

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3449 OF 2013

Shri Ashok Sidramappa Nalwar ... Petitioner

Vs

1. The Commissioner, Municipal Corpn.
For City of Solapur & Ors. ... Respondents

Mr. Ashok B. Tajane for the Petitioner.

Mr. I.M. Khairdi for the Respondent No.1.

Mrs. M.S. Bane,'B' Panel Counsel for the Respondent No.2.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 16TH MARCH, 2017

P.C. :

1 The petitioner before us claims diverse reliefs and firstly he wants the High Court to direct the respondent No.1 - Corporation to furnish to him information as claimed by him in his applications dated 28th December, 2011 and 16th January, 2012.

2 With regard to this prayer, we must at once clarify that these applications are referable and traceable to the Right to Information Act, 2005. If the information sought and on the subject and points in this application is not provided or withheld or not provided in its entirety, there are remedies available under that Act itself. For not availing those remedies, the petitioner provides no explanation. These prayers, therefore, need not detain us.

3 By prayer clause (c), the petitioner desires and prays that the Corporation be directed to pay to him, interest on the amount paid and as claimed by him in a letter dated 14th January, 2012, from the date of the withholding of the said dues till its realisation.

4 This is a claim of interest based on delayed pension. It is undisputed that the petitioner filed Writ Petition No.5701 of 2010 against the Municipal Corporation for the City of Solapur, its Municipal Commissioner and other officials so also the State proclaiming that the petitioner's retiral dues and his pension has been wrongly and illegally withheld. Paragraph 1 of that writ

petition, copy of which is enclosed at page 19 of the paper-book onwards, itself discloses that the petitioner was aware that he worked for thirty four years. His qualifying service entitled him to draw pension. The pension, as paid, was not on the correct computation and calculation. That petition proceeds to allege that the petitioner joined the services of this Corporation as a Fitter Attendant on 24th January, 1975. He knew the age of his superannuation. The petitioner claims that he retired on attaining the age of superannuation. He rendered unblemished service from 24th January, 1975 to 30th November, 2009. The petitioner states that he has put in thirty four years of service which is more than the minimum required / qualifying service of twenty years for entitlement of pension, full gratuity, provident fund contribution, commutation of pension and other benefits. The petitioner claims this relief after writing several letters and making several representations and filling several forms. Upon such a petition, which is exhaustive of all the reliefs that the petitioner claims even now, the petitioner was satisfied with an order of this Court copy of which is to be found at page 37 of the paper-book.

5 In the Memo of the present petition, the petitioner discloses that the said writ petition was disposed of. The petitioner states that this writ petition was disposed of by an order, copy of which is at page 33 of the paper-book. That order reads as under :

“Heard the counsel for the parties.

2. The counsel for the respondent-Corporation submits that the Corporation is more than willing to disburse the pensionary dues payable to the petitioner. However, they are not in a position to process the proposal, as the petitioner has filed suit before the Court of Civil Judge (Senior Division), Solapur, being Civil Suit No. 286 of 2010, praying for declaration and mandatory direction against the Corporation to give him benefit of pension also for the period when he was unauthorisedly absent from duty.

3. The fact that such a suit is pending, in our opinion, should not come in the way of the Corporation processing the proposal on the basis of other admitted pension dues payable to the petitioner. The disputed period and the additional pensionary benefit on account of the said period, if decided in favour of the petitioner, can always be released by the Corporation at a later date, subject to the outcome of the civil proceedings. In other words, the Corporation shall process the proposal de hors the disputed period, and release the pensionary dues payable to the petitioner with regard to the undisputed period forthwith.

4. The counsel for the Corporation states that the proposal will be processed, and requisite amount will be disbursed to the petitioner as expeditiously as possible, and in any case, within two months from today. That statement is accepted.

5. *The counsel for the petitioner submits that, in view of the above arrangement, the petition can be disposed of, with liberty to the petitioner to pursue his civil suit, and to claim further pensionary benefit, depending on the outcome of the said suit. Ordered accordingly.*

6 A bare perusal of this order would denote as to how the petitioner is quite vigilant and aware of his rights. He has approached not only a civil court, but this Court. The counsel for the Corporation made a statement before this Court that the proposal for his pension will be processed and the amount would be disbursed to him. The petitioner, therefore, made no attempt to contest the petition further and after this statement was recorded and accepted by this Court. No dispute was ever raised about the quantum of pension, leave, salary etc. Each of the computations and under several heads as made by the Corporation were acceptable to the petitioner. It is based on these computations and calculations that the Corporation released diverse amounts to the petitioner, which he accepted without any demur or protest.

7 We do not see how a second petition for the same relief which could have been obtained in the first and the earlier round

of litigation can be entertained by us. We cannot grant any relief in terms of prayer clause (c).

8 For the very reasons that we have denied the relief in terms of prayer clause (c), even prayer clause (d) cannot be granted. That prays for a direction to pay the pension to the petitioner and other retired employees as per the directions of this Court in a judgment in the case of *Manager, Solapur Municipal Corporation & Ors. vs. Devidas Mahadev Potdar & Ors.* reported in 2009 (3) BCR 347.

9 We do not see why, when the petitioner complained that there was no pension and this Court ensured the reliefs of pension, the arrears in relation thereto and all other amounts, was the petitioner prevented from seeking this direction. If this direction flows from a judgment of this Court and which binds the Municipal Corporation and which releases the pensionary amount month to month, then, we do not see why we should grant any separate direction. Presently, the petitioner is drawing the pension and as is released by the Municipal Corporation.

10 We do not think that the petitioner is entitled to any relief in a petition which is *ex-facie* not maintainable. It is, therefore, dismissed. Since, the petitioner is a senior citizen we do not impose any costs even though we find that the petition raises a false and frivolous claim.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.