

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.2123 OF 2010

Sayyed Sujauddin s/o Nizamoddin ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....

Shri S.R. Barlinge, Advocate for petitioner
Shri S.B. Yawalkar, A.G.P. for State

.....

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 25th September, 2019

PER COURT :

1. Heard learned counsel for the parties.
2. It is a classic case where the thoughts of the petitioner were pleaded by the lawyer who drafted Original Application No.151/2005 in a most confusing and inappropriate manner. The result is a dismissal of Original Application by the impugned order dated 25.1.2006. The order records inconsistent and

irreconcilable stands. Indeed this is so. On the one hand the claim was for invalid pension and on the other, the claim was for pension pursuant to voluntary retirement on completing 20 years qualifying service. The lawyer overlooked the fact that it could never be a case of voluntarily retirement.

3. The relevant facts are that the petitioner joined as a Junior Clerk in the Public Works Department on work charge basis till 30.6.1962. From 1.7.1962 he was appointed on the regular establishment and was in service till 31.3.1980. Suffering from tuberculosis, he obtained a certificate from one Dr. P.R. Chaudhary. W.e.f. 1.4.1980, he proceeded on leave never to return. The facts become hazy and fussy at this stage. From the hazy and fussy facts, it emerges that on 7.12.1982 the Executive Engineer recorded an order that the petitioner needs to be invalidated from service and sanctioned invalid pension contemplated by Rule 68 of the Maharashtra Civil Services (Pension) Rules, 1982 which provides invalid pension shall be granted to a Government servant who is permitted to retire from Government service before reaching the age of superannuation on

production of a medical certificate in the form prescribed in Rule 72 to the effect that the Government servant is by mental or bodily infirmity incapacitated for Government service.

4. Rule 72 prescribes the form. Rule 73 empowers the authority to issue the certificate. The same is a Medical Board constituted as per Rules 33, 35 and 36 of the Maharashtra Civil Services (Leave) Rules, 1981.

5. The hazy and fussy facts show that invalid pension was not sanctioned to the petitioner on account of the fact he did not present himself before the Medical Board and did not produce the certificate contemplated by Rule 72. However, nobody informed him of the said fact.

6. The petitioner appeared to have obtained a letter on 11.2.2005 from the Civil Surgeon, General Hospital, Latur certifying that on account of suffering from tuberculosis he is physically not able to continue in Government service. In respect of said letter, the Maharashtra State Administrative Tribunal has recorded as under :

“Incidentally the letter dtd. 11.2.2005 of Civil Surgeon, General Hospital, Latur which we have extracted in paragraph 6 above, was placed on record along with the additional affidavit in reply of respondent No.2 filed on 14.2.2005. Surprisingly, there has been no response/ reaction thereto on the part of the applicant during about a year by now. An inference is, therefore, irresistible that the applicant has nothing to say in the matter.”

7. We are little bit surprised as what has been written by the Tribunal for the reason the said letter supports the case of the petitioner and that there was a question of there being a surprise as there being no response from the petitioner does not arise. The letter was produced by respondent No.2.

8. Be that as it may, the claim being one for invalid pension, the correct direction which the Tribunal ought to have recorded while disposing of the Original Application was to direct the petitioner to appear before the Medical Board contemplated by Rule 73 of the Maharashtra Civil Services (Pension) Rules, 1982

with further direction that the petitioner would produce his entire medical record for the reason the decision would lead back to the year 1980 and today the petitioner is of 79 years of age. Ordered accordingly. The Medical Board would render an opinion with reference to the said documents and the current physical health of the petitioner : Whether the illness of the petitioner as of the year 1980 was of a kind which rendered him bodily infirm or incapacitated to be in Government service.

9. Based on the certificate, decision would be taken by the competent authority on the question whether the petitioner would be entitled to invalid pension w.e.f. 1.4.1980.

10. The petition is disposed of accordingly passing above directions.

11. Needful shall be done within four months from today.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

fmp/-