

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5462/2016.

Subhash Nathuji Meshram

-VERSUS-

The State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI
& M. G. GIRATKAR, JJ.

DATE : AUGUST 28, 2018.

Heard Shri R.S. Khobragade, learned
Counsel for the petitioner and Ms. M.A. Barabde,
learned A.G.P for respondents.

2. Perused Pursis dated 24.07.2018, filed
vide Stamp No. 9243/2018 and order dated
20.07.2018, passed during the pendency of the Writ
Petition.

3. By order dated 20.07.2018, in view of the
provisions contained in Rule 27 of the Maharashtra
Civil Services (Pension) Rules, 1982, 75% of the
pension of petitioner is permanently forfeited.

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4. It appears that in Original Application No. 499/2015, filed before the Maharashtra Administrative Tribunal, petitioner had pointed out absence of any such order and therefore, requested for release of his provisional pension till orders of punishment or exoneration in the departmental enquiry. The Maharashtra Administrative Tribunal has by order dated 06.01.2016, dismissed the Original Application observing that the stoppage of pension could not have been seen as illegal, since decision under Rule 27 was till then not taken. The Maharashtra Administrative Tribunal has also relied upon the judgment of this Court reported at **2008 (3) Mh.L.J. 389 (Suresh Dadarao Surywaanshi .vrs. State of Maharashtra and others)**.

5. In this backdrop, effort of learned counsel for the petitioner is to demonstrate that the provisional pension needs to be released till at least passing of the order dated 20.07.2018. He submits that petitioner is independently taking steps to challenge that order also.

6. Learned A.G.P. submits that 75% of the pension is permanently forfeited. In the light of

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Division Bench judgment noted supra, provisional pension could not have been granted. Her contention is, order dated 20.07.2018 operates from the date of superannuation.

7. We are not inclined to go into these niceties at this stage. If order of punishment dated 20.07.2018, is set aside on merits, petitioner will be entitled to normal pension. However, if it is maintained, the question of treating the period from superannuation till 20.07.2018, will arise. Maharashtra Administrative Tribunal has not gone into that issue under an impression that the action under Rule 27 of the Pension Rules, was then pending.

8. In this situation, as petitioner intends to challenge the order dated 20.07.2018 on merits, we clarify that the observations of Maharashtra Administrative Tribunal in decision dated 06.01.2016 in Original Application No.499/2015, shall not in any way prejudice the consideration of the said challenge. The challenge raised should be looked into on its own merits.

9. With this clarification and liberty to challenge the punishment order and claim relief of

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provisional pension for period from superannuation till
20.07.2018, we dispose of the present Writ Petition.
No costs.

JUDGE

JUDGE

Rgd.