr Milind Patil (Beedkar), Advocate for petitioner;
Mr G. K. Thigle, Advocate for respondent

CORAM : MOHIT S. SHAH, C.J. AND
N.W. SAMBRE, J.

(Date of reserving
the judgment : 23rd March, 2015

Date of pronouncing
the judgment : 31st March, 2015)

JUDGMENT : (PER : N. W. SAMBRE, J)

Rule. Rule is made returnable forthwith and by consent, the matter is heard finally.

2. The present petition under Article 226 of the Constitution of India is for seeking directions to the respondent – Municipal Council to finalize the pension of the petitioner and make payment along with other monetary dues, including payment of gratuity, commutation of pension, etc. along with interest at the rate of 18% per annum, as are payable to the petitioner. By way of amendment, the petitioner has prayed for declaration that the departmental enquiry initiated against him vide letter dated 10th July, 2009, be held to be illegal and bad in law.

3. The brief facts as are relevant for the purpose of deciding the present writ petition are as under :-

The petitioner claims that he joined the services of respondent – Municipal Council w.e.f. 25th June, 1985 in the capacity of Clerk in class III cadre. Upon adorning permanency in the services of Municipal Council, the petitioner was posted as a Clerk in various Departments, viz. Birth and Death Section, Property Tax Revision, G.A.D., etc.

4. It is claimed by the petitioner that he completed 58 years of age on 30th September, 2003. As such, in view of the provisions of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as the “Pension Rules, for the sake of brevity), the petitioner stood superannuated by an order dated 28th March, 2003, with effect from 30th September, 2003.

5. The petitioner further claims that upon retirement, his total length of service was assessed to 18 years, 3 months and 3 days on the post of Clerk in the respondent – Municipal Council and was given provisional pension to the tune of Rs.1,275/-.

6. It is claimed by the petitioner that in the light of provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, he was served with a charge-sheet proposing an enquiry against him after his retirement as it was noticed that from 1997 to 1999-2000 he had collected the copying charges, however, neither the receipt book was submitted by him nor the amount was deposited in the office of the respondent Municipal Council and as such has violated the provisions of section 79 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. One more

charge was levelled against the petitioner, that while posted as Storekeeper, he had not carried out audit of the recoveries made under the heads “house tax”, “water tax”, “education fund”, etc.

7. In addition to above, the petitioner was also charged with non compliance of short-falls noticed in the audit and not responding to the show cause notice issued to him.

8. The petitioner submitted his reply to the charges and the said enquiry proceedings were completed and a report was submitted by the Enquiry Officer, on 29th December, 2009 by giving finding that both the charges were proved against the petitioner.

9. According to the petitioner, the disciplinary proceedings are not tenable against him in view of the fact that he stood retired with effect from 30th September, 2003. The provisions of Rule 27 of the Pension Rules, empower the respondent to initiate the proceedings against the petitioner with prior sanction of the Government and is required to be restricted in respect of an event which took place within four years before such initiation. According to him, perusal of the allegations against him reflects that the same was in relation to

the year 1997 to 1999-2000 and the non-compliance of the audit report pertained to the period 1991-95. As such, in his submission, the proceedings could have been initiated prior to retirement of the petitioner, i.e. 30th September, 2003 and in any case not later than four years from the date reflected in the charges levelled against the petitioner. According to him, as such the disciplinary proceedings itself are not tenable.

10. Mr Thigle, learned Counsel appearing on behalf of the respondent – Municipal Council, while opposing the said contentions, has invited attention of this Court to the defaults committed by the present petitioner and would urge that the nature of charges levelled against the petitioner and as are proved in the departmental proceedings, as is apparent from the enquiry report dated 29th December, 2009, is very serious. According to him, the charges of financial defalcations are proved against the petitioner and what is remained to be done is to proceed against petitioner for recovery of the loss caused to the respondent – Municipal Council. In addition to above, he would urge that while petitioner was working with the respondent – Council, upon inspection it was noticed that the property register of house Nos.1-8-113, 1-14-69, 2-

14-98, 2-16-266 and 1-5-962 were manipulated by him without any authority, whereby area of the respective properties was tampered, resulting into respondent – Council facing wrath of the Civil Court and apology was required to be tendered for the above referred defaults of the petitioner in Regular Civil Suit No.146 of 2000.

11. In addition to above, learned Counsel for the respondent has submitted that vide order dated 7th June, 2004, the pension matter of the petitioner was finalized and monthly pensionary benefits are released to him, however, the amount of gratuity to the tune of Rs.41,400/- was withheld in view of above disciplinary proceedings. Thus, he prayed for dismissal of the petition.

12. From the rival contentions of the parties, this Court is required to decide an issue, whether it is open for the respondent – Municipal Council to proceed against the petitioner departmentally in 2009 having regard to the fact that he stood retired from the service with effect from 30th September, 2003.

13. The services of the present petitioner, being an employee of Municipal Council, are indisputably governed by the provisions of

the Maharashtra Civil Services Rules. The provisions of Rule 27 of the Pension Rules, read thus :-

"**27. Right of Government to withhold or withdraw pension**

(I) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also under the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were

commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of Superannuation or otherwise and against whom any departmental or judicial proceedings are instituted

or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

(5)Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (I) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6)For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date: and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance in made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court. “

Reading of the complete Rule takes this Court to the only conclusion that it is complete Code in itself which governs the issue sought to be raised in the present petition. Admittedly, the petitioner stood retired on 30th September, 2003. In the light of the provisions of the above referred Rule, it is not permissible for the respondent – Municipal Council to withhold retirement benefits of the petitioner. The said Rule contemplates a prior sanction from the Government and the institution of the departmental proceedings within four years from the date of occurrence of the event.

14. If sub-rule (2) of said Rule is read with sub-rule 1 (b) (a) of the same, it would be amply clear that the disciplinary proceedings shall be deemed to have been instituted on the date on which the statement of charge is issued to the concerned employee.

15. In the present case, it is not in dispute that after retirement on 30th September, 2003, the petitioner was served with a charge-sheet, which itself is dated 10th July, 2009, alleging the events for which charges are levelled against him and which have taken place some time in 1999-2000. In accordance with the above referred Rule, if the disciplinary proceedings were to be instituted against the

petitioner, that could have been only by 2004-05 and not subsequent thereto. In that view of the matter, in our view, case of the petitioner is squarely governed by the provisions of Rule 27 of the Pension Rules *qua* right of the respondent to withhold or withdraw the pensionary benefits. In view thereof, the order of the respondent withholding the pensionary benefits of the petitioner, in our view, is not sustainable.

16. We are fortified in our view, in the light of the law laid down by this Court in the matter of **Ratnakar Bhagwanrao Mahajan vs. District & Sessions Judge, Jalna & anr**., reported in **2009 (2) Mh.L.J. 312**. In paragraph 6 of the said judgment, this Court has observed thus :-

> *"From these observations, it would be clear that initiation of the departmental proceedings would commence from the date of issuance of regular show cause notice by the Disciplinary Authority. In the instant case, the show cause notice was issued on 5-10-2004, much after the retirement of the employee on 6-9-2004. Rule 27 of the Pension Rules confers the powers on the Government to withhold or withdraw the pension. The said Rule provides the procedure when such an order can be passed. In the case of an employee, who retires proceedings can still be initiated as set out in Rule 27 (2)(b) if*

> *those predicates are satisfied. One of the predicates, as pointed out earlier, is that departmental proceedings can not be initiated without the sanction of the Government. The expression "save with the sanction of the Government" must be read to mean a mandatory requirement for a Disciplinary Authority to initiate the proceedings. Without that sanction the proceedings would be without jurisdiction considering that the employee is no longer in service.*"

17. Admittedly, in the present case, the requirement of Rule 27 (2) (b)(i) of the Pension Rules, i.e. prior sanction from the Government to proceed against petitioner is absent. In view thereof and also in the light of the law laid down by this Court in the matter of Ratnakar (cited supra), the departmental proceedings against the petitioner are also not tenable.

18. As a result, the enquiry proceedings initiated against the petitioner are without any lawful authority and are accordingly held to be contrary to the very scheme of Rule 27 of the Pension Rules. Thus, the instant writ petition succeeds.

19. In the light of what has been observed herein above, Rule is made absolute in terms of prayer clauses (B) and (D) with no order as to costs.

(CHIEF JUSTICE)

(N.W. SAMBRE, J.)

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