

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

WRIT PETITION NO. 5720 OF 2014

Shri Vijay Pundalik Mestry	)	... Petitioner.
Aged 60 years, Occupation Retired,	)	
R/o. A-701, Mahaveer Vaibhav Co-op.	)	
Housing Society, Plot No.13, Sector-11,	)	
Koparkhairne, Navi Mumbai -400 709,	)	
Dist. Thane.	)	

V/s.

- | | | |
|--|---|------------------|
| 1) The Maharashtra State Electricity |) | |
| Distribution Company Limited, |) | |
| having office at Prakashgad, |) | |
| Bandra (E), Mumbai – 400 051. |) | |
| |) | |
| 2) The Chief Engineer, |) | |
| The Maharashtra State Electricity |) | |
| Distribution Company Limited, |) | |
| Bhandup Urban Zone, 1 st Floor, |) | |
| L.B.S. Marg, Mumbai – 400 078. |) | |
| |) | |
| 3) The Chief General Manager [Tech.] |) | |
| MSEDCL, Prakashgad Bandra (E), |) | |
| Mumbai – 400051. |) | |
| |) | |
| 4) The Executive Engineer, |) | ... Respondents. |
| Panvel Urban Division, MSEDCL, |) | |
| Bhingari, Panvel -410206. |) | |

Mr. N. V. Bandiwadekar, Advocate for the Petitioner.
Ms. Anjali R. Shiledar-Baxi, Advocate a/w. Mr. Nitesh Zimur,
for Respondent Nos. 1 to 4.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 05th OCTOBER, 2017

ORAL JUDGMENT : (Per S.C. Dharmadhikari,J.)

1 We have heard Mr.Bandiwadekar, learned Advocate for the Petitioner, extensively. He would invite our attention to para 5 of the order passed by this court on 29th November, 2013 in writ petition no. 10059 of 2012 to submit that it is an inquiry, which was at that time continued, despite the petitioner attaining the age of superannuation, which was questioned and the court clarified that the petition itself is confined to this issue, the other prayers / reliefs in terms of prayer clauses (b), (c) and (d) were not considered, that means other issue was kept open. If that issue was kept open then there is no merit in the preliminary objection raised by Mr.Baxi, Advocate for Respondents Nos. 1 to 4, to the maintainability of this petition.

2 In this petition, the petitioner says that he may have been allowed to retire honourably on 31st May, 2012. There is no enquiry / punishment post retirement. His whole terminal benefit is withheld and no monetary relief has been granted. In that regard, Mr. Bandiwadekar would rely upon the averments in para 5 of the present petition. He would submit that the petitioner requested the Chief General Manager (Technical) to consider grant of 3 special benefits admissible to the petitioner under the G.O. No.111[P] on the basis that the petitioner has already completed 29 years' service and is due to retire. Mr. Bandiwadekar would submit that another application was forwarded to the Dy. Executive Engineer, Panvel City Sub Division, Panvel and he had favourably considered the case of the petitioner and forwarded his remarks. However, no action was taken by the superiors. Based on all these averments, the petitioner alleges that he is deprived of the gratuity, encashment of earned leave and half pay leave converted into the full pay leave. Thereafter, show-cause was issued and when the petitioner submitted his reply,

it has resulted in action, which was questioned in the earlier petition. Further the correspondence would also denote that the said claim was never given up but kept alive. The petitioner is thus pressing his entitlement and for the services rendered to the predecessor of respondent no.1 and respondent no.1. The petitioner joined the services on 13.01.1983 and retired on 31st May, 2012. On account of his 29 years of meritorious service, the petitioner was entitled to receive special benefits of grant of higher grade on first occasion, on completion of six years, second benefit, on completion of 9 years, followed by grant of higher grade benefit on third occasion, on completion of 28 years of service. The petitioner has relied upon General Order No. 74 [P] dated 30th April, 1974, laying down the rules regarding promotion to the higher grade in respect of the employees, who remained stagnant in one post for 10 years or more. Since the petitioner could not be awarded other benefits, the benefits in terms of this GO could have been granted as there was an Administrative

Circular issued 28th July, 2010 and the petitioner was relying on the same.

3 The Petitioner, having been deprived of this just and legitimate claim, prays that the reliefs in terms of prayer clauses (b) and (c) be granted.

4 The respondents have pointed on affidavit that the very entitlement, which is claimed now, was also part and parcel of the pleadings in the writ petition filed earlier and nothing prevented the petitioner from claiming these reliefs in terms of prayer clauses in that petition. Having not claimed that earlier, it is not open for the petitioner to file another petition.

5 Apart from this, the entitlement could have been granted, provided the petitioner was vigilant. The petitioner was aware that as per the rule appended to GO No. 111 [P] dated 13.05.1982, the employee like the petitioner must fill an

option form before two months of first entitlement of the benefit namely, first six years of service. As per correction slip no. 16, dated 27th November, 1990, the choice was given to an employee, who has not filled any option form, to file it within three months from the date of the correction slip. The petitioner did nothing of this kind and till his retirement never raised this issue. The correction slip no. 27, dated 21st May, 1988 clarified that option forms are not necessary but in cases of such employees, who are eligible for promotion as per rules. The petitioner was trapped by the Anti-Corruption Bureau and the case concluded in 2009. A show cause notice for failure to achieve target was also issued to the petitioner and he was deprived of the monetary benefits. It is in these circumstances, that the disciplinary action is also a reason for the petitioner being held not to be entitled to any of the benefits under the G.O.

6 From a reading of this affidavit, we are satisfied that firstly, the petitioner was not vigilant, remained silent and

secondly, throughout his 29 years of service, his claim of his service being blemish-less and clean is not borne from the record. The record indicates that the petitioner was accused of corruption and Anti-Corruption Bureau laid a trap and the Petitioner was caught and he was tried and prosecuted. The case went on from 1999 and ended in 2009, after which also the employer reserved his liberty to recover the amount. The proceeding in that regard were also initiated. By all means, therefore, the petitioner was clearly involved and knowing fully well, that he would not be entitled to claim nothing beyond quashing and setting aside of the disciplinary proceedings, he rested his claim only to the prayer in that behalf, meaning thereby, quashing and setting aside the disciplinary action and consequential steps. Having squarely given up above claims but raising them now is nothing but an afterthought and trying to take advantage of some of the observations in the earlier order. Consequentially, on merits as well, we do not think that the petitioner deserves any reliefs based upon the earlier order.

7 We find that this is not a fit case for exercising our discretionary and equitable jurisdiction under Article 226 of the Constitution of India.

8 The petition fails and is dismissed accordingly. No costs.

(SMT.BHARATI H.DANGRE,J.)

(S.C.DHARMADHIKARI,J.)

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