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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2031 OF 2015

The State of Maharashtra and ors. ... Petitioners
Vs.
Dattatray N. Jadhav ... Respondent

Mr. C.P. Yadav, AGP for the petitioners.
Ms Vaishali Jagdale for the Respondent.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : JULY 13, 2016

P. C.

1] The challenge in this petition is to the judgment and order dated 6 February 2014 made by the Maharashtra Administrative Tribunal (MAT) allowing the Original Application No. 684 of 2011 instituted by the respondent.

2] By the impugned judgment and order, the MAT has issued the following directions:

“7. Having regard to the aforesaid facts and circumstances, the Original Application is allowed. The Applicant is entitled to add 5 years to his qualifying service of 27 years, 1 month and 5 days as provided in Rule 66-A of the Maharashtra Civil Services (Pension) Rules, 1982, which is yet to be amended. His gratuity

and commutation of pension will be worked out accordingly, within a period of 3 months from the date of this order. There will be no order as to costs.”

3] Mr. C.P. Yadav, learned AGP for the petitioners, has submitted that by Government Resolution (G.R.) dated 30 October 2009, the Maharashtra Civil Services (Pension) Rules, 1982 (said Rules) stand amended. In terms of this amendment, the provision regarding addition to qualifying service under Rule 66-A of the said Rules stands deleted with effect from 27 February 2009. In such circumstances, the impugned judgment and order, which has virtually directed taking into consideration of additional five years service, is illegal and in excess of jurisdiction. Mr. Yadav, however, pointed out that even if the additional five years are not taken into consideration, the respondent will continue to draw full pension at the rate of 50% of his last basic pay and therefore, the MAT should have declined relief to the respondent.

4] Ms Vaishali Jagdale, learned counsel for the respondent, has submitted that the respondent was permitted to voluntarily retire with effect from 28 February 2009. The pension and pensionary benefits have therefore been worked out on the basis of the Rules in force on the date of such voluntary retirement. Ms Jagdale submitted that the G.R. dated 30 October 2009 is not at all applicable to the case of the respondent. Further, she also submitted that by means of an executive instructions like G.R. dated 30 October 2009, the said Rules,

which are statutory in nature, could never have been amended. Ms Jagdale placed reliance upon the decision of the Himachal Pradesh High Court in case of ***Brij Lal Thakur Vs. Himachal Road Transport Corporation and anr.*** - 2015 III CLR 144 and the decision of the Hon'ble Supreme Court in case of ***Bank of India and anr. Vs. K. Mohandas and ors.*** - (2009) 5 SCC 313 and submitted that the petition as filed may be dismissed.

5] We have duly considered the rival submissions, perused the record as well as the impugned judgment and order. In our judgment, there is no case made out to interfere with the impugned judgment and order made by the MAT.

6] In the peculiar facts and circumstances of the present case, there is no reason to interfere with the impugned judgment and order, which rejects the contentions raised by and on behalf of the petitioners. This is because by the time the respondent was permitted to voluntarily retire from service, he had already discharged the requisite qualifying service. In fact, it is also the case of the petitioners that non-addition of five years to the qualifying service, will not affect the pension, which is presently being drawn by the respondent. If this is position, we fail to understand as to why the petitioners have challenged the impugned judgment and order made by the MAT.

7] That apart, the record indicates that the date on which the respondent was permitted to voluntarily retire, i.e., on 28 February 2009, the G.R dated 30 October 2009 was not even in existence. The MAT, in the impugned judgment and order, has recorded that the GR makes reference to amendment to Rule 66-A of the said Rules, but however, the said Rules have not actually been amended. It is settled position in law that by means of a G.R., which is at the highest an executive instruction, normally statutory rules, cannot be supplanted though, they may be supplemented.

8] Further, it is to be noted that the respondent has retired in the year 2009. On basis of G.R., which was not even in existence at the time when the respondent gave his notice for voluntary retirement and thereafter actually voluntarily retired, the pensionary benefits awarded to the respondent cannot be varied to his disadvantage, in the absence of a clear and categorical amendment to the statutory rules.

9] Upon cumulative consideration of the aforesaid aspects, we are satisfied that the impugned judgment and order made by the MAT does not warrant interference in the exercise of jurisdiction under Articles 226 and 227 of the Constitution of India. Accordingly, the petition is dismissed. There shall, however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]