

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5103 OF 2015**

- | | | |
|---|---|--------------------|
| 1) The State of Maharashtra |) | |
| through the Secretary, |) | |
| Medical Education and Drugs |) | |
| Department, Mantralaya, Mumbai.) |) | |
| 2) The Deputy Secretary, |) | |
| Medical Education and Drugs |) | |
| Department, Mantralaya, |) | |
| Mumbai – 400 032 |) | |
| 3) The Director, |) | |
| Directorate of Medical Education |) | |
| and Research, St. George's |) | |
| Hospital Compound, 4 th Floor, |) | |
| Dental College Building, |) | |
| Mumbai – 400 001 |) | |
| 4) The Dean, Grant Medical |) | |
| College, Sir J.J. Group of |) | |
| Hospitals, Mumbai – 400 008 |) | Petitioners. |

V/s

- | | | |
|----------------------------------|---|-----------------|
| Shri Ravindranath Kautik Mohite, |) | |
| R/at 401, Shri Gayatri CHS Ltd., |) | |
| Opp. Kapil Kiran Society, |) | |
| Lokmanya Tilak Rd., |) | |
| Mulund (East), Mumbai-400081 |) |Respondent |

Mr. P.G. Sawant, AGP for the Petitioner.

Mr. Ajit Ram Pitale for Respondent No.1.

**CORAM: V. M. KANADE &
M.S. SONAK, JJ.**

DATE: 27th July, 2016

ORAL JUDGMENT: (*Per V.M. Kanade, J.*)

1. Rule. Rule is made returnable forthwith. Respondent waives service. By consent of parties, Petition is taken up for final hearing.

2. State of Maharashtra has challenged the order passed by the Maharashtra Administrative Tribunal ("MAT") in O.A. No.909 of 2013. The impugned order was passed on 13/06/2014. Petition was filed on 15/12/2014. However, for six months, no application seeking stay of the order was moved, till the Respondent, after waiting for 10 years to receive his pension, was constrained to take out contempt proceedings. The day on which the contempt petition was filed before the MAT, on the same day, an application was moved seeking stay of the impugned order before this Court.

3. We have heard the learned AGP appearing for the Petitioners/State and Mr. Pitale, the learned Counsel appearing on behalf of the Respondent.

4. Petitioner – State of Maharashtra is aggrieved by the directions given by MAT, directing the State of Maharashtra to pay pension to Respondent after setting aside the impugned order, in terms of prayer clauses 9(A), (B) and (C) and also by passing consequential order i.e. accepting the lengths of services of the Respondent who had worked in different Departments of the State and Central Government, as qualifying service for pension. Further direction was given that it

should be done within two months from the date of the said order after condonation of break in service

5. This is a classic case which demonstrates complete apathy and callous nature of the Officers of the State Government in not granting pension to Respondent though he was legally entitled to receive full pension from the date of his appointment till the date he attained the age of superannuation. This case demonstrates that apart from being callous, State Government Officers have shown complete disregard to the orders passed by the Tribunal and, as a result, the Respondent had to knock the doors of the MAT on three occasions and, thereafter, had to file contempt petition which is still pending before the MAT.

6. Respondent is now 73 years old and had to spend money from his pocket to seek justice from the State Government of which he was an employee and had worked in several capacities. This is a case where the Respondent initially joined one of the Departments of State of Maharashtra through regular channel viz. Employment Exchange. During the course of his career, by dint of hard work, he was selected by the MPSC and was appointed in higher cadre. During this period, he again appeared for the examination conducted by UPSC and was appointed by the Central Government on account of successfully passing the written test and interview. Finally, he was absorbed by the State Government and he worked in the Department of Medical Education till he attained the age of superannuation in 2005.

7. Respondent, with due diligence, applied for pension two years before his retirement and he gave his reasons why his entire service should be taken into consideration for the purpose of becoming eligible to claim pension.

8. Brief history regarding the Departments in which the Respondent has worked is as under:-

(A) Respondent joined the services of the State Government on 11/03/1966 as a clerk in the Agriculture and Cooperation Department, Mantralaya, Mumbai where he worked till 01/07/1971 putting in service of 5 years and 4 months. Some employees of the said Department who were on deputation to the Rationing Department were repatriated and, as a result, Respondent was retrenched with effect from 01/07/1971. Thereafter, there was a break in his service from 01/07/1971 to 19/01/1972.

(B) From 20/01/1972, Respondent was appointed in the Small Savings Directorate (Finance Department) being sponsored by the Employment Exchange and he continued to work in that Department till 13/02/1975.

(C) Respondent then appeared for competitive examination conducted by MPSC and was selected to Maharashtra Finance and Accounts Service (MFAS) Class II which he joined on the very next day i.e. on 14/02/1975. He worked there in that Department till 14/11/1979.

(D) Respondent then appeared for UPSC competitive examination and was selected for the post of Mamlatdar, having applied through proper channel. He had to resign from the said post of MFAS Class II because his appointment was through UPSC. His resignation was duly accepted vide memorandum dated 14/11/1979 of the Finance Department.

(E) Respondent then joined the services of Union Government on 15/11/1979 as an Inquiry Officer, City Survey at Daman.

(F) Respondent again appeared for MPSC Examination after the advertisement was issued for the post of Chief Administrative

Officer, Employees State Insurance Scheme. He passed a written test and interview and was recommended by the MPSC for the said post. He therefore sent a notice of resignation on 01/04/1981 from the post of Inquiry Officer, Daman and thereafter he was appointed on 04/06/1981 to the post of Chief Administrative Officer in the Directorate of Medical Education and Research and was on probation for a period of two years.

9. Respondent came across the G.R. dated 04/04/1983 in the year 2002 and realized that he could claim benefit of past service for pension purposes. He therefore submitted representation at least two and half years in advance before his retirement on superannuation, requesting the authorities for counting his past service for pension purposes. Respondent also made several oral and written representations which were not decided by the State Government.

10. Respondent therefore filed first OA vide OA No. 401 of 2008. It was contended by the Respondent before the MAT that paras 2(a) and 2(b) of the G.R. No.PEN-1083/CR 438/83/SER-4 dated 04/04/1983 were squarely applicable to the case of the Respondent. The Medical Education & Drugs Department by its order dated 06/09/2008 disallowed the services of the Respondent in the Agriculture and

Cooperation Department and other services in the Directorate of Small Savings and did not treat it as a qualifying service. The MAT allowed his application and noted that his application was dismissed after almost six years after he had filed the application in 2002 and that too on the basis of incomplete proposal of the Director. It observed that the Director had not clarified or explained certain facts properly. Tribunal has observed that it was the duty of the Director to get the inadequacies in the proposal of the Respondent rectified. However, no such opportunity was given and his application was rejected. Director ought to have referred the matter to the concerned Department, seeking appropriate clarification and thereafter should have passed a reasoned order. Tribunal in OA No.401 of 2008 gave the following directions:-

“Under the circumstances, the Respondent No.2 is hereby directed to consider the case of the applicant for counting of past service on the basis that GR dated 4.4.1983 is applicable and take decision according to law within three months from today and communicate the said decision to the applicant forthwith.”

Tribunal had therefore given a clear finding that Respondent No.2 should consider the case of the Applicant/Respondent for counting his past service on the basis of the said G.R. Dated 04/04/1983 and it further observed that the said G.R. was applicable to the case of the Respondent and a further direction was given to decide the matter within three months and to communicate the decision to the

Respondent. After the said order was passed by the MAT, State Government did not challenge the said order and therefore the said finding that the G.R. dated 04/04/1983 was applicable to the case of the Respondent had become final.

11. However, Medical Education & Drugs Department again issued a fresh order cancelling the order dated 06/09/2008 and on the same grounds, passed the same order with only difference that it treated the period of Respondent's service from 18/06/1979 to 01/04/1981 as qualifying service. It was further observed in that order that G.R. Dated 04/04/1983 was applicable only from 31/03/1982 and the Applicant could not get benefit of the said G.R.

12. In our view, the said finding is clearly contrary to the finding given by the MAT in OA No.401 of 2008 in which the MAT had in terms stated and had given a finding that G.R dated 04/04/1983 was applicable. The Officer was not empowered to sit in appeal over the finding given by the MAT and, in fact, the said Officer had obviously committed contempt by disregarding the direction given by the MAT by holding that the G.R dated 04/04/1983 was not applicable to the Respondent. However, in the contempt petition filed by the Respondent, the MAT was generous to say that it was merely a non-compliance of its order.

13. Respondent therefore was constrained to file another OA No.1270 of 2010. Tribunal, again, by a fresh order dated 28/09/2012

directed Respondent No.2 – Deputy Secretary, Medical Education & Drugs Department to consider the claim of the Applicant for pensionary benefits by passing a reasoned order and communicate the same to the Applicant.

14. After the said direction was given, Deputy Secretary, Medical Education & Drugs Department again confirmed the earlier order without assigning any reasons.

15. Prima facie, we are of the view that the second order passed by Deputy Secretary, Medical Education & Drugs Department clearly amounts to contempt and non-compliance of directions given by the MAT for the second time.

16. Respondent again had to knock the doors of MAT by filing OA No.909 of 2013. Tribunal took into consideration the entire chronology of events, noticed that Director of Medical Education had acted in most perfunctory, casual and irresponsible manner while rejecting the first application, second application and third application of the Applicant who is the Respondent herein. It observed that Deputy Secretary of Medical Education has disregarded the directions given by the Tribunal. Tribunal relied on MCS (Pension) Rules, 1982 and also Government Resolutions which have been issued from time to time. Tribunal reiterated that G.R. dated 04/04/1983 was squarely applicable in the facts of the present case and more particularly clauses 2(a) and 2(b) of the said G.R., which read as under:-

“2(a) Those who having been retrenched from the service of State/Central Government secured on their own employment under Central/State Government either with or without interruption between date of retirement and date of new appointment;

2(b) Those who while holding temporary posts under State/Central Government apply for posts under Central/State Government through proper channel/with proper permission of the administrative authority concerned.”

17. Tribunal secondly observed that in view of Rule 48(1) and (3) of MCS (Pension) Rules, 1982 if a Government servant had worked in various Departments of Government and there was an interruption between the two spells of civil service rendered by a Government servant then the said interruption would be treated as automatically condoned and the pre-interruption service should be treated as qualifying service. Tribunal has rightly relied on the judgment of the Apex Court in *Vasant Gangaramsa Chandan vs State of Maharashtra*¹. Tribunal has also relied on Rule 30 of MCS (Pension) Rules, 1982, which reads as under:-

“30. Commencement of qualifying service:- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity;

1 1996(10) SCC 148

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.”

Relying on these Rules and the said G.R., Tribunal came to the conclusion that services rendered by the Respondent of 5 years and 4 months in Agriculture Department could be counted as qualifying service since he subsequently continued to hold a post in the Directorate of Small Savings as a result of condonation of break by invocation of Rule 48.

18. Tribunal has also observed that Respondent had produced all necessary documents in support of his case. However, Director, Medical Education without referring these documents to the concerned Department, came to the conclusion that there was no material to show that Respondent was working in the post mentioned hereinabove. Further, in para 22 of the impugned order, Tribunal has observed that reason given for non-recognition of service of the Applicant in MFAS Class-II was also unacceptable. Respondent had worked for about 4 years in the said Department. It is an admitted position that he was not terminated on account of unsatisfactory service but because he had passed MPSC examination and he took charge of the post in the higher cadre and continued in service with the State Government.

19. We find that the said order is well reasoned order and there is absolutely no infirmity in the said order passed by the MAT. The Under Secretary (Legal) had in his note clearly given an opinion that Tribunal had given a well reasoned order and filing of writ petition will be a futile exercise. However, Additional Secretary (Finance) observed that the Department must examine the position and challenge the order in OA No.909 of 2013 and in earlier OAs in the High Court. Though it is true that State Government has every right to challenge the orders passed by the Tribunal by filing Writ Petition in this Court, we are of the view that there should be some application of mind on the part of the State before approaching this Court. Apex Court in several cases has observed repeatedly that statutory authorities exist to discharge statutory functions in public interest. It has observed that they should be responsible litigants and they cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. Apex Court has observed that they cannot behave like some private litigants with profiteering motives. Apex Court in *Urban Improvement Trust, Bikaner Vs. Mohan Lal*¹ has made these scathing observations against tendency of State and Central Government in filing frivolous cases. Apex Court in the said judgment has observed in para 5 as under:-

“5. It is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory functions in public

1 (2010) 1 SCC 512

interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in callous and high-handed manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an over bearing manner. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.”

In para 6 of the said Judgment, the Apex Court has observed that Government and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. Similarly, in the case of *Dilbagh Rai Jarry vs. Union of India*¹, the Apex Court has observed as under:-

“25.....'5..... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to

1 (1974) 3 SCC 554:1974 SCC (L&S) 89

score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.”

Further, the Apex Court in *Madras Port Trust vs. Hymanshu International*¹ has observed in para 2 as under:-

“2..... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to

1 (1979) 4 SCC 176

decide it and if the plea is well founded, it has to be upheld by the court, but what we felt is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.”

Thereafter, a three-Judge Bench of the Apex Court in *Bhag Singh vs. UT of Chandigarh*¹ has observed that the State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.

In *Urban Improvement Trust, Bikaner Vs. Mohan Lal*², the Apex Court has observed in paras 10 and 11 as under:-

“10. Unwarranted litigation by Governments and statutory authorities basically stems from the two general baseless assumptions by their officers. They are:

(I) All claims against the Government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could

1 (1985) 3 SCC 737

2 (2010) 1 SCC 512

be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the court and secure a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of Governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision-making, or worse, of improper motives or any decision-making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision-making to courts and tribunals.”

“11. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby eliminating unnecessary litigation. But it is not sufficient if the Central Government, should also make genuine efforts to eliminate unnecessary litigations. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants.”

20. We are of the view that these observations made by the Apex Court in several Judgments squarely apply to the facts of the present case.

21. Petitioner was an honest, hardworking Government servant who

worked for the State and during his service he rose up by dint of his hard work after successfully passing MPSC Examination twice and UPSC Examination once. Instead of putting a pat on his back for the efforts taken by him, he had been made to run from pillar to post and that too after he had successfully completed his tenure and had attained the age of superannuation. Respondent was seeking pension on the basis of his past service. Apex Court has observed in *D.S. Nakara and Others vs. Union of India*¹ that pension is a right and not a bounty or charity. Same view has been taken by the Apex Court in the following cases:-

1. *State of Punjab vs. K.R. Erry*²
2. *Deoki Nandan Prasad vs. State of Bihar*³
3. *All India Reserve Bank Retired Officers Association and others vs. Union of India and others*⁴
4. *Salabuddin Mohamed Yunus vs. State of Andhra Pradesh*⁵
5. *Kerala State Road Transport Corpn vs. K.O. Varghese and others*⁶

22. Apex Court has also observed in its judgment in *R.L. Marwaha*

1 1983(1) SCC 305

2 AIR 1973 SC 834

3 [1971] 2 SCC 330

4 AIR 1992 SC 767

5 1984(Supp) SCC 399

6 AIR 2003 SC 3966

vs. Union of India and others¹ and in R.K.Gupta vs. Union of India & Others² that service rendered with Central Government is liable to be counted as part of qualifying service for the purpose of retiral benefits. Initially, the concerned Officer had not even considered the said period for counting qualifying service. However, subsequently, after the matter was remanded third time, the said Officer was generous enough to add the said period as qualifying service and again discarded other services rendered by the Respondent in the State Government.

23. We are constrained to observe that the stand of the Petitioners is not only frivolous, vexatious but it is also contemptuous since the orders passed by the MAT were not followed and complied with. State Government continued to litigate, not as a fair opponent but pursued the matter as if it was an adversarial litigation. In our view, this is a fit case where Government should be directed to pay interest for the delayed payment of pension to Respondent. Apex Court in several cases has held that if delay is caused on account of non-processing of the file then the Applicant is entitled to get interest on the delayed pension. The Apex Court has made this observation in following cases:-

1. Harendra Nath vs. State of Bihar and Others³

2. M.L. Jain vs. Union of India and

1 (1987) 4 SCC 31

2 1988 (Supp) SCC 501

3 1987(Supp) SCC 56

*Others*¹

*3. Devki Nandan Prasad vs. State of Bihar and Others*²

*4. Dr. Uma Agrawal vs. State of U.P and another*³

We are therefore of the view that the Order passed by the Tribunal will have to be complied with and the Petitioner/State Government shall pay interest @ 18% on the delayed pension of the Respondent from the date of superannuation of the Respondent till the actual payment is made to him. Respondent is 73 years old and he is practically in the evening of his life. We wonder, whether interest which is awarded can be of any benefit to him but, at the most, it will give him some satisfaction that the justice has been done to him.

24. In the present case, we are of the view that Mr. Ganesh Shamrao, Sonawane, Deputy Secretary, Medical Education and Drugs Department who has flouted the orders passed by the MAT and had continued to take similar view despite specific directions given by the MAT will have to pay compensation to the Respondent for his unjust stand and for non-compliance of the orders passed by the MAT. We direct the State Government to recover an amount of Rs 10,000/- from him and also recover an amount of Rs 5000/- from the concerned Director, Directorate of Medical Education and Research as compensation and to pay the said amount which will be recovered

1 AIR 1989 SC 669

2 AIR 1983 SC 1134

3 (1999) 3 SCC 438

from them to the Respondent within six weeks.

25. We are informed that the Contempt Petition No.38 of 2015 filed by the Respondent is pending before the MAT. Tribunal shall consider and decide the Contempt Petition on merits and in accordance with law.

26. With the aforesaid directions, Petition is dismissed. Directions which are given by the MAT as well as this Court be complied with within six weeks and compliance report be filed immediately thereafter.

27. Petition is accordingly disposed of in the aforesaid terms and the Rule is discharged.

(M.S. SONAK, J.)

(V.M. KANADE, J.)