IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6230 OF 2014

Union of India,
Through Secretary,
Ministry of Finance,
Dept. of Revenue & Ors. ..Petitioners
V/s.
Shri.Madhav Dattatraya Sathe ..Respondent

Mr.R.V. Desai, Senior Advocate a/w Smt.Shehnaz V. Bharucha, Mr.D.A. Dube for the Petitioners.

Mr.Sandeep V. Marne for the Respondent.

CORAM : SMT.V.K. TAHILRAMANI AND
M. S. SONAK, JJ.

DATE : 11th SEPTEMBER 2017

P.C.

1. Heard Mr.R.V. Desai, learned Senior Advocate along with Ms.S.V. Bharucha and Mr.D.A. Dube for the petitioners and Mr.Sandeep Marne for the respondent.

2. The challenge in this petition is to the judgment and order dated 30th October 2013 made by Central Administrative Tribunal (CAT), Mumbai to pay regular pension as also arrears of retrial benefits to the respondent within a period of eight weeks

from the date of receipt of the order.

3. Mr.R.V. Desai, the learned Senior Advocate for the petitioner submits that disciplinary proceedings were initiated against the respondent on 11-05-2011 i.e. hardly within less than two months from the date of his retirement with effect from 31-03-2011. He submits that the process for initiation of disciplinary proceedings had commenced much prior to the date of the respondent's retirement. He submits that such course of action is very much permissible under Rule 9 of the CCS (Pension) Rules and further, in such a case, there is no obligation for payment of regular pension. At the highest, provisional pension may become payable in terms of Rules 69 of the CCS (Pension) Rules. Mr.R.V. Desai, places reliance upon the decision of the Division Bench of the Delhi High Court in the case of ***Union of India V/s. R. Vasudevan in Writ Petition (c) 1424 of 2012*** in support of his contention.

4. Mr.R.V. Desai, the learned Senior Advocate for the petitioners further points out that the disciplinary proceedings initiated against the respondent have culminated in the making of order dated 21st April 2016, in terms of which, the disciplinary authority, has imposed penalty of withholding 5% of the monthly

pension for the period of six months on the respondent. He submits that this order dated 21st April 2016 has not been challenged by the respondent and therefore, the same has attained finality. Mr.R.V. Desai submits that in the light of this subsequent development, it is necessary that the impugned judgment and order dated 30th October 2013 made by CAT is required to be either set aside or suitably modified.

5. Mr.Marne, the learned counsel for the respondent submits that in pursuance of the impugned judgment and order dated 30th October 2013 made by the CAT, the respondent is in receipt of regular pension along with other retiral benefits. He however, points out that there was some delay in payment of gratuity and encashment of leave. He submits that interest on this account has not been paid by the petitioners for the delayed period. Mr.Marne admits the receipt of the order dated 21-04-2016 and states that the respondent has no intention of questioning such order. Mr.Marne submits that in fact this petition stands worked out and therefore, there is no reason to make any further orders except perhaps to direct the petitioners to pay interest for the delayed period.

6. Upon due consideration of rival contentions and perusal of the material on record, we find that the CAT, whilst directing the petitioners to pay regular pension along with arrears to the respondent, had, at paragraph 12, reserved liberty to the petitioners in the following terms.

> *"12. However, I make it clear that the respondents are not barred under Rule 9 of the CCS (Pension) Rules from taking action against the applicant but the effect on the pension must be consequent to the result of the pending disciplinary proceedings. It will be open to the respondents to take suitable action, if necessary, by directing suitable cut in the pension in accordance with law, only after conclusion of the pending disciplinary proceeding or after final outcome of the said disciplinary proceeding."*

7. Further, from the perusal of the order dated 21st April 2016 produced on record by the learned Senior Advocate appearing for the petitioners, it is apparent that the disciplinary proceedings stand concluded with the imposition of the penalty of withholding of the 5% of the monthly pension for the period of six months to the respondent. Admittedly, the respondent has not challenged the order dated 21st April 2016 and in terms of the statement made

today, the respondent, does not desire to challenge the order dated 21st April 2016. This means that for the period of six months, the petitioner, would be entitled to withhold 5% of the monthly pension otherwise payable to the respondent.

8. Conjoint reading of paragraph Nos.12 and 13 of judgment and order dated 30th October 2013 indicates that the CAT whilst directing the petitioners to pay regular pension to the respondent, had also reserved the right to the petitioners to conclude the disciplinary proceedings and after conclusion of the same, to take suitable action, if necessary, by directing a suitable cut in the pension so payable. This is precisely what the petitioner has done by order dated 21-04-2016. The petition therefore, stands worked out and there is no necessity to make any further orders in this petition.

9. As regards the issue of alleged delay in releasing certain retiral benefits, we are afraid, we will be not in a position to advert to these aspects in the present petition instituted at the behest to the petitioners-Union of India. Accordingly, there is no question of issuing any directions for payment of interest in the present petition.

10. This petition is disposed of in the aforesaid terms. There shall be no order as to cots.

[M. S. SONAK, J.] **[SMT.V.K. TAHILRAMANI,J.]**