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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3831 OF 2016

The State of Maharashtra and ors. ... Petitioners
Vs.
Dr. Smt. Hemalata Balkrishna Hankare ... Respondent

Mr. A.I. Patel, AGP for the Petitioners.
Ms Swati Prabhakar Manchekar for the Respondent.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : AUGUST 02, 2016.

P. C.

1] The petitioners challenge the judgment and order dated 18 June 2015 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 914 of 2013 restraining the petitioners from recovering an amount of Rs.3,61,916/- from out of pension and retiral benefits awarded to the respondent. The MAT has, however, permitted the petitioners to recover the amount of Rs.1,01,319/- from the respondent, if they so desire, after duly reverifying the whole process and the amount recoverable.

2] Mr. A.I. Patel, learned AGP for the petitioners, has submitted that the MAT has erred in treating the respondent's period of absence from 14 September 2004 to 1 July 2005 as “*compulsory waiting period*”, since, in the facts and circumstances of the case, consequent upon application made by the respondent herself, the said period was treated as earned leave and commuted leave. Mr. Patel submitted that once a particular leave is sanctioned by the Government, there is no provision to treat such sanctioned leave under some other category. For this reason, Mr. Patel submitted that even the limited relief granted by the MAT to the respondent is contrary to the provisions contained in Maharashtra Civil Services (Leave) Rules, 1981.

3] Ms. Swati Manchekar, learned counsel for the respondent, has submitted that the respondent has not challenged the impugned judgment and order, to the extent, such order permits recovery of an amount of Rs.1,01,319/- upon due re-verification of the whole process and determination of the precise amount due. However, Ms Manchekar submitted that there was no legal infirmity whatsoever in treating the leave period as “*compulsory waiting period*” in the facts and circumstances of the present case. Ms Manchekar submitted that in any case, the respondent was permitted to voluntarily retire from services with effect from 5 March 2013 or thereabouts. Thereafter, it was impermissible for the petitioners to have made orders with regard

to leave availed almost eight years earlier and on the said basis seek to recover from the respondent an amount of Rs.5,23,105/-. Ms. Manchekar submitted that in the facts and circumstances, such recovery is patently unreasonable and arbitrary. Ms Manchekar submitted that the MAT, in the present case, has made a detailed judgment and order and there is neither any jurisdictional error nor any perversity involved. For all these reasons, Ms Manchekar submitted that this petition may be dismissed.

4] We have considered the rival contentions. We have also perused the record as well as the impugned judgment and order. In our judgment, there is no case made out by the petitioners warranting interference with the impugned judgment and order in the exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5] In this case, the respondent had proceeded on leave on 14 September 2004 on medical grounds. As the period of leave was more than sixty days, the respondent was not permitted to rejoin duties, despite, her offer to do so. Instead, the respondent was directed to appear before the Medical Board for medical examination. This was in accord with Rule 40 of the Maharashtra Civil Services (Leave) Rules, 1981. For reasons not attributable to the respondent, the Medical Board delayed the examination of the respondent. Finally, on 28

February 2005, the respondent was examined by the Medical Board, which certified that the respondent was suffering from mechanical backache. This certificate/report of the Medical Board, even as per the chronology of the dates submitted by the petitioners, was received by the Government only on 15 June 2005. Thereafter, on 30 June 2005 a formal order was issued requiring the respondent to join duties. The respondent accordingly joined the duties on 1 July 2005. If these facts are taken into consideration, it is quite clear that the respondent was very much willing to join duties but was not permitted to, for reasons not attributable to herself but rather, to the petitioners themselves. In these circumstances, we see no infirmity in the view taken by the MAT that such period was required to be considered as compulsory waiting period.

6] Besides, now that the respondent has already retired, we do not deem it appropriate to permit the petitioners to recover the amount of Rs.3,61,916/- from the retiral benefits payable to the respondent. The petitioners themselves delayed in the matter of taking an appropriate decision in the matter of treatment of leave. The record indicates that such decisions came to be taken only in the year 2013 at the time of computation of retiral benefits of the respondent, when in fact, the leave relates to the year 2004-2005. At this stage, it would indeed be harsh and inequitable to permit the petitioners to recover the amount of Rs.3,61,916/- from out of retiral benefits of the respondent.

7] We also note the fair approach of the respondent in not contesting the portion of the impugned judgment and order, which holds that the petitioner, in case it so desires, may recover amount of Rs.1,01,319/- from the respondent after duly reverifying the whole process and the amount recoverable. We clarify that in case the petitioner does desire to recover this amount upon due determination, the same shall bear no interest and further, the same shall be recovered only by way of easy installments.

8] For the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

9] All concerned to act on the basis of authenticated copy of this order.

[M. S. SONAK, J.]

[V. M. KANADE, J.]