

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2030 OF 2017

Nandkishor Digambar Deshpande]
(Former Judge of the Bombay High Court)]
Age : 65 years,]
Having address at :]
Building No.56/A Wing/604,]
Chintamani CHS, Opp. Bus Depot,]
Pratiksha Nagar, Sion (E),]
Mumbai 400 022.]..Petitioner

Versus

- 1] High Court of Judicature of Bombay]
Bombay]
[Summons to be served on the]
Registrar General,]
High Court of Judicature of Bombay]
Bombay.]]
- 2] The Registrar General]
High Court of Judicature of Bombay]
Bombay.]
- 3] The Prothonotary & Senior Master/]
Registrar Original Side,]
High Court of Judicature of Bombay.]
- 4] Registrar]
(Administration)]
High Court of Judicature of Bombay]
Bench Aurangabad]
Jalna Road, Aurangabad.]
- 5] Union of India]
[Summons to be served on the Learned]
Government Pleader appearing for]
Union of India under Order XXVII,]
Rule 4, of the Code of Civil]

- Procedure, 1908].]
- 6] The Secretary,]
Law and Judiciary Department]
Government of India]
New Delhi.]
[Summons to be served on the Learned]
Government Pleader appearing for]
Union of India under Order XXVII,]
Rule 4, of the Code of Civil]
Procedure, 1908].]
- 7] State of Maharashtra]
[Summons to be served on the Learned]
Government Pleader appearing for]
State of Maharashtra under Order XXVII,]
Rule 4, of the Code of Civil]
Procedure, 1908].]
- 8] The Secretary]
Law and Judiciary Department]
Government of Maharashtra]
Mantralaya, Mumbai 400 032.]

[Summons to be served on the Learned]
Government Pleader appearing for]
State of Maharashtra under Order XXVII,]
Rule 4, of the Code of Civil]
Procedure, 1908].]
- 9] The Accountant General (A&E)]
Office of Accountant General]
Maharashtra I, Mumbai,]
101, Maharshi Karve Road,]
Mumbai 400 020.]
- 10] The Account General (A&E)]
Office of the Accountant General]
Maharashtra II Nagpur]
Nagpur 440001]
Having the address at : Nagpur]..Respondents

Mr. A. V. Anturkar, Senior Counsel a/w Mr. Manjiri S. Parasnis for the Petitioner.

Mr. Rahul Nerlekar for the Respondent Nos.1 to 4.

Mr. R. S. Apte, Senior Counsel for the Respondent No.5.

Mr. Kedar Dighe, AGP for the Respondent Nos.7 & 8 – State.

Mr. Vinod Joshi for the Respondent Nos.9 & 10.

**CORAM : B. R. GAVAI &
SANDEEP K. SHINDE, JJ.
DATE : 15th NOVEMBER, 2017**

ORAL JUDGMENT :-(Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard by consent.

2] We are called upon to answer an unfortunate question as to whether a person who had occupied the office of 'Additional Judge of this Court' and who happens to be from the cadre of City Civil and Sessions Judge/District and Sessions Judge, would be deemed to be retired as High Court Judge or as a Judge of the City Civil and Sessions Court.

3] The facts in the present case are not in dispute. The Petitioner came to be appointed directly as a Judge of the Bombay City Civil and Sessions Court vide notification dated 11th October 1991. He served in that capacity for period of almost 17 years. Vide notification issued by the Government of India dated 11th April 2008, the Petitioner

came to be appointed as an Additional Judge of the Bombay High Court for a period of two years i.e. till 11 April 2010. The Petitioner accordingly took oath as an Additional Judge of this Court on 16th April 2008. Another notification came to be issued on 8th March 2010 thereby further appointing the Petitioner as an Additional Judge of this Court for a further period of one year i.e. upto 15th April 2011. However, it appears that when the Petitioner was occupying the post of an Additional Judge of this Court a notification came to be issued by the Government of Maharashtra on 8th April 2011 under the provisions of Section 58 of the Maharashtra Universities Act, 1994 appointing the Petitioner as Presiding Officer of Mumbai University and College Tribunal (herein after referred to as "said Tribunal"). The said appointment was tenure appointment for a period of three years. The Petitioner accordingly assumed the office of the Presiding Officer of the said Tribunal on 11th April 2011. The Petitioner continued to hold the said post till end of the tenure i.e. 10th April 2014.

4] It appears from the record that the Petitioner had filed a Writ Petition (L) No.290 of 2013 under Article 32 of the Constitution of India before the Hon'ble Supreme Court, seeking declaration that after 16th April 2011 he ought to have been either granted further extension as Additional Judge or confirmed as permanent Judge of this Court. The

said Petition was dismissed in limine on 2nd July 2013.

5] The Petitioner ceased to hold the office as a Presiding Officer of the said Tribunal from 10th April 2014, upon completion of three year tenure. After that there was some dispute as to under what provisions the pensionary and terminal benefits would be granted to the Petitioner.

6] The issue regarding fixation of pension and other retirement benefits of Petitioner was considered in the meeting of Administrative Judges Committee held on 10th April 2015, wherein it was resolved that, the Petitioner stands retired on superannuation, as District Judge in Maharashtra State Judicial Services with effect from 10th April 2014. In pursuance to the decision of the Hon'ble Administrative Judges Committee, a notification came to be issued on 17th April 2015 notifying that the Petitioner stands retired on superannuation as a District Judge in the Maharashtra State Judicial Service with effect from 10th April 2014 (AOH). The perusal of the minutes of the Hon'ble Administrative Judges Committee would reveal that since there was no confirmation or extension beyond 15th April 2011, the Petitioner ceased to be a Judge of the Bombay High Court with effect from 15th April 2011 and from that date he went back to the cadre of District Judge in the Maharashtra State Judicial Service. The minutes further reveal that though the Petitioner

had completed 60 years of age, but in view of the notification dated 8th April 2011 notified by the State Government, he held the office of the Presiding Officer of the Tribunal till 10th April 2014. The Administrative Judges Committee resolved that for the purpose of fixation of pension and other retiral benefits, the Petitioner is granted extension in service in the cadre of District Judge upto 10th April 2014.

7] That being aggrieved by the notification dated 17th April 2015, the Petitioner had preferred a representation on 24th April 2015 requesting the High Court to recall the notification for the reasons stated therein. This representation was decided by the Committee of Administrative Judges in its meeting dated 2nd May 2016, wherein it was decided to reiterate and confirm the earlier decision of Administrative Judges Committee that, the pension papers of the Petitioner shall be processed and finalized by the office of City Civil and Sessions Court Mumbai on the premise, that he stood retired on superannuation as a District Judge with effect from 10th April 2014.

8] It appear that the Petitioner had addressed a letter to Secretary, Government of India, Department of Justice, New Delhi on 6th February 2016, which was followed by another letter dated 31st May 2016, whereby the Secretary, Government of India, Department of Justice

was requested for taking early decision regarding the finalization of his pension.

9] It appears that in response to the representation made by the Petitioner, Hon'ble Minister of Law and Justice, Government of India addressed a communication to the Hon'ble the Chief Justice of this Court dated 4th July 2016. A perusal of the letter would reveal that in response to the earlier communication of the Petitioner, a communication was addressed to the Accountant General (Pension) of Maharashtra and to the Registrar General of this Court for taking further action. It would further reveal that Accountant General (Pension) of Maharashtra vide communication dated 18th March 2016 had informed that the issues relating to pension eligibility of the Petitioner are to be sorted out by the administrative authority of the Bombay High Court and the case will be finalized after getting complete proposal from the pension sanctioning authority which is the Registry of this Court. It was further informed that the Department of Law and Justice has not received response from the Bombay High Court nor the pension papers were received. The Hon'ble Minister for Law and Justice by the said letter requested the Hon'ble the Chief Justice, for forwarding the pension admissibility papers expeditiously to the appropriate authority. This letter was replied by the High Court through Registrar General vide letter dated 16th July 2016

inter-alia informing that the High Court on Administrative Side considered issue of pension of the Petitioner in its meeting held on 10th April 2015. It was also informed that the representation against the decision dated 10th April 2015, was decided on 2nd May 2016. It was brought to the notice of Secretary, Ministry of Law and Justice that inspite of communication of the decision dated 2nd May 2016 Petitioner was not turning up to the City Civil and Sessions Court, Mumbai for finalization of pension papers and consequently these could not be forwarded to the office of Accountant General.

10] After receipt of the communication dated 16th July 2016 from the Registrar General of this Court, the Director, Government of India, Ministry of Law and Justice again addressed communication to the Registrar General of this Court on 14th October 2016. It was specifically mentioned in the said letter that under Section 2(g) of the High Court Judges (Salaries and Conditions of Services) Act, 1954 (hereinafter referred to as “the said Act”), 'Judge' means, Judge of a High Court and includes the Chief Justice, an Acting Chief Justice, an Additional Judge and an Acting Judge of the High Court. It was also stated that according to Section 2(gg) of the said Act, 'Pension' means a pension of any kind whatsoever payable to or in respect of a Judge and includes any gratuity or other sum or sums so payable by way of of death or retirement

benefits. The Registrar General was therefore requested to consider as to how pension in respect of period served by the Petitioner as an Additional Judge of the Bombay High Court will be regulated as per the provisions of Part III of the said Act.

11] It appears that, pursuant to the communication dated 14th October 2016, the Hon'ble the Chief Justice had referred the matter to a Special Committee of two Hon'ble Judges of this Court. The said Committee of Hon'ble Judges in its meeting dated 8th December 2016 found that the pension papers of the Petitioner would have to be processed considering him as superannuated as a Judge of City Civil and Sessions Court and the Registry of the City Civil and Sessions Court should take necessary action.

12] It appears that pursuant to the decision of the Special Committee, the Registrar General of this Court addressed a letter dated 23rd December 2016, to the Director (Ministry of Law and Justice) stating therein that the Petitioner ceased to be Judge of High Court with effect from 15th April 2011. It was also informed that, with effect from that date he went back to his substantive cadre of District Judge in the Maharashtra State Judicial Service and therefore, the said Act had no application to the pension case of the Petitioner. It was further informed

that from the language of Section 14 and definition of the term 'Judge' appearing in Section 2 clause (g) r/w Section 2(gg) of the said Act defining the term 'Pension', it was apparent that the Act is applicable to a Judge of High Court including Chief Justice, Acting Chief Justice and Additional Judge and Acting Judge of the High Court and Petitioner was not a Judge of this Court. It was further stated that he was appointed as a Presiding Officer of the said Tribunal with effect from 11th April 2011 and therefore, he ceased to be governed by the said Act and attained the age of superannuation as a District Judge. In the letter a reference has also been made to the judgment of the Hon'ble Supreme Court in N. Kannadasan Vs. Ajoy Khose and others reported in (2009) 7 SCC 1.

13] Being aggrieved by the decision of this Court on Administrative side as is reflected in the letter dated 23rd December 2016 addressed by the Registrar General of this Court to the Director (Justice), Ministry of Law and Justice declaring that the Petitioner has retired as District Judge and not as Judge of this Court, the Petitioner has approached this Court by way of the above Writ Petition.

14] Mr. A. V. Anturkar, learned senior counsel appearing for the Petitioner has made various submissions in support of the Petition. However, we do not find it necessary to refer to all the submissions made

by Mr. A. V. Anturkar.

15] Mr. Rahul Nerlekar, learned counsel appearing on behalf of the High Court would submit that in paragraph 20 of the judgment of the Apex Court in the case of *N. Kannadasan*, it has categorically been held that an Additional Judge who holds a tenure post indisputably would not get any pensionary benefit, and therefore no error could be found with the decision taken by the High Court on the administrative side.

16] As already discussed hereinabove, though Mr. A. V. Anturkar has made various submissions, we do not find it necessary to refer to them, in as much as, we are of the considered view that the Petition deserves to be allowed on the basis of interpretation on the provisions of the said Act. It will be relevant to refer to clause (d) and clause (g) of Sub Section (1) of Section 2 of the said Act which read thus :-

“2. Definition :- (1) In this Act, unless the context otherwise requires -

(a)

(b)

(c)

(d) Additional Judge' means a person appointed as an additional Judge under clause (1) of Article 224 of the Constitution;

(e)

(f)

(g) 'Judge' means a Judge of a High Court and includes the Chief Justice, [an acting Chief Justice, an additional Judge and an acting Judge of the High Court];”

17] The perusal of the aforesaid provisions would reveal that clause (d) defines that an additional Judge means a person appointed as an additional Judge under clause (1) of article 224 of the Constitution of India. Clause (g) means a Judge of a High Court and includes the Chief Justice [an acting Chief Justice, an additional Judge and an acting Judge of the High Court]. Section 15 of the said Act reads thus :-

“15. Special provision of pension in respect of Judges who are members of service.- (1) Every Judge-

(a) (.....)

(b) who (.....) has held any other pensionable civil post under the Union or State, shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part III of the First Schedule;

Provided that every such Judge shall elect to receive the pension payable to him either under Part I or the First Schedule or, (.....) Part III of the First Schedule, and the pension payable to him shall be calculated accordingly.”

18] The perusal of clause (b) of Sub Section (1) of Section 15

would reveal that every Judge who has held any other pensionable civil post under the Union or State, shall on his retirement, be paid a pension in accordance with the scale and provisions of Part III in the First Schedule of the said Act. The proviso thereto provides that every such Judge shall elect to receive the pension payable to him either under Part I of the First Schedule or, Part III of the First Schedule and the pension payable to him shall be calculated accordingly.

19] It will not be necessary to refer to Part I of the First Schedule of the said Act since the Petitioner would not be governed by the same. Undisputedly, the case of the Petitioner would be governed by Part III. It will be relevant to refer to the following provisions as are contained in Part III of the said Act:-

“1. The provisions of this Part apply to a Judge who has held any pensionable post under the Union or a State but is not a member of the Indian Civil Service and who has not elected to receive the pension payable under Part I.

2. The pension payable to such a Judge shall be -

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of Rs.16,020/- per annum in respect of each completed year of service for

pension.

Provided that the pension under clause (a) and the additional pension under clause (b) together shall in no case exceed Rs.5,40,000/- per annum in the case of a Chief Justice and Rs.4,80,000/- per annum in the case of any other Judges.”

20] Clause (1) of Part III of the First Schedule would reveal that the provisions of this Part shall apply to a Judge who has held any pensionable post under the Union or a State (but is not a member of the Indian Civil Service) and who has not elected to receive the pension payable under Part I. Undisputedly, the Petitioner has not elected to receive the pension payable under Part I. Clause (2) of Part III of the First Schedule provides that the pension payable to such a Judge shall be the pension to a Judge under the ordinary rules of his service, if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension. Sub clause (b) provides that a special additional pension of Rs.16,020/- per annum in respect of each completed year of service for pension would be payable to such a person. The proviso thereof provides that the pension under clause (a) and the additional pension under clause (b) together shall in no case exceed Rs.5,40,000/- per annum in the case of a Chief Justice and Rs.4,80,000/- per annum in the case of any other Judge. Undisputedly, the Petitioner would be governed by the Maharashtra Civil Services

(Pension Rules) 1982 in so far as the pension to be granted to him as Judicial Officer under the Maharashtra Judicial Officers cadre is concerned. Under Rule 53 of the Maharashtra Civil Services (Pension Rules) 1982, the Petitioner who is directly recruited from the Bar for the post of a Judge of the Bombay City Civil and Session Court and since his age on the date of initial appointment was 38 years, he would be entitled for 8 years additional qualifying service, in addition to the services already rendered by him.

21] The factual scenario thus that would emerge is that the Petitioner has completed services as a Judicial Officer in the cadre of City Civil and Sessions Judge for a period of 16 years and 6 months. In view of Rule 53(b) of the Maharashtra Civil Services (Pension) Rules, 1982, he would be entitled to 8 more years of qualifying service. In view of the provisions of Section 15 r/w Part III of Schedule I of the said Act, the period during which the Petitioner has worked as a Judge will have to be added to his pensionary service for calculating his pension.

22] However, the crux of the dispute lies on this point. It is the contention of the Respondent – High Court that the 3 years period during which the Petitioner has actually worked as an Additional Judge of this Court cannot be treated as a period for qualifying him to the pensionable

services of a High Court Judge, since according to the High Court he was not confirmed as a Judge of this Court. A strong reliance is placed in this respect on the judgment of the Apex Court in the case of *N. Kannadasan*.

23] Per contra, it is the contention of the Petitioner that the Petitioner has actually worked as an Additional Judge of this Court and that as a matter of fact, when he assumed office as the Presiding Officer of the said Tribunal, he was still an Additional Judge of this Court. It is not in dispute that, the services rendered by a person as a Presiding Officer of the said Tribunal are not pensionable and as such those services cannot be counted for a pensionary benefit.

24] As already discussed hereinabove, under clause (g) of Sub Section (1) of Section 2 of the said Act, the Judge also includes Additional Judge. Undisputedly, the Petitioner has been appointed as an Additional Judge for the first time vide notification dated 11th April 2008. He took oath on 16th April 2008. Undisputedly, vide second notification dated 8th March 2010, the Petitioner was further appointed as an Additional Judge for a period of one year with effect from 16th April 2010. As such, under the notification dated 8th March 2010, the Petitioner was entitled to be continued as an Additional Judge of this Court till 15th April 2011. Undisputedly, even prior to the completion of the said period,

a notification was issued appointing the Petitioner as a Presiding Officer of the said Tribunal on 8th April 2011 and the Petitioner assumed the said office on 11th April 2011. It could thus be seen that, the Petitioner continued to be an Additional Judge of this Court till the date he assumed the office as Presiding Officer of the said Tribunal. As a matter of fact, the Petitioner could have also continued as an Additional Judge of this Court till 15th April 2011. We do not wish to go into further controversy as to whether the Petitioner should have been continued thereafter or as to whether he should have been confirmed or not. The Petitioner has restricted his claim only for the purpose of a direction that he is entitled for pensionary benefits under the provisions of the said Act and that his services as an Additional Judge of this Court should be counted while calculating the pensionary benefits, to which he is entitled.

25] As already discussed hereinabove, a Judge also includes an Additional Judge. The provisions of Section 15 of the said Act are applicable to the Judge who has held any other pensionable civil post under the Union or State. Undisputedly, under clause (1) of Part III of the First Schedule of the said Act, a Judge who has held any pensionable post and who has not elected to receive pension payable under Part I, would receive his pension under the ordinary rules of his service, if he had not been appointed a Judge, his service as a Judge being treated as service

therein for the purpose of a calculating that pension. However, a special additional pension of Rs.16,020/- per annum is payable to a Judge in respect of each completed year of service for pension. It could further be seen that in case of a Judge, the pension under both the provisions shall in no case exceed Rs.4,80,000/- per annum. We are therefore of the considered view that since the Petitioner in fact occupied the post of an Additional Judge of this Court, his case would be governed by the definition of Judge as provided under Section 2(g) of the said Act and therefore he would be entitled to a pension as a Judge of the High Court under the provisions of Section 15 of the said Act r/w Part III of the First Schedule.

26] That leads to us to the question as to whether the reliance placed by the High Court on the case of *N. Kannadasan* is well placed or not. Firstly, the judgment in the case of the *N. Kannadasan*, is totally on different facts. In the said case, a person who was appointed as an Additional Judge of the Madras High Court was not found to be continued as an Additional Judge or confirmed as permanent Judge. After he ceased to hold the post of Additional Judge, he came to be appointed as a President of the Consumer Forum. In that premise, the Hon'ble Supreme Court was required to decide the issue as to whether the person who was not found to be fit to be continued as an Additional

Judge, could be appointed as the Chairman of the Consumer Forum, wherein the qualification required for that post was that a person should be qualified to be judge of the High Court.

27] It is further to be noted that in the said case, the person so appointed was a lawyer who was directly elevated to the High Court. As such, the question as to whether the period during which a person who had held any pensionable post under the Union or State could be treated as a service therein for the purpose of calculating the pension would not arise for consideration in the said case.

28] Apart from that it is further to be noted that the appointment of the Petitioner as a Presiding Officer of the said Tribunal was also challenged before this Court by a PIL seeking reliance on the judgment of the Apex Court in the case of *N. Kannadasan*. The Division Bench of this Court consisting of Smt. Ranjana Desai and Dr. D. Y. Chandrachud, JJ (As Her Ladyship and His Lordship then were) considered the challenge raised in the said Petition. The judgment in the case of *N. Kannadasan*, was considered by Their Lordships. The Petitioner herein was Respondent No.1 in the said Petition. It will be relevant to refer to paragraph 10 of the said judgment which read thus :-

“10. In this case, respondent 1 worked as a judge of the City Civil and Sessions Court from 11 October 1991 to 16 April 2008 on which day he was appointed judge of this court. He was a judge of this court from 16 April 2008 till 11 April 2011 when he was appointed as Presiding Officer of the College Tribunal There are no allegations of lack of probity against him. His integrity and character is not in doubt. Moreover, unlike the appellant in Kannadasan, the first respondent had not demitted office. When respondent 1 was appointed as a Presiding Officer of the College Tribunal, he was a judge of this court. His case is, therefore, covered by Section 58(4)(a) of the Maharashtra Universities Act, Kannadasan is not applicable to this case.”

(emphasis supplied)

29] It could thus be seen that Their Lordships have specifically observed that the Respondent No.1 worked as a Judge of City Civil and Sessions Court from 11th October 1991 to 16th April 2008 on which day he was appointed as a Judge of this Court. It has further been observed that the Petitioner was a Judge of this Court from 16th April 2008 till 11th April 2011, when he was appointed as Presiding Officer of the said Tribunal. Their Lordships further observed that there are no allegations of lack of probity against him. His integrity and character is not in doubt. It has further been observed that unlike the appellant in the case of *N. Kannadasan*, the present Petitioner had not demitted the office. Their Lordships further observed that when the Petitioner was appointed as a Presiding Officer of the said Tribunal, he was a Judge of this Court.

30] It is further relevant to refer to paragraph 13 of the said judgment, which is reproduced herein under :-

“13. There are no allegations in the petition that respondent 1 lacks probity. In the additional affidavit of Mr. Patil, however, it is stated that I.B. Report is considered while making a judge permanent and, therefore, the Central Government should have filed an affidavit. Mr. Patil had at the outset informed us that he did not wish to see the record and that we should peruse it. We have accordingly, perused it. There is no adverse report of any agency against respondent 1. After a careful perusal of the record, we are of the opinion that there is no need to direct the respondents to file affidavits in reply as the petition deserves to be dismissed in limine.”

(emphasis supplied)

31] It is observed by Their Lordships that there are no allegations against the Petitioner/Respondent No.1 of lack of probity. However, in the additional affidavit of Mr. Patil, it is stated that the I.B. Report is considered while making a judge permanent and, therefore, the Central Government should have filed an affidavit. Their Lordships further observed that they have perused the record and no adverse report has been found against the present Petitioner.

32] In that view of the matter, it could be clearly seen that the case of the present Petitioner by no stretch of imagination can be equated with the case of *N. Kannadasan*. In any case, the Division Bench of this

Court on a judicial side has, in unequivocal terms, held that the *N. Kannadan's* case is not applicable to the case of the present Petitioner.

33] We are of the considered view that since the Petitioner was entitled to continue as an Additional Judge of this Court till 15th April 2011 in view of notification issued by Union of India dated 8th March 2010, he would be deemed to have retired as a Judge of this Court with effect from 15th April 2011. It is to be noted that the Petitioner assumed the office of University and College Tribunal on 11th April 2011, in pursuance to the notification issued by the State Government on 8th April 2011. However, as already discussed hereinabove the services as Presiding Officer of the University and College Tribunal are not pensionable.

34] In that view of the matter, we are of the considered view that since the Petitioner was holding office of a Judge of this Court on the date on which he assumed the office of the Presiding Officer of the said Tribunal, he will have to be construed to be a Judge for the purposes of the said Act and the pensionary benefits that would follow from then. In the result, the Petition is allowed.

I) It is held and declared that the Petitioner has retired as

a Judge of this Court on 15th April 2011. It is further held and declared that the Petitioner is entitled to receive the pension under the provisions of the High Court Judges (Salaries and Conditions of Services) Act, 1954 and specifically Section 15(1)(b) r/w Part III of First Schedule thereof.

- II) The Registrar General is directed to submit the papers for making applicable Pensionary and terminal benefits to the Petitioner in the light of the aforesaid observations to the Respondent Nos.9 and 10 within a period of one month from today.
- III) The Petitioner shall render necessary co-operation including signing of documents etc. for the said purpose.
- IV) The Respondent Nos.9 and 10 are directed to process the said papers and ensure that the pensionary and terminal benefits are made applicable to the Petitioner within a period of three months from today.
- V) All the arrears shall be paid to the Petitioner within a

period of six months from today.

35] At this stage, the learned counsel for the High Court Mr. Rahul Nerlekar prays for stay of the order passed by us.

36] It is unfortunate that a person who has occupied the office of the Additional Judge of this Court for a period of three years and the office of Judge of the City Civil and Sessions Court for a period of more than 16 years, has to run from pillar to post for a period of three and half years for getting his terminal and pensionary benefits. The Apex Court in the case of *D. S. Nakra Vs. Union of India*¹ has held that right to pension is included in right to life under Article 21 of the Constitution of India. In that view of the matter, the prayer is rejected.

[SANDEEP K. SHINDE, J.]

[B. R. GAVAI, J.]

¹ AIR 1983 SC 130.