

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5000 OF 2014**

Vijay Ganpat Pimple

....Petitioner.

Vs.

The Thane Municipal Corporation & Ors.

....Respondents.

Mr. Yogendra Pendse for the Petitioner.

Mr. Mandar Limaye for Respondent Nos. 1 to 3.

Mr. N.C. Walimbe, AGP for Respondent No. 4.

**CORAM : ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.
DATE : 27 MARCH 2017.**

ORAL JUDGMENT (PER ANOOP V. MOHTA):-

1. Rule. Rule made returnable forthwith.

Heard finally by consent of the parties.

2. The Petitioner, based upon the advertisement and the recruitment, worked uninterruptedly as a legal Assistant with Respondent Nos. 1 and 2, since 1997. Though there was a issue that the Petitioner has not appeared in the Court as per the recruitment and service conditions, till the date of retirement, there was no such objection received to the extent of withholding of his monetary claim

and all other pensionary benefits. The Petitioner has been getting the salary uninterruptedly till the date of his retirement. The Petitioner's prayer clause to claim the pension on the basis of pay-scale, actually drawn by the Petitioner with interest at the rate of 12% on unpaid amount, in our view, required to be granted, specifically in the background that the entitlement of pension comes based upon the retirement rules and on the foundation of last drawn salary.

3. The Respondents, in additional affidavit dated 29 August 2016, endorsed that MCSR (Pension) Rules are applicable. This undisputed position, therefore, in our view, in the facts and circumstances of the case is sufficient to consider the case of the Petitioner, as his pensionary benefits cannot be curtailed and/or taken away, merely for non-compliance of any formalities, so stated above, basically after his retirement. The aspect of the relaxation of recruitment rules should have been taken care of, at the time of appointment and/or at least immediately thereafter.

4. However, having permitted the Petitioner and as the Petitioner, as recorded, has completed his unblemished service, we see

there is no reason to deny the pensionary benefits, which the Petitioner is otherwise entitled. Neither there is a justification, which is sufficient to accept the case of the Respondents nor there is any communication denying the pension claims, so prayed by the Petitioner.

5. Therefore, taking an overall view of the matter and as withholding of such pension itself is unacceptable situation, in the interest of justice and to strike a balance, we are directing that the Petitioner be paid the pension and/or arrears of pension, if any, from 1 March 2013 with interest @ 6% p.a. as early as possible.

6. Writ Petition is allowed. Rule made absolute, accordingly.
No costs.

(RAVINDRA V. GHUGE, J.)

(ANOOP V. MOHTA, J.)