IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5724 OF 2013

Dr. Ashok D. Vadekar ...Petitioner
Versus
The Secretary to
the Government in the
Public Health Department and ors. ...Respondents

Mr. K.K. Malpathak for the Petitioner.
Mr.N.C. Walimbe, AGP for the Respondents – State.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 14.06.2018.

ORAL JUDGEMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 06.03.2013 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing the petitioner's O.A. No.510 of 2011, in which, the petitioner, had applied for the following reliefs:

“a) That this Hon'ble Tribunal be pleased to issue

*appropriate Order of direction quashing and setting aside the impugned Orders Nos.ESS-1810/1016/PK 183/ESI-1 dated 15th March 2011 passed by the Respondent No. 1 (**Exh.A)** and Order No. ESS/ESP/Dr. Vadekar/Gy & Obst./ Class I/ Retd. / 3379-84/11 dated 13/4/2011 passed by The Respondent No. 3 (Exh.A-1);*

b. that this Hon'ble Tribunal be pleased to direct the Respondents to pay the Applicant interest @ 9% p.a. on the retiral benefits on account of inordinate delay in making actual payment in terms of the claim made by the Applicant in para 6.15 of this Application;

c. that this Hon'ble Tribunal be pleased to direct the Respondents to pay the actual amount of commuted pension which he would have received had be been paid the same within due time with interest thereon @ 9% p.a. till actual payment;

d. costs of this Application be provided for;

e. any other Order which this Hon'ble Tribunal deems fit & proper be passed."

4] Mr. K.K. Malpathak, learned counsel for the petitioner, submits that there was unreasonable delay of 7 years on the part of the respondents in concluding the departmental enquiry against the petitioner. He submits that on account of such delay, the petitioner was deprived of pension and other terminal benefits for a period of almost 7 years. He submits, therefore, that the petitioner was liable to be paid interest by the respondents on such delayed payments.

5] Mr. Malpathak further submits that the petitioner is entitled to interest on gratuity, commuted pension, difference in ad-hoc pension from 30.06.2009 to February 2010, difference of pay and allowances from 1.02.200 to 13.01.2010 and leave encashment from 1.02.2000 to 14.12.2009. He submits that such interest is due and payable because here again there was delay on the part of the respondents in paying such amounts to the petitioner. He submits that such amounts have in fact not even been paid to the petitioner.

6] Mr. Malpathak submits that the order dated 15.03.2011, the respondents, themselves ordered payment of interest for a portion of the delayed period. He submits that the petitioner has impugned the order dated 15.03.2011, to the extent it denies to the petitioner interest as commuted and demanded by the petitioner.

7] Finally, Mr. Malpathak submits that the order dated 13.04.2011, which is only an order in purported compliance with the order dated 15.03.2011 is required to be interfered with because even though the order dated 15.03.2011 had directed payment under four distinct heads, the implementing authority, based upon its own but erroneous interpretation has chosen to grant the petitioner benefit under only two heads. Mr. Malpathak submits that the implementing authority cannot defy the directions of the sanctioning authority.

8] For all these reasons, Mr. Malpathak submits that the impugned judgment and order made by the MAT is liable to be set aside and the petitioner is liable to be granted all the reliefs prayed for by him in O.A. No. 510 of 2011.

9] Mr. N.C. Walimbe, learned AGP for the respondents-State, submits that the disciplinary enquiry against the petitioner concluded only on 12.01.2007 with the imposition of penalty upon the petitioner. He points out that the petitioner has not questioned the order imposing penalty. He submits that as long as the disciplinary proceedings were pending, there was no obligation to release pension or terminal benefits. After conclusion of disciplinary proceedings, pension and other terminal benefits have in fact been paid to the petitioner vide orders dated 15.03.2011 and 13.04.2011. For the delay post the conclusion of the disciplinary proceedings, interest has also been sanctioned and paid to the petitioner. In these circumstances, Mr. Walimbe submits that there is no case made out to interfere with the impugned judgment and order made by the MAT and this petition may therefore be dismissed.

10] The rival contentions now fall for our determination.

11] The disciplinary proceedings against the petitioner had commenced prior to his retirement with effect from 31.01.2000. In terms of the rules as applicable, the enquiry was continued post the retirement of the petitioner. The petitioner, at no stage, challenged the continuance of such enquiry. No doubt, the enquiry did take considerable period to conclude. However, there is nothing on record to indicate that the petitioner made any complaints about the tardy progress in the disciplinary proceedings or that the petitioner approached any court or tribunal seeking to either quash disciplinary proceeding or to expedite the same. At this point of time, we have no material before us to determine which party was responsible for the delay in the conclusion of the enquiry proceedings. However, there is no dispute that the enquiry proceedings concluded on 12.01.2007 with the imposition of a penalty upon the petitioner. There is also no dispute that the petitioner has not even challenged the penalty imposed upon him.

12] In the aforesaid circumstances, we see no reason to interfere with the impugned order made by the MAT to the extent it holds that until the conclusion of the disciplinary proceedings, there was no obligation upon the respondents to pay pension and other terminal benefits to the petitioner. On this basis, the MAT has declined to award the petitioner interest on the pension and other terminal benefits, which were ultimately paid to the petitioner from 1.2.2000 as claimed by the petitioner.

13] In the detailed order dated 15.03.2011, the claims of the petitioner under 7 heads have been listed. The first head relates to payment of interest on gratuity from 01.02.2000. The respondents have denied the petitioner interest from 01.02.2000 but awarded the petitioner interest for the period commencing from 12.04.2007. This is on the basis that gratuity became payable within three months from the date of conclusion of disciplinary proceedings, i.e., within three months from 12.01.2007. Since the gratuity was actually paid in the year 2011, interest has been paid from 12.04.2007 till the date of actual payment. This is quite correct and we see no reason to award the petitioner any further interest under this head.

14] The claim under second head raised by the petitioner relates to commuted pension. Mr. Malpathak has contended that if such commuted pension is to be paid to the petitioner in the year 2007 itself, the same would be substantially higher than the amount of Rs.1,02,740/- paid to the petitioner on 16.02.2010. Although, the claim of the petitioner from the year 2000 cannot be considered. There is no reason to deny the petitioner the amount towards commutation of pension as determined on 12.01.2007, i.e., the date of conclusion of the disciplinary proceedings or at least on 12.04.2007, i.e., within a period of three months from the date of conclusion of the disciplinary proceedings. This amount would come to approximately Rs.1,10,000/- or thereabouts. This means that the petitioner would have got additional amount of approximately Rs.7,000 to Rs.8,000/- towards commuted pension. We accordingly, allow such additional amount of Rs.10,000/- inclusive of interest.

15] The claim under third head relates to arrears of pension. Though the petitioner has claimed the interest on this amount from year 2000, we are of the opinion that the interest is payable from 12.04.2007. Such interest has already been awarded and paid to the petitioner and therefore, no further relief is due against this head of claim.

16] The fourth head relates to difference consequent upon applicability of 6^{th} Pay Commission Scale, the amount claims is Rs.10,027/-. There is no basis for this claim and we see no good reason to make any award under such head.

17] The fifth head relates to claim an amount of Rs.4,572/- again relates to the difference arising out of implementation of recommendation of 6^{th} Pay Commission Scales. This claim has been rejected by reference to certain statutory rules and we see no good ground to award this claim to the petitioner

18] The sixth head relates to difference payable consequent upon pay fixation. Some interest is paid to the petitioner and therefore, this claim is now not pressed by the petitioner. Even otherwise, we are satisfied that the interest amount already paid to the petitioner is adequate and there is no question of any further award under this head.

19] The claim under the seventh head relates to encashment and this claim is also not pressed by the petitioner. Insofar as the implementation order dated 13.04.2011 is concerned, we agree with Mr. Malpathak that the implementing authority has to make orders consistent with the orders made by the sanctioning authority. Therefore, the order dated 13.04.2011, to the extent the same is inconsistent with the order 15.03.2011 warrants interference.

20] For all the aforesaid reasons, we partly allow this petition and dispose of the same by making the following order:

a) The respondents are directed to pay to the petitioner interest on the ground of gratuity at the rate of 9% per annum for the period between 12.04.2007 and 13.04.2011;

b) The respondents are directed to pay to the petitioner an amount of Rs.10,000/- towards computation of pension;

c) The order dated 13.04.2011 is hereby quashed and concerned implementing authority is directed to issue a fresh implementation order, consistent with the order dated 15.03.2011 issued by the State Government and after taking into consideration the relief granted by this court in terms of clauses (a) and (b) above;

d) The respondents are directed to compute and pay to the petitioner all amounts due in terms of the present order within a period of three months from today;

e) Rule is made partly absolute in the aforesaid terms; and

f) There shall, however, be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**