

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5422 OF 2016

Subhash Ramchandra Durape ...Petitioner
vs.
The State of Maharashtra & Ors ...Respondents

Mr.Nitin P. Dalvi for the Petitioner
Mr.N.C.Walimbe, AGP for the respondent Nos.1 to 3.

CORAM : A.S.OKA, &
M.S.SONAK, JJ.
DATE : SEPTEMBER 26, 2018

P.C.:

1 Heard the learned counsel for the petitioner
and the learned AGP for the respondent Nos.1 to 3.
By the impugned order dated 21st March 2016, the
learned Vice Chairman of the Maharashtra
Administrative Tribunal (for short 'the Tribunal')
dismissed the Original Application filed by the
petitioner. The grievance in the Original
Application was about the failure of the
respondents to grant to the petitioner second
benefit of Assured Career Progression Scheme (for
short 'ACP Scheme') on completion of 24 years of
service. He sought benefit of second ACP Scheme
from June 2008.

2 The reason given for dismissing the claim of
the petitioner is that with effect from 1st August
2005 to 17th February 2010 the petitioner was under

an order of suspension. The learned Vice Chairman observed that if the said period is excluded, it cannot be held that the petitioner has completed 12 years of regular service in June 2008. The Tribunal observed that to enable the petitioner to claim the second benefit of ACP Scheme, he ought to have completed 12 years of service from June 1996. Thus, it appears from the impugned Judgment that there is no dispute about the factual position that if the period of suspension from 1st August 2005 to 17th February 2010 is treated as period in service for the purposes of grant of second benefit of ACP Scheme, the petitioner will be entitled to the said benefit. Perhaps, due to this reason that on 31st July 2018, the learned AGP on instructions made a statement that a decision will be taken within a period of four weeks from that day on the question as to how the suspension period will be treated.

3 Thereafter, there are two orders placed on record. The first order is of 30th August 2018 imposing penalty upon the petitioner. The second order is of 24th September 2018. The second order provides that the period of suspension cannot be treated as period spent on duty for the purpose of accepting the said period for pensionary benefit. However, the said period will have to be treated as period spent on duty for calculating pension. Thus, the period of suspension has not been regularized for the purpose of claim of the petitioner for grant of second benefit of ACP Scheme.

4 The learned counsel for the petitioner states that the petitioner wishes to challenge both the orders dated 30th August 2018 and 24th September 2018. We accept the said statement.

5 Now coming back to the impugned order, only reason given by the Tribunal for denying the second benefit of ACP Scheme to the petitioner reads thus:

"The Applicant's service from 1.8.2005 to 17.2.2010, when he was under suspension, has not been regularized as yet. He cannot be held to have completed 12 years of regular service in June 2008. The Applicant is clearly not eligible to get second benefit of ACP Scheme as per G.R. dated 1.4.2010.

6 Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs."

6 In the event, the petitioner succeeds in the Original Application filed by him for challenging the orders dated 30th August 2018 and 24th September 2018 and it is directed that the period of suspension shall be treated as the period spent on duty for considering the ACP Scheme, the petitioner will be entitled to get second benefit of ACP Scheme as per G.R. dated 1st April 2010.

7 Though we are not keeping this petition pending, we clarify that in the event the petitioner ultimately succeeds in the proceedings for challenging orders dated 30th August 2018 and 24th September 2018 and it is held that the period of suspension shall be treated as period spent on duty for the purpose of second benefit of ACP Scheme under the G.R. dated 1st April 2010, the respondents will be under an obligation to grant second benefit of said ACP Scheme and all consequential benefits to the petitioner.

8 We dispose of this petition accordingly. We make it clear that we have made no adjudication on merits of the orders dated 30th August 2018 and 24th September 2018 and all issues are left open to be decided by the Tribunal.

(M.S.SONAK,J.)

(A.S.OKA,J.)