

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4936 OF 2015

VIZARAT ALI KHAN S/O MOHD.MOINUDDIN
ALI KHAN

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND
OTHERS

RESPONDENTS

Mr.A.C.Deshpande, Advocate for the petitioner.
Mr.P.G.Borade, AGP for respondent No.1.
Respondent Nos. 2 to 6 are served.

(CORAM : S.S. SHINDE AND
RAVINDRA V. GHUGE, JJ.)

DATE : 20/01/2016

PER COURT : (Per Ravindra V.Ghuge, J.)

1. The petitioner is aggrieved by the inaction on the part of respondent Nos. 3 and 4 in responding to the objections raised by respondent No.6 in relation to the pending claim of the petitioner for compassionate pension.

2. The petitioner has set out his prayers in clause "C", "D" and E" as under :-

“C. To direct the respondent Nos.3 and 4 to submit explanation/ decision to the objection raised by the respondent No.6 in

verifying the pay of the petitioner for grant of pension benefits in regards to the gap period in service of the petitioner thereby deciding the same, if not decided, and for that purpose issue necessary orders ;

D. To direct the respondent Nos. 2 to 6 to complete the process of granting pension benefits to the petitioner within the period of 3 months from today and for that purpose issue necessary orders;

E. To direct the respondent No.5 to grant and release the pension benefits in favour of the petitioner w.e.f. 1.10.1996 i.e. from his date of removal and for that purpose issue necessary orders;”

3. The petitioner had joined duties in 1982 and was terminated on 12/08/1986. He had approached this Court by filing Writ petition No.875/1986. This Court, by its order dated 14/10/1986, granted ad interim protection to the petitioner. Consequently, he was reinstated in service on 01/12/1986. Eventually, his matter was transferred to the Maharashtra Administrative Tribunal and which dismissed the appeal by judgment and order dated 09/08/1996.

4. The petitioner litigated against his termination upto the Supreme Court. By order dated 09/12/1996, the Apex Court dismissed the special leave petition and observed that the petitioner,

who had completed 14 years of service and was qualified for the benefits, may apply for the same.

5. It is stated by the petitioner that subsequently he applied for the pensionary benefits on 26/10/1999. Respondent No.6, by its communication dated 04/04/2012, raised certain objections with regard to a break of 106 days in the service of the petitioner. Respondent Nos. 3 and 4 were called upon to submit an explanation with regard to the said break/objections. Grievance of the petitioner is that respondent Nos. 3 and 4 have not submitted any explanation to respondent No.6 and as a consequence of which, there is no decision arrived at on the claim of the petitioner for pensionary benefits.

6. The petitioner, therefore, submits that respondent Nos. 3 and 4 be directed to tender their explanation to respondent No.6 so as to enable respondent No.6 to complete the process of grant of pension, if eligible.

7. An affidavit in reply has been filed on behalf of respondent No.6, wherein it has been contended that the petitioner may not eventually be eligible for pension considering the break in service of

106 days.

8. Learned AGP relies upon the affidavit in reply filed by respondent No.4 wherein the stand taken is that the break in service to the extent of 106 days cannot be condoned. Services of the petitioner, therefore, cannot be regularized for 106 days and hence he may not be entitled for compassionate pension under Rule 101(3) of the Maharashtra Civil Services (Pension) Rules.

9. We have considered the submissions of the learned Advocates as have been recorded hereinabove.

10. It is undisputed that no decision has yet been communicated to the petitioner on his application for compassionate pension. It is also not disputed that respondent No.6 has been unable to complete the process of considering the claim of the petitioner in the light of respondent Nos. 3 and 4 having not responded to the objections raised by respondent No.6.

11. In the light of the peculiar facts as recorded above, we are of the opinion that ends of justice would be met by directing respondent Nos. 3 and 4 to submit their explanation to the objections raised by

respondent No.6. Once this reply is tendered by respondent No.6, respondent No.5 in turn could then proceed to take a decision on the claim of the petitioner for compassionate pension.

12. In the light of the above, this petition is partly allowed. Respondent Nos. 3 and 4 are directed to submit their explanation to the objections raised by respondent No.6 within a period of 6 (six) weeks from today, if not already submitted. Respondent No.6, upon receipt of the explanation from respondent Nos. 4 and 5, shall proceed to take a decision, if not already taken, within a period of 12 weeks thereafter.

13. Needless to state, any decision arrived at by respondent No.6 and in turn by respondent No.5, shall be communicated to the petitioner expeditiously. It is made clear that we have not considered the claim of the petitioner for compassionate pension on its merits and it is left to respondent Nos. 6 and 5 to take a decision in accordance with the Law, as is applicable.

(RAVINDRA V. GHUGE, J.)

(S.S. SHINDE, J.)