

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

**WRIT PETITION NO. 4184 OF 2004
WITH
CIVIL APPLICATION NO. 388 OF 2017
IN
WRIT PETITION NO. 4184 OF 2004**

Shri Babulal Fakira Vasaikar
Bhagirathi Nivas, Sadichha Housing
Society, Charnipada, Behind Anjurphata,
Jakat Naka, At and Post Rahnal,
Taluka Bhiwandi, District Thane.

... Petitioner

V/s.

- 1 State of Maharashtra
Mantralaya, Mumbai 400 032
copies to be served in the office-
Addl. Government Pleader, High Court,
(A.S.) (Writ Cell) Bombay 400 032.
- 2 Dr. S.N. Pathan,
Director of Higher Education,
Maharashtra State, Pune 411 001.
- 3 Dr. A.D. Sawant,
Joint Director of Higher Education,
Mumbai Region, Mumbai,
Elphinstone Technical High School's
Campus, Dhobi Talao, 3, Mahaplika
Marg, Mumbai 400 001.
- 4 The President/Secretary,
Padmshree Annasaheb Jadhav Bharatiya
Samaj Unnati Mandal, Bhiwandi,
Vidyashram Post Dhamankar Naka,
Bhiwandi, District Thane.
- 5 The Accountant General,
Maharashtra State, M. Karve Road,
Marine Lines, Mumbai 400 020.

- 6 The Administrator/Principal,
B.N.N. College, Bhiwandi,
Dhamankar Naka, Vidyashram,
Post Bhiwandi, Dist. Thane.
- 7 The Registrar, University of Bombay,
University Marg, Fort, Mumbai 400 032. ... Respondents

Mr. R.V. Desai, Senior Advocate a/w R.B. Pardeshi i/b K.R.P. Legal
for the Petitioner.

Ms. Jyoti Jadhav, A.G.P. for the State.

Mr. Sharique Nachan i/b Judicare Law Asso. for Respondent Nos.4
and 6.

Mr. R. Jain i/b Rui A. Rodrigues for Respondent No.7.

**CORAM : ANOOP V. MOHTA AND
MANISH PITALE, JJ.**

DATE : 15th NOVEMBER, 2017.

ORAL JUDGMENT [PER : ANOOP V. MOHTA, J.]

1 Heard the learned senior Advocate for the Petitioner
and Advocates appearing for respective Respondents.

2 The Respondents concerned have withheld the
retirement benefits of the Petitioner on unsustainable reasons,
therefore, the present Writ Petition.

3 This Court on 29.07.2004, while admitting the Petition, directed the Respondents to release the part pension with Dearness Allowance, on regular basis. The Petitioner has been getting this part amount, but not the full pension/retirement benefits in accordance with law. The Petitioner, who had served 33 years and 11 months in the various institutions run by Respondent Nos.4 and 6 – Management and retired on 31.05.2002, is still awaiting his full retirement benefits. It is settled that the retirement benefits are not bounty. It is the property, as contemplated under Article 300A of the Constitution of India. Therefore, there is no question of depriving a person of such retirement benefits/property, unless provided and/or prescribed in rules in any law.

4 Background of the matter is crystallized:-

The Petitioner served as the Head Master in New English School, Sonale, Taluka Wada, District Thane, under the Management of Respondent No.4 since 15.6.1967 till 28.03.1973. During the above period, he also served from 17.6.1968 to 18.12.1968 as Assistant Teacher in the New English School, Bhiwandi, District Thane and also in Ambishte High School. For the period from 29.3.1973 to 14.6.1973, he worked as Extension Officer

in the Education Department of Zilla Parishad, Thane. Thereafter, from 15.6.1973 to 18.7.1975, the Petitioner worked as Head Master in Ambishte High School, Ambishte, Taluka Wada, District Thane. On 19.7.1975, the Petitioner was appointed as a Lecturer in B.N.N. College-Respondent No.6 and worked till 8.10.1992. He was appointed as the Vice-Principal on 9.10.1992 and worked till 14.3.1995. From 15.3.1995 till 14.3.2002, the Petitioner worked as Principal of the B.N.N. College, Bhivandi, District Thane. Upon request, the Petitioner posted as a Lecturer from 15.3.2002 to 31.5.2002, in B.N.N. College, Bhiwandi, District Thane. On 31.5.2002 the Petitioner was retired.

5 On 5.6.2002, Respondent No.6 sent the complete pension file of the Petitioner to the Joint Director-Respondent No.3 on his superannuation and requested to forward the same to the Accountant General, for necessary action. On 3.7.2002, the Petitioner, by letter, requested to the in-charge Principal of Respondent No.6 to give him all the retirement benefits including pension, gratuity, leave benefits and provident fund immediately as he has completed all the formalities and served about 35 years, as he has no other source of income. On 4.7.2002, a Secretary of

Padmshri Annasaheb Jadhav Bharatiya Samaj Unnati Mandal wrote a letter to the In-charge Principal and requested to take an action for all the pensionary benefits of the Petitioner. By letter dated 20.9.2002, the Petitioner requested Respondent No.3 to take necessary action for his pensionary benefits, since he has no source of livelihood. On 20.1.2003, Respondent No. 6 also requested the Joint Director to release all the pensionary benefits to the Petitioner. The Petitioner, on 3.2.2003 submitted a detailed representation and requested to release him all the retirement benefits, since he has no source of income. Respondent No.4 also made similar representations on 13.3.2003, 24.4.2003 and 12.3.2003, to the Education Minister and the Joint Director. The Petitioner, again on 19.9.2003, made representation to Respondent No.3 to release his pension and retirement benefits, so also on 2.10.2003. However, no reply was received to the Petitioner from Respondent No.3. The Petitioner also personally visited and met the authorities on number of occasions but invain.

6 On 9.1.2004, the Joint Director, Higher Education, informed the Petitioner that he is granted the pension from 6.6.2002 to 30.11.2002 as a provisional pension along with

dearness allowance and in addition to that, Rs.1,66,140/- were given as gratuity. On 21.1.2004, the Petitioner replied to the Joint Director and explained the entire position. No reply was given to the same by the Authority. Hence the present Petition.

7 The Petitioner is governed by the Maharashtra Universities Act, 1994. The Government of Maharashtra has published a Notification on 12.8.1999, by which, the Maharashtra Civil Services Pension Rules, 1982 (*"Pension Rules"*) are made applicable to the teachers and the Lecturers, as well as, the Principal serving in the Colleges. As per the notification dated 12.8.1999, the Maharashtra Civil Service Rules (*"MCSR"*) are applicable to them from 1.10.1982. As per the Resolution and the provisions of the MCSR are applicable to the teachers, lecturers and principals serving in the college. The Petitioner is entitled to all retirement benefits as are admissible to the teachers, lecturers and principals of the Colleges affiliated to the University. The Petitioner was serving as a Head Master, Lecturer, Principal and lastly as a Lecturer in B.N.N. College of Respondent No.6 at the time of his retirement, therefore,

as per the provisions of Rules 140 and 146, he is entitled to the pension from from 1.6.2002.

8 The basic contention so raised by the learned counsel appearing for the Petitioner is that there was no reason for the Respondents to withhold the pension, mainly on the ground of pendency of the criminal proceedings against the trustees of the Management trust. The Petitioner was not directly involved in those matters. The original complainant never mentioned the Petitioner as an accused in the year 2004. There was no specific departmental action and/or enquiry initiated against the Petitioner for the same reason. There was no specific charge-sheet against the Petitioner and no trial was faced by the Petitioner, at any point of time. Therefore, there was no question of withholding pension merely because of pendency of such criminal litigation. There is no specific provision which empowered the Respondents in these background, to withhold the pension of the Petitioner as the Petitioner had retired in 2002 itself.

9 There was no break-in-services of the Petitioner, as he was working with the Management/other institutions since

15.06.1967 till 31.05.2002. The break, even if there was of three months, as worked as the Extension Officer which was also condoned by the Management at the relevant time. All the service records and the necessary proceedings were submitted at the appropriate time to the concerned department, for assessment/calculation of the retirement benefits. The management has also forwarded all the necessary service records of the Petitioner for the same. There was no such demand and/or objection raised about non submission of full service record of the Petitioner. Therefore, there was no question of not granting the full retirement benefits. There was no break-in-service.

10 The Petitioner has placed on record, apart from rejoinder, various documents in support of his original case and to support that the pendency of those criminal matters, even if any, should not have been the foundation to deny the retirement benefits of the Petitioner. There is specific averment made in respect of the criminal matters, which reads as under :-

“In that all complaints, my name is not included in five complaints. However, it appeared only in remaining five cases and from which two cases has

been finalised as 'C' Summary as per the Court's order. It means that Jt. Director has deliberately included my name in five more cases.”

11 The material placed on record goes to show that the Petitioner was not involved in main criminal matter at any point of time. The reply of contesting Respondent, itself is not sufficient to withhold the pension and all other benefits at any point of time. There was no specific criminal case made out against the Petitioner specifically referring to any pecuniary loss to the Government. There was no case, where the Petitioner was found guilty of grave misconduct or negligence during the period of his service. As noted earlier, even there was no departmental enquiry initiated against the Petitioner, at the relevant time.

12 Rule 26 and 27 of the Maharashtra Civil Services (Pension) Rules 1982, as noted by the Division Bench of this Court while passing the interim order, are also of no assistance to the Respondents to take such action. There is no other justification, which according to us, placed on record and/or even available from

the record, empowering the State Government and/or Respondents to withhold the retirement benefits.

13 The Apex Court in State of Jharkhand and others vs. Jitendra Kumar Srivastava and Anr.¹ while dealing with the similar issue of withholding even a part of pension or gratuity during the pendency of departmental/criminal proceedings, is crystallized in following words :-

“ 11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office.”

“14. Article 300 A of the Constitution of India reads as under :-

“300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined

1 (2013) 12 SCC 210

in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. ”

14 So also the Supreme Court in Madhukar vs. State of Maharashtra² while considering the aspect of break in service and qualifying period of service revolving around right of pension, further reiterated the entitlement of pensioner and while passing the order by noting the permissible aspects of the condonation of break-in-service. The Respondents' action of withholding of retirement benefits, in view of above clear position of law, is unsustainable and in breach of service conditions, apart from violation of constitutional and legal rights of the Petitioner.

15 The learned counsel appearing for the Management, apart from the rejoinder filed on record by the Petitioner, by placing on record the subsequent events and specifically referring to the pendency of criminal matters has contended that there was no break-in-service and made the statement that the Petitioner was discharged from those proceedings which were basically against the

² (2014) 15 SCC 565

previous Management/ trustees and employees. A statement is also made that there was no issue about non supply of any service record of the Petitioner to Respondent No.3. The Petitioner has placed on record every documents to support the same. The Management, therefore, all the time supported the Petitioner's case in this regard. Therefore, the action of Respondent denying the pension/retirement benefits by holding or by not treating the Petitioner continuity of service by overlooking the provisions of law so referred above and wrongly denying pensionary benefits on account of the pendency of the criminal proceedings, reflects non application of mind to the fact as well as, to the law. The action of withholding of pension is unjust, illegal and, therefore, unsustainable. The Petitioner as of right is entitled to get these benefits from the date of his retirement which were wrongly illegally withheld by the Respondents. The justification, even if any, as noted above, and as pointed out by the learned counsel appearing for the Respondents, in no way, is acceptable. Therefore, we are of the view that this is a case where the Petitioner is entitled for the interest on the balance amount of retirement benefits not received by the Petitioner since 2002, apart from the balance retirement benefits.

16 This Court, while admitting the Writ Petition, by order dated 29.07.2004 directed the Respondents to continue to pay Rs.6,000/- per month along with Dearness Allowance. The Petitioner has been getting the same. The petitioner, however, has specifically made averments, based upon the service conditions and the rule that he is entitled for Rs.9,630/- per month as pension. However, as Respondents restricted it in view of the order passed by this Court to Rs.6,000/- per month + Dearness Allowance, we are inclined to direct the Respondents to calculate the pension of the Petitioner from the date of his retirement, in accordance with law, after adjusting the amount already received by the Petitioner. The Respondents are further directed to pay the interest on the balance amount/unpaid amount @ 9%, p.a. as early as possible. It is clarified that the Petitioner is entitled for all other benefits arising out of the amount including the Dearness Allowance and all other benefits in accordance with law on the basic amount of pension of Rs.9,630/-. It is also made clear that Petitioner is entitled for all the benefits, even otherwise available to such service conditions, including the benefits of the pay commissions. It is one of the case, where the Petitioner is entitled for the costs also apart from the interest for the reasons so recorded above.

17 The learned senior Advocate Mr. Desai appearing for the Petitioner, on instructions, makes a statement that the statement of balance amount along with @9% p.a. interest thereon, will be calculated and submitted by 23.11.2017. Order accordingly. The Respondents to deal with the same in accordance with law as early as possible preferably within eight weeks from today. Hence the following order.

ORDER

- (i) Writ Petition is allowed.
- (ii) It is declared that there was no break in service of the Petitioner, and therefore, the Petitioner is entitled for all the retirement benefits from the date of his retirement i.e. from 31.05.2002, in accordance with law.
- (iii) We direct the Respondents to pay interest on the balance amount @ 9% p.a. from the date of retirement i.e. from 31.05.2002. The amount to be paid/deposited in the account of the Petitioner, as early as possible, preferably within eight weeks from today.

(iv) The Petitioner is entitled for the costs of Rs.10,000/-.

(v) Rule is made absolute accordingly in the aforesaid terms.

(vi) In view of disposal of the Writ Petition, Civil Application No. 388 of 2017 filed in the Writ Petition does not survive and is also disposed of accordingly.

(MANISH PITALE, J.)

(ANOOP V. MOHTA, J.)