

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5345/2015

(PRASHANT MUKUNDRAO ANDHALE & ANOTHER **VERSUS** UNION OF INDIA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri C.A. Joshi, counsel for the petitioners.
 Shri N.P. Lambat, counsel for the respondents.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATE : OCTOBER 25, 2016.

By this writ petition, the petitioners seek a direction against the respondents to grant the pensionary benefits to the petitioner no.1 and pay the regular pension to him along with the arrears of pension from 09.12.2005. The petitioners seek a direction against the respondents to relax the rule pertaining to minimum qualifying service so as to enable the petitioner no.1 to receive the pensionary benefits. By amending the writ petition, the petitioners had alternatively sought to challenge the orders of the disciplinary and appellate authority passed in 2005, compulsorily retiring the petitioner no.1 with all benefits. The petitioners have challenged the order of the respondents dated 10.08.2016 rejecting the representation made by the petitioner no.1 for relaxing the rule providing for minimum ten years service for grant of pensionary benefits, in his case.

The petitioner no.1 was working as a Constable when a departmental enquiry was initiated against him. three charges were levelled against the petitioner no.1 as the petitioner no.1 was found in a drunken state and had misbehaved with his superior at Akola on telephone as well as

in the chamber. When the petitioner no.1 was directed to be medically examined, he misbehaved with a lady doctor who was on duty in Civil Hospital, Akola and threatened her. During the medical examination, it was found that the petitioner no.1 had consumed alcohol. The petitioner no.1 was granted an opportunity to defend the charges and the enquiry officer found that each of the charge that was levelled against the petitioner no.1, was proved. The disciplinary authority compulsorily retired the petitioner no.1 from service but, with a view to avoid educational hardship to the children of the petitioner no.1, the petitioner no.1 was compulsorily retired from service with all benefits. The petitioner no.1 challenged the order of the disciplinary authority in two departmental appeals but, without success. After the order of compulsory retirement was passed, the respondents paid the retiral dues to which the petitioner no.1 was entitled. The petitioners have filed the instant petition for a direction against the respondents to pay the pensionary benefits to the petitioner no.1. Belatedly, the petitioners have also challenged the order of the disciplinary and the appellate authority.

Shri Joshi, the learned counsel for the petitioners, submitted that the respondents ought to have relaxed the rule requiring qualifying service of ten years for grant of pensionary benefits, in the case of the petitioner no.1. It is stated that the petitioner no.1 has completed 7 years, 5 months and 11 days of service and in view of Rule 107 of the Railway Services (Pension) Rules, 1993, the respondents should have relaxed the rule pertaining to the minimum qualifying service of ten years in the case of the petitioner

no.1. It is submitted that great hardship would be caused to the petitioners if the rule in regard to the minimum qualifying service is not relaxed in case of the petitioner no.1 as the petitioner no.1 is not mentally sound and was suffering from mental ailment since the year 2003.

Shri Lambat, the learned counsel for the respondents, has supported the action on the part of the respondents. It is submitted that though the petitioner no.1 was compulsorily retired from service in view of the grave misconduct committed by the petitioner no.1, by taking a lenient view in the matter, the disciplinary authority had compulsorily retired the petitioner no.1 from service with all benefits. It is stated that the petitioner no.1 has received all the retiral benefits to which he was legally entitled. It is stated that the petitioner no.1 was not entitled to the grant of pensionary benefits as he had completed only 7 years, 5 months and 11 days of service and the minimum qualifying service for grant of pensionary benefits is ten years as per the Railway Services (Pension) Rules, 1993. It is stated that Rule 107 of the Rules of 1993 cannot be applied to the case of the petitioner no.1 as the same is required to be applied only in exceptional cases where undue hardship is caused. It is stated that since the petitioner no.1 is compulsorily retired from service in view of the three serious charges that were proved against the petitioner no.1, the case of the petitioner no.1 cannot fall within the ambit of the term “undue hardship”, under Rule 107 of the Rules. It is stated that the representation of the petitioner no.1 for relaxing the rule pertaining to the minimum qualifying service of ten years was rightly rejected by the respondents by the impugned order

dated 10.08.2016. It is stated that the charges levelled against the petitioner no.1 were grave and serious and since they were proved, the power to relax the rule pertaining to the minimum qualifying service cannot be utilized to favour a person like the petitioner no.1. It is submitted that though the petitioner no.1 claims to be suffering from mental disorder, the petitioner no.1 has sought his reinstatement in service by belatedly challenging the order of compulsory retirement after ten years.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioners cannot be granted. Serious charges were levelled against the petitioner no.1 and it was found by the enquiry officer that the petitioner no.1 was found in a drunken state and that he had misbehaved with his superior on telephone as well as in the chamber. It was found that the petitioner no.1 had misbehaved with a lady doctor in Civil Hospital, Akola and had threatened her. It was found from the medical examination of the petitioner no.1 that the petitioner no.1 was in an intoxicated state when the two incidents had occurred. We are not inclined to sit in appeal over the findings recorded by the enquiry officer and the disciplinary and appellate authority. The impugned order compulsorily retiring the petitioner no.1 was passed in the year 2005 and the petitioner no.1 cannot challenge the said order by filing a petition on 09.09.2015. It is worthwhile to note that when the petition was filed, on 09.09.2015 the petitioners had not challenged the order of compulsory retirement. The said order was challenged later by amending the writ petition on 20.04.2016. In any case, the petition, insofar as it challenges

the order of compulsory retirement, suffers from laches and the same is liable to be dismissed.

We do not find any merit in the submission made on behalf of the petitioners that the respondents were not justified in not relaxing the rule in regard to the minimum qualifying service for grant of pensionary benefits in the case of the petitioner no.1. It is rightly submitted on behalf of the respondents that Rule 107 of the Rules would not operate in the case where an employee is punished in view of the proof of serious charges that are levelled against him. The petitioner no.1 belonged to a disciplined force and as a constable it was not expected of the petitioner no.1 to misbehave with his superiors and the lady doctor who was on duty. In the circumstances of the case, the respondents have rightly declined to invoke the provisions of Rule 107 of the Rules of 1993 while rejecting the representation of the petitioner by the impugned order, dated 10.08.2016.

Since there is no merit in the writ petition, we dismiss the same with no order as to costs.

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