

kps

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

WRIT PETITION NO. 265 OF 2012

NAYANKUMAR SHIVAPPA WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...

Advocate for Petitioner : Mr.Gaikwad Pandurang M.

AGP for Respondent Nos.1 & 3: Mrs.Y.M.Kshirsagar, AGP

Advocate for Respondents : Mr.Chavan P.S. for R/2.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th June, 2015

Per Court:

1 On 24.06.2015 considering the statement made by Mr.Chavan, learned Advocate, who was supported by the learned AGP, I have passed the following order:-

“1 *This petition has been consistently adjourned from 11.12.2013 at the request of the Petitioner till 03.04.2014. None was present for the Petitioner on 05.01.2015. Thereafter, the matter has again been adjourned. None appears for the Petitioner today.*

2 *Mr.Chavan, learned Advocate for Respondent No.2, submits that the sentence awarded by this Court in Criminal Appeal No.135/1997 by it's judgment and order dated 06.02.2009 thereby, convicting the Petitioner under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 to suffer*

rigorous imprisonment of one year and pay fine of Rs.10,000/- or suffer further six months' rigorous imprisonment, has been upheld by the Honourable Supreme Court in Criminal Appeal No.135/2009 by its judgment dated 13.02.2015. He, therefore, submits that in the light of the judgment delivered by the Apex Court, this petition does not survive.

3 *Since none appears for the Petitioner today, stand over to 29.06.2015.*

4 *If none appears for the Petitioner on the next date, the submissions of Mr.Chavan supported by the learned AGP shall be accepted and the petition shall be disposed of.”*

2 Mr.Gaikwad, learned Advocate appearing on behalf of the Petitioner, has gone through the judgment delivered by the Apex Court dated 13.02.2015 by which Criminal Appeal No.1352/2009 filed by the Petitioner (Nayankumar Shivappa Waghmare) was dismissed. His bail was cancelled and he was directed to surrender before the Court concerned to serve out the remaining part of the sentence.

3 A copy of the said judgment of the Apex Court is placed on record, which is marked as “Exhibit X” for identification.

4 After going through the judgment Exhibit-X, Mr.Gaikwad submits that the Appellant before the Apex Court in Criminal Appeal No.1352/2009 which has been dismissed by the Judgment Exhibit-X, is

the same Petitioner in this petition.

5 The Petitioner herein had sought the quashing and setting aside of the impugned order dated 08.07.2009 passed by Respondent No.2 / Chief Executive Officer, Zilla Parishad, Osmanabad and the judgment and order dated 30.06.2011 delivered by Respondent No.3/ Divisional Commissioner, Aurangabad.

6 On account of the conviction suffered by the Petitioner in this Court, his pensionary benefits were permanently withdrawn under the Maharashtra Civil Services (Pension) Rules, 1982. His grievance on this count was negated by Respondent No.2 by the order dated 08.07.2009. His appeal on the ground that the Apex Court is seized with the Criminal Appeal, was dismissed by the impugned order dated 30.06.2011.

7 Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under:-

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

(1) *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 order 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 re-employment 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 re-employment, 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 (1) 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 is made, and*
 - (ii) *in the case of civil proceedings, on the date of presenting the plaint in the Court. ”*

8 In the light of the above, especially, in the light of the fact that the Apex Court has dismissed the Appeal filed by the Petitioner vide judgment Exhibit-X, no interference is called for in the impugned orders

passed by Respondent No.2 and subsequently, by Respondent No.3.

9 This Writ Petition is, therefore, dismissed.

10 At this stage, Mr.Gaikwad submits that because of the judgment Exhibit-X, the Petitioner may not be entitled to gratuity, but his provident fund accumulation, if any, need to be paid to him.

11 Needless to state, the Petitioner is at liberty to make an application to the Provident Fund Authorities who would consider his case strictly in accordance with law.

(RAVINDRA V. GHUGE, J.)