ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1752 OF 2011

Suhas Vasant Prabhudesai ...Petitioner
vs.
Joint Director, Higher Education,
Mumbai Region and others ...Respondents

Mr.Mihir Desai, Senior Counsel and Mr.Sariputta P. Sarnath I/b Mr.Chetan Mali for the Petitioner
Mr.Kedar Dighe, AGP for the respondent-State

CORAM : A.S.OKA, &
SANDEEP K. SHINDE,JJ.
DATE : DECEMBER 4, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 In this petition in the year 2011, notice for final disposal was issued on 24th June 2013. This is one more case which shows the lack of inaction on the part of the Officers of the State Government in dealing with grant of pensionary benefit.

2 The case of the petitioner is that he was appointed as a Senior Clerk on probation with effect from 17th July 1979. On 16th July 1980, the appointment on probation was continued. In the same year, his appointment was confirmed. The petitioner has set out his progress and as to how he was granted promotional post in the office. Ultimately

while holding the post of the Registrar in the concerned degree college, on 31st May 2010, the petitioner superannuated.

3 In this petition filed on 4th August 2011, the prayer of the petitioner is for issuing a writ of mandamus directing the respondents to treat the petitioner as being in continuous service from 17th July 1979 and a direction to release all the retirement benefits including pension, gratuity and leave encashment. There is no dispute that the petitioner was paid gratuity and was granted provisional pension. However, final pension amount is not fixed and not released. The learned AGP representing the first respondent states that the proposal for leave encashment has not been received and therefore, the same has not been considered.

4 It will be necessary to advert to the interim order passed by this Court on 10th February 2014. The Division Bench of this Court while granting ad-interim relief in terms of prayer clause (b) has commenced on the lamentable conduct of the concerned respondents. Clauses 1 and 2 of the order dated 10th February 2014 read thus:

> "1 The grievance of the petitioner is that though he has completed his service and pension papers have been forwarded by the college authorities, the Joint Director of Technical Education, Mumbai Region, Mumbai has not processed the pension papers and has not paid the pension and other retirement

benefits to the petitioner. Though on several occasions, time was given to the respondent to file their affidavit in reply, as of today, no reply has been filed. The learned AGP for the State submits that several letters were written by her to the Joint Director of Technical Education. Further she submits that she has not received any instructions, whatsoever, despite repeated requests being made by her. In the present case, the petitioner was initially appointed as a clerk in 1979. Later on he has promoted and retired as Registrar on 31.5.2010. He was duly promoted from time to time and his promotion was approved by the Government. Despite this, for no reasons, whatsoever, his pension papers have not been cleared. It is unfortunate that though apparently from the papers which are produced before us, the petitioner was duly appointed on a permanent basis and he was given promotion and his promotion was approved by the Government, his pension papers have not been cleared since June 2010. It is an admitted position that the college has forwarded the pension papers to the respondents. It is expected that after the retirement of the petitioner from service and who had unblemished record, at least one would expect from the Government to clear the pension papers promptly. In our view, this is a clear case where the respondents have acted in a most negligent manner and have shown complete callousness and disregard to the right of the petitioner to receive the pension.

2 Prima facie case is made out by the petitioner for grant of ad-interim relief. Ad-interim relief is granted in terms of prayer clause (B). Respondent Nos.1 and 2 to give an explanation as to why an affidavit in reply has not been filed so far and as to why instructions were not given to the learned AGP. Stand over to 10.3.2014. If affidavit in reply is not filed before the next date,

> the petition shall be disposed of finally on the basis of controverted averments made in the petition."

5 In terms of the clause 2 of the order dated 10th February 2014, an affidavit dated 17th February 2015 has been filed by Dr.Manjusha Subhsash Molwane on behalf of the first respondent. We have perused the said affidavit. The affidavit does not record any reason as to why instructions were not given to the learned AGP by the first respondent. The affidavit records that the provisional pension has been sanctioned. In paragraph 2, the Joint Director has stated that S.S.C certificate of the petitioner is not on record and therefore, the Principal of the College (the fourth respondent) was called upon to submit S.C.C certificate of the petitioner. Strangely, it is contended that the fourth respondent will be solely responsible for delay in granting pension to the petitioner.

6 In the affidavit, the provision of law under which the State Government can demand S.C.C certificate is not set out. On a query made by this Court, the learned AGP is unable to point out any such provision. It is not the case that while appointing the petitioner in service as on 17th July 1979, he was not possessing the qualification of S.S.C. During the tenure of service of the petitioner, from July 1979 till the date of his superannuation on 31st May 2010, no Authority questioned whether the petitioner is possessing the

qualification of S.S.C. The first respondent has no justification for demanding S.S.C. certificate of the petitioner as a condition for grant of pension and other retirement benefits. A very hyper-technical approach was adopted by the first respondent which has resulted in the petitioner not getting the regular pension for more than last eight years. We must note here that such a stand has been taken in the year 2015 after strictures were passed by a Division Bench of this Court as noted in the aforesaid order passed on 10th February 2014. Perhaps, the pension papers of the petitioner for grant of provisional pension were processed only after the aforesaid order was passed by this Court.

7 As far as the leave encashment is concerned, we propose to direct the fourth respondent to submit a proposal to the concerned Authority so that the same will be considered in accordance with law. Though regular pension was denied to the petitioner, we are not inclined as of today to grant interest. But this is a fit case where the first respondent should be saddled with costs as a frivolous stand is taken to deny pension to the petitioner. We are not granting relief of interest as provisional pension has been granted. The amount of costs is quantified at Rs.25,000/-. We propose to grant a reasonable time to the State Government to grant final pension amount along with arrears, if any.

8 We make it clear that on failure of the State

Government to pay the arrears, if any within stipulated period, the petitioner will be entitled to apply for revival of this petition for claiming interest.

9 We dispose of the petition by passing the following order:

(I) Rule is made absolute in terms of prayer clause (A) in so far as it relates to release of final pension amount only. We make it clear that prayer for grant of interest is not granted;

(II) We direct the first respondent to ensure that the final pension amount is fixed within a period of four months from the date on which this order is uploaded. The entire arrears of pension amount shall be paid to the petitioner within the said period. On the failure of the State to comply with this order within stipulated period, the petitioner will be entitled to apply for revival of this petition only for considering the prayer for grant of interest;

(III) Within a period of six weeks from the date on which this order is uploaded, the fourth respondent shall forward the proposal for leave encashment of the petitioner to the office of the first respondent. Needless to add that on submission of the proposal of the leave encashment, appropriate decision on the said proposal shall be taken within a period of three months from the date on which the proposal is submitted in the office of the first respondent. Even the amount, if any, payable to the petitioner shall be released within the said period of three months;

(IV) We direct the State Government to pay costs quantified at Rs.25,000/- to the petitioner within a period of one month from the date on which this order is uploaded;

(V) Rule is made absolute on above terms;

(VI) Though the petition is disposed of, the same shall be listed on 2nd May 2019 for reporting compliance;

(VII) If there is any shortfall in the gratuity amount released to the petitioner, it will be open for the petitioner to make a representation which shall be decided within a period of three months from the date on which the same is submitted.

(SANDEEP K. SHINDE,J.) (A.S.OKA,J.)