

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.163 OF 2016

The Commissioner, State Intelligence Department, M.S; Mumbai	Petitioner
versus	
Sunil Sadashiv Padave	Respondent

Mr.Nitin P. Deshpande, AGP, for Petitioner-State.

Mr.Sagar Mane i/by Mr.Bhushan A. Bandiwadekar for
Respondent.

CORAM : D.H.WAGHELA, C.J. AND
SMT.VK.TAHILRAMANI, J.

DATE : 2nd March 2016

PC :

1. The petition is preferred against order dated 22nd June 2015 of the Maharashtra Administrative Tribunal ('MAT') whereby the claim of the Respondent-employee is accepted with a final direction as under :

"36. In view of the above discussion, we direct that the impugned order being Exhibit-A at page 19 of the paper book is quashed and set aside. The Respondent is hereby directed to consider the request of the Applicant for voluntary retirement afresh in accordance herewith and also to process and complete the case of the Applicant for all his outstanding dues including pensionery and post retiral benefits. The compliance to commence forthwith

and be completed in all respects on or before 31st August 2015. The Original Application is allowed in these terms with no order as to costs."

2. Present petition appears to have been filed by the State agency in December-2015 due to which its admission and entertainment was objected on the ground of delay. However, that objection is overruled and learned counsel for the Petitioner is heard in extenso.

3. Relevant facts in brief are that the Respondent-employee was appointed on purely temporary basis on the vacancy caused by another employee who had gone on leave. After such appointment on 3rd October 1985, the Respondent has continued in service and after 25 years and 3 months of uninterrupted service, he proposed to take voluntary retirement invoking provisions of Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982; according to which an employee having put in 20 years of service could give the notice. The Government was required to decide such notice within three months. Therefore, prima facie, the Respondent being a Class-III employee shall be deemed to have retired voluntarily and would be entitled to get retiral benefits.

4. In the facts of the present case, the Petitioner issued an order dated 29th February 2012, in substance, conveying that since the service of the Respondent was not regularized by

General Administration Department of the Government of Maharashtra, he was not entitled to get the benefits of voluntary retirement. It is to challenge that order that the Respondent approached MAT.

5. Undisputedly there was no demand of the Respondent to regularize his service or seek permanency in service and otherwise he was entitled to seek voluntary retirement after putting in twenty years of service. As far as entitlement to pensionary benefits is concerned, this subject was admittedly governed by Pension Rules. Relevant Rules 30 and 31 of Maharashtra Civil Services (Pension) Rules, 1982 read 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 :

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 :

(Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years

of qualifying service, shall be eligible for grant of superannuation. Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.)"

"31. Conditions subject to which service qualifies :

(1) The service of a Government servant shall not qualify unless the duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.

(3) In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, following interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify :

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply."

6. The only contention raised by the Petitioner before the Respondent had actually retired was that although the period of service in temporary capacity can be counted as

qualifying service, the employee having not been made permanent and his service not having been regularized at the time he sought retirement, he would not be entitled to any pension. Evidently Rule 30 envisages and takes within its sweep the services rendered in temporary capacity. It is by way of a proviso that it is provided that at the time of retirement, the employee should hold substantively a permanent post in Government service or hold a suspended lien or certificate of permanency. It is nowhere asserted or established as a fact that the Respondent was, at the time of seeking retirement, not holding the post which was substantively a permanent post in Government service. The second proviso to Rule 30 of Pension Rules makes it clear that in cases where a temporary Government servant retires voluntarily after completion of twenty years qualifying service, he shall be eligible for grant of retirement pension, retirement gratuity and family pension at the same scales as admissible to a permanent Government servant. Therefore, the stand adopted by the Petitioner even before the Respondent was allowed to retire, does not appear to be proper or valid.

7. In the above facts and circumstances, the final direction contained in paragraph 36 of the impugned order of MAT dated 22nd June 2015 does not require any interference at the instance of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

Therefore, the petition is summarily dismissed, subject to the observation that the impugned order be allowed to be implemented by 25th April 2016. No order as to costs.

(CHIEF JUSTICE)

(SMT.V.K.TAHILRAMANI, J.)

MST