

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

WRIT PETITION NO. 4191 OF 2014

Vaidya Narendra S/o Purushottam
Dalal,
Aged about 59 years, Occu. : Retired,
R/o Indraprasta, 30 near Saimandir,
Ayodhyanagar, Nagpur 440 024. .. Petitioner

Versus

1. State of Maharashtra,
Through its Secretary Medical
Education and Drugs Department,
G.T. Hospital Complex 9th Floor
Lokmanya Tilak Road,
Mantralaya, Mumbai 400 001.
2. Director of Ayurved Maharashtra
State Government Dental College
Hospital Building 4th Floor,
St. Georges Hospital Compound,
P. D. Demaloo Road Fort,
Mumbai 400 001.
3. Dean,
Government Ayurved College,
Tuljapur Road,
Usmanabad - 413 501. .. Respondents

Shri N. D. Thombre, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

Date on which reserved for judgment : 03.03.2015

Date on which judgment pronounced : 08.05.2015

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner had filed Original Application bearing No. 485 of 2013 before the Maharashtra Administrative Tribunal at Aurangabad (for short "M.A.T."). The petitioner prayed for following reliefs in the said original application.

"i) Direct the Respondent No. 1 Secretary Medical Education and Drugs Department to issue order accepting the voluntary retirement of the applicant given vide notice dated 31/7/2009;

ii) Direct the respondents to release the post retiral claims of the applicant such as pension, gratuity communication, leave encashment, traveling allowance, etc. within stipulated period of 3 months thereafter;

iii) Direct the respondents to pay interest @ 12% per annum on all these above claims from 1/2/2010 till its realization;"

3. The Maharashtra Administrative Tribunal partly allowed the said original application. It declared that the petitioner stood voluntarily retired as on 30th September 2009, however, denied the pensionary benefits. The reason for denial for

pensionary benefits is that, the petitioner has not submitted the validity certificate in respect of his caste claim. The petitioner was appointed from reserved category and as validity is not submitted, nor the caste certificate as belonging to Special Backward Class is submitted, the appointment of petitioner as Reader is not legal. Aggrieved thereby the petitioner has filed the present writ petition.

4. Mr. Thombre, the learned counsel for the petitioner strenuously contends that once the Tribunal had directed to accept the voluntary retirement application of the petitioner and had further held that petitioner stood retired pursuant to his application for voluntary retirement on 30th September 2009, then the pensionary benefits as available to a voluntary retired employee should have been awarded. The learned counsel submits that, the Tribunal had misread the Government Resolution dated 18.05.2013. Sub clause (6) of clause 2 of the Government Resolution is relevant. An affidavit is given that the petitioner belongs to Koshti (Special Backward Class) and left his claim as belonging to Halba (Scheduled Tribe). The petitioner is appointed as a lecturer in the year 1989 by following due selection process. Thereafter Reader in the year 1997 and promoted as Associate Professor in the year 2002. As such, the petitioner is entitled for the retiral benefits. The learned counsel submits that, the petitioner is in Government employment right since 1984 as a demonstrator and since 1989 as a lecturer. As

the retiral benefits are illegally withheld, the petitioner is also entitled for interest at the rate of 12% per annum on all the said claims from 01.02.2010.

5. The learned Assistant Government Pleader submits that, the Tribunal had rightly negated the relief of pensionary benefits. The petitioner failed to get the validity certificate in respect of his tribe claim as belonging to Halba (S.T.). The petitioner was appointed from scheduled tribe category. Even the petitioner failed to submit the certificate of Koshti, which the petitioner claimed. As such, the benefit of Government Resolution dated 18.05.2013 is also not available. Even the benefit of Government Resolution dated 30th July 2013 is not available to the petitioner, in absence of the caste certificate being produced. As such, the petitioner is not entitled for the retiral benefits.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The Tribunal has granted the first prayer of the petitioner that is it has declared the petitioner as having stood retired vide his application for voluntary retirement with effect from 30th September 2009. It is not disputed that, the petitioner was initially appointed on 06.01.1984 with the respondents as a demonstrator. Thereafter on 03rd November 1988 was promoted

as a lecturer. The petitioner was appointed as a lecturer by direct nomination on 17th October, 1989. On 20th September 1997 the petitioner was appointed as a Reader by nomination from reserved category and vide order dated 23rd July, 2002 the petitioner was promoted to the post of Associate Professor for temporary period and he continued to work on the said post till the application for voluntary retirement is made. After considering the case put forth, the Tribunal came to the conclusion that the petitioner stood retired from the post of reader. In para No. 8 of the judgment of the Tribunal it is held by the Tribunal that the petitioner stood retired from the post of reader pursuant to his application for voluntary retirement with effect from 31.10.2009, whereas in the operative part it is stated that, the petitioner stood retired as on 30th September, 2009 pursuant to his application for voluntary retirement.

8. In case, if appointment of the petitioner would have been illegal, the Tribunal could not have directed acceptance of the application of the petitioner for voluntary retirement, nor any declaration could have been given by the Tribunal that the petitioner stood voluntarily retired with effect from 31.10.2009. The said finding that the petitioner stood voluntarily retired with effect from 30th October, 2009 is not assailed by respondents/employer. The said finding is accepted by the respondents/State.

9. Once it is held that the petitioner stood voluntarily retired with effect from 31.10.2009, then as per the provisions of the Maharashtra Civil Services (Pension) Rules 1982 (for the sake of brevity hereinafter called as "Pension Rules"), the petitioner would be entitled for the retiral benefits as laid down under the provisions of the Pension Rules. Sub Rule 6 of Rule 66 of the Pension Rules reads as under :

**THE MAHARASHTRA CIVIL SERVICES
(PENSION) RULES 1982**

1.
2.

**66. Retirement of completion of 20 years
qualifying service.**

- (1)
- (2)
- (6) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the pay as defined under rules 60 and 61 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purpose of calculating pension and gratuity.

10. In the light of the above, once it is held that, the petitioner stood voluntarily retired, then sub Rule 6 of Rule 66 of the Pension Rules comes in operation and the petitioner would be entitled for the benefit of retiral benefits as laid down in Sub Rule 6 of Rule 66 of the Pension Rules. Thus, the said aspect has

not been considered by the Tribunal. On the contrary, the Tribunal has gone on the premise that the appointment of the petitioner as reader is illegal, as such is not entitled for pensionary benefits.

11. The issue whether the appointment of the petitioner was legal or not is not germane, more particularly in view of the fact that, the Tribunal has declared the petitioner as having stood voluntarily retired with effect from 31.10.2009. Once the petitioner stands voluntarily retired as reader with effect from 31.10.2009, he would be entitled for the retiral benefits as provided under Rule 66 of the Pension Rules.

12. In the light of the above, we set aside the order of the Tribunal to the extent that the petitioner is not entitled for the pensionary benefits.

13. As far as interest part is concerned, we are not inclined to grant any interest to the petitioner, as it appears that, there was bonafide dispute between the parties and that the petitioner was also negligent in submitting caste certificate of Special Backward Class.

14. In the light of the above, we pass the following order.

15. The order of the Maharashtra Administrative Tribunal

Aurangabad to the extent of denying the pensionary benefits is quashed and set aside. The respondents shall consider the petitioner as having retired from the post of Reader and shall calculate and pay the pension considering the pay scale of reader as last drawn salary and not that of Associate Professor to which he was promoted in the year 2002, as the finding of the Tribunal is that, the petitioner stood retired as Reader. The prayer for grant of interest is rejected. The writ petition as such is partly allowed. No costs.

Rule made absolute in above terms.

Sd/-

[V. L. ACHLIYA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/May 15