

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 26512 OF 2017

The State of Maharashtra and anr.	...Petitioners
Versus	
Smt. Ranjana S. Patil	...Respondent

Mr. A.I. Patel, AGP for the Petitioners/State.
Mr. Bhushan A. Bandiwadekar i/b Mr. G.A. Bandiwadekar for
the Respondent.

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

DATE : 13th MARCH 2018.

ORAL JUDGMENT:

- 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 petitioners -State challenges the judgment and order dated 7th November 2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing Original Application No. 165 of 2016 instituted by the respondent.

4] The respondent, i.e., original applicant before the MAT was basically aggrieved by the order dated 28th April 2015, which, the Accountant General, M.S.-1, Mumbai had ordered recovery of an amount of Rs.6,65,404/- towards the excess amount of pay and allowances said to have been paid to the respondent in the matter of implementation of the Assured Career Progression Scheme (ACPS Scheme). The respondent in her O.A. No. 165 of 2016, had only applied for the following substantive relief:

“9. Relief sought:

a] By a suitable order, this Hon'ble Tribunal may be pleased to set aside the order dated 28.4.2015 passed by the Respondent No.1 (EXHIBIT-A) under which he informed the Accountant General, M.S.-1, Mumbai, that the Petitioner owes to the State Government has sum of Rs.6,65,404/- towards the excess amount of pay and allowances and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.”

5] In the course of the proceedings before the MAT, it is possible that some issue arose as regards the correct quantum of pension of other post retiral benefits payable to the respondent. This is because it was the case of the respondent that there was no excess payment made to her and if, the impugned order dated 28th April 2015 were to be

set aside, then, pension of Rs.9541/- per month would become payable to the respondent. On the other hand, it appears that it was the case of the petitioners that even if the issue of excess payments were to be decided in favour of the respondent, the quantum of pension payable to the respondent would be in the range of Rs.8544/- per month.

6] The MAT, by the impugned judgment and order dated 7th November 2016, has set aside the impugned order for recovery dated 28th April 2015. Since, the alleged excess amount which was already recovered by the petitioner from the respondent was not refunded despite the impugned judgment and order dated 7th November 2016 made by the MAT, the respondent instituted Contempt Application No. 18 of 2017 before the MAT. During pendency of the contempt application, there is no dispute that the petitioners have refunded the amount recovered to the respondent. Further, Mr. Patel, learned AGP for the petitioners, has made a statement that the petitioners are not questioning the impugned judgment and order dated 7th November 2016 made by the MAT, insofar as it sets aside the impugned order for recovery dated 28th April

2015 and the refund of amounts in pursuance of the same to the respondent.

7] Mr. Patel, learned AGP, however, submits that the respondent in Contempt Application No.18 of 2017 instituted by her before the MAT is now insisting upon the payment of pension at the rate of Rs.9541/- per month when according to the petitioners the correct amount of pension payable to the respondent is Rs.8544/- even after setting aside of the impugned order dated 28th April 2015. Mr. Patel points out that the issue of quantum of pension or other retiral benefits was never an issue in O.A. No. 165 of 2016 before the MAT. Mr. Patel points out that even the MAT has specifically declined to go into this issue. Mr. Patel, however, submits that the respondent, taking advantage of the ambiguity in the operative portion of the impugned judgment and order dated 7th November 2016, where, the MAT has directed that the respondent shall be entitled to pay full pension and other post retiral benefits as if the impugned order dated 28th April 2015 had not been passed, is insisting upon payment of pension at the rate of Rs.9541/- per month, when in fact, the same is not at all

due and payable to the respondent.

8] Mr. Bandiwadekar, learned counsel for the respondent, submits that the respondent was constrained to institute Contempt Application No. 18 of 2017 before the MAT because despite the impugned judgment and order dated 7th November 2016, the petitioners had failed to refund the illegally recovered amounts to the respondent. Mr. Bandiwadekar admits that such amount has now been refunded to the respondent and therefore, nothing further survives in the contempt application before the MAT. He submits that the respondent will therefore, not press the contempt application before the MAT.

9] Mr. Bandiwadekar, however, submit that the correct pension payable to the respondent is Rs.9541/- per month and it is only because the petitioners are avoiding to take a decision expeditiously that pension is being denied to the respondent at the correct rate. Mr. Bandiwadekar submits that this court may direct the petitioners to take appropriate decision in the matter expeditiously, so that the respondent is awarded pension at the correct rate of

Rs.9541/- per month.

10] Upon due consideration of the rival contentions, we are of the opinion that Contempt Application No. 18 of 2017 instituted by the respondent before the MAT can be disposed of in the light of statement made by the learned counsel for the respondent. In any case, we are satisfied that the issue of quantum of pension or other retiral benefits was not at all decided by the MAT in the impugned judgment and order dated 7th November 2016 and consequently, there arises no question of maintaining a contempt application on the basis of directions in the impugned judgment and order dated 7th November 2016 for payment of full pension and other post retiral benefits to the respondent on the basis that the impugned order dated 28th April 2015 was never made. The direction, can, at the highest be construed as a direction for payment of pension and other retiral benefits as admissible in law. Contempt Application No. 18 of 2017 is therefore, disposed of. The parties may produce the authenticated copy of this order before the MAT so as to enable the MAT to make formal orders for disposing of Contempt Application No. 18

of 2017 pending before it.

11] As noted earlier, the MAT, in the impugned judgment and order dated 7th November 2016 has quite rightly not gone into the issue of quantum of pension or other post retiral benefits payable to the respondent. This is because such an issue was not really involved in O.A. No. 165 of 2016 instituted by the respondent before the MAT. The only substantive relief applied for by the respondent before the MAT was in relation to the impugned order dated 28th April 2015 in the context of alleged excess payment to the respondent.

12] In fact, the MAT, in the impugned judgment and order dated 7th November 2016, on the issue of quantum of pension and post retiral benefits has made the following observations:

"5. I make it clear that I make no pronouncement with regard to the quantum of pension or any of the heads of the post retiral benefits. It is necessary to make this observation because it appears to me that there is some dispute that the Applicant raised about the quantum. That aspect of the matter will be worked out and in case, the directions to refund the amount recovered is sufficient to take care of the situation so be it."

13] The subsequent direction to the effect that the respondent shall be entitled to pay full pension and other post-retiral benefits as if the impugned order was not passed will therefore have to be read and construed in the light of the aforesaid observations, The directions cannot be read or construed to mean that the petitioners are obliged to pay pension at the rate of Rs.9541/- per month. With this clarification, there is no necessity to interfere with the impugned judgment and order dated 7th November 2016.

14] In order to avoid any prejudice to any parties, we, however, clarify that neither the MAT nor have we adjudicated on the issue as to quantum of pension or other retiral benefits payable to the respondent. If, therefore, the respondent is aggrieved by any inaction on the part of the petitioners or non payment of pension at the rate of Rs.9541/- per month, then, this will afford the respondent a fresh cause of action for institution of original application before the MAT. If such an original application is indeed instituted by the respondent before the MAT, we have no doubt, that the MAT will dispose of the same as

expeditiously as possible and in accordance with law and on its own merits. We once again clarify that we have not adjudicated upon this issue and therefore all contentions of all parties are kept open for determination by the MAT, if and when such occasion arises.

15] Rule in this petition is therefore, disposed of in the aforesaid terms. There shall however, be no order as to costs.

16] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)