

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5137 OF 2016

Ramesh Manikrao Sasane. ...Petitioner.
vs.
The State of Maharashtra and anr. ...Respondents.

Mr. M.S. Athalye for the Petitioner.
Mr. C.P. Yadav, AGP. for Respondent Nos. 1 and 2.

CORAM : R.M. BORDE AND
A.S. GADKARI, JJ.
DATE : 07th February, 2017

PC:

1. Heard.
2. Rule.
3. By consent of the parties, writ petition is taken up for final hearing at the admission stage.
4. The petitioner is objecting to the order passed by the Maharashtra Administrative Tribunal dated 28.8.2014 rejecting the claim of the petitioner for grant of retirement benefits like Pension, Leave Salary, Gratuity and the salary of suspension period.
5. The petitioner was appointed in the State Excise Department, Maharashtra State on 18.9.1979 as Sub Inspector. The petitioner retired on attaining the age of superannuation on 31.5.2011. At the time of retirement, he was holding the

post of Surveyor. While in service, in 1995, a crime No.113/1995 was registered against him under the provisions of Prevention of Corruption Act, 1988. The petitioner was tried for the offence lodged against him and at the conclusion of the trial he has been acquitted of the charge by the Special Court, Solapur in Special Case No.2/2004 on 15.4.2013. The petitioner made representation dated 30.9.2013 to respondent No.2 for release of pension and other benefits receivable by him.

6. After the petitioner was permitted to retire, he has not been paid final pension, however, he is allowed to draw the provisional pension. The petitioner tendered representation to respondent No.3 putting forth his grievances in respect of release of retirement benefits and finalization of pension proposal. Since there was no response from the respondents, the petitioner approached the Maharashtra Administrative Tribunal seeking direction to release the pensionary benefits. It is pointed out by the petitioner that during the course of employment he was under suspension from 20.6.1995 and the suspension continued till 10.12.1999. The petitioner approached the MAT by presenting the Original Application No. 299 of 1999 seeking revocation of the order of suspension. The

original application tendered by the petitioner was allowed and the Tribunal quashed and set aside the order of suspension and directed the respondents to reinstate the petitioner on or before 10.12.1999.

7. The petitioner was accordingly reinstated and was also permitted to retire on attaining the age of superannuation. The petitioner contends that final pension has not been determined by the respondents and all terminal benefits also have not been released. The MAT has turned down the Original Application thereby rejecting the claim of the petitioner in entirety on the ground that no departmental inquiry certificate issued on 18.5.2011 has been revoked on 31.10.2011, in view of the pendency of the criminal case. The reasons recorded for rejecting the claim of the petitioner by the Tribunal are not just and proper since pending criminal case lodged against the petitioner was already decided, however, the appeal against the order of acquittal remained pending in the High Court.

8. According to the petitioner, pension is hard earned benefit which accrues to an employee and is in the nature of “property”. It is submitted that unless there is a provision prohibiting employee to draw benefits of pension contained in

the relevant service regulations, the respondent State cannot be permitted to withhold the benefits. In the matter of *Devki Nandan Prasad vs. State of Bihar and ors. reported in AIR 1971 SC 1409* the Supreme Court has ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It is further held that grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive flows to the officer not because of any such order but by virtue of the rules. The aforesaid view has been reaffirmed in the matter of *State of Punjab and anr. vs. Iqbal Singh reported in AIR 1976 SC 667*. The right to receive pension has been recognized as right to property by the Constitutional Bench Judgment. The reference can be made to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 which reads thus:-

27. Right of Government to withhold or withdraw pension- (1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether

permanently or for a specified period, and also under the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty or grave misconduct or negligence during the period of his service.

In the instant matter the petitioner has not been found guilty in the judicial proceeding or any departmental proceeding nor there was any charge levelled against him in respect of commission of any grave misconduct or negligence during the period of his service. Admittedly there is no departmental proceeding pending against the petitioner. Merely because an appeal preferred by the State challenging the order of acquittal is pending in the High Court cannot be reason to withheld pension or any part of pensionary benefits.

9. The second submission made by the petitioner is in respect of grant of monetary benefits of the suspension period in view of decision of MAT. Since MAT has quashed and set aside the order of suspension, as a consequence thereof, the petitioner shall be held entitled to claim pay and allowances receivable by him, treating the period of suspension to be duty period. The petitioner is entitled to pay and allowances admissible during the period of suspension which has been

denied by respondents as well as by Tribunal.

10. For the reasons stated above, the petition deserves to be allowed. The order passed by the MAT in Original Application No.103 of 2014 is quashed and set aside. The respondents are directed to release the pensionary benefits admissible to the petitioner as expeditiously as possible and preferably within a period of 6-weeks from today. The petitioner however, would not be entitled to claim gratuity since rule 130(c) of the Maharashtra Civil Services Rules provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Since the appeal against the order of acquittal i.e. judicial proceeding is pending, he is not entitled to gratuity till the conclusion of the criminal appeal against the order of acquittal pending in the High Court.

11. Rule is made absolute to the extent as specified above. There shall be no order as to costs.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)