

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.5183 OF 2018

SOPAN BALAJI KASABE
VERSUS
THE CHAIRMAN AND DISCIPLINARY AUTHORITY MAHARASHTRA
GRAMIN BANK AND OTHERS

...

Advocate for Petitioner : Mr. Rodge Pratap G.
Advocate for Respondents : Mr. Shembole Gajanan S.

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 28th March, 2019

PER COURT :

1. Mr. Rodge, the learned counsel for the petitioner submits that memorandum of charge-sheet dated 19.01.2017 issued by respondent No.1 Disciplinary Authority is based on the false and frivolous facts. The petitioner is not guilty. Just one day prior to the retirement, charge sheet is served upon the petitioner. According to the learned counsel, for two years, enquiry has not been concluded. The learned counsel further submits that retiral benefits, such as provident fund, gratuity, leave encachment be directed to be paid to the petitioner as per Regulation 61 with proviso to Regulation 67, so also Regulations 71 and 72 of the Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010. Learned counsel relies on

the judgment of the Division Bench of this Court in Writ petition No. 1347/2016 (Ashok Munjappa Potphale Vs. chief Secretary, Union of India) dated 17.02.2017.

2. Mr.Shembole,learned Advocate for the respondents submits that the petitioner has been paid 90% of the provident fund and pension is also disbursed to the petitioner regularly, every month. It is also pointed out that order is also passed under the Payment of Gratuity Act by the competent authority. Regulation 45(4) of the Regulation reads as under:

"45. Disciplinary proceedings after retirement:

(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon, except his own contribution to Contributory Provident Fund (CPF).

Explanation: For the purpose of this regulation, the normal retirement benefits such as encashment of privilege leave and gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority."

3. The petitioner is claiming benefit of privilege leave encashment. As per explanation to Regulation 45(4), same can be withheld pending disciplinary enquiry. Disciplinary enquiry is pending against the petitioner pursuant to the charge sheet issued to the petitioner on 19th January, 2017.

4. Judgment referred to by the learned Advocate for the petitioner in Writ petition No. 1347/2016 (supra) would not assist the petitioner, as Regulation 45(4) was not brought to the notice of the Court while deciding the said matter.

5. It is also a fact that the petitioner stood retired on superannuation on 31.01.2017. Moreover, two years have lapsed, the enquiry is not concluded. The respondents are required to conclude the enquiry, expeditiously, more particularly, when the petitioner had retired from service. The respondent shall conclude the enquiry within a period of four months from today.

6. Writ petition is disposed of. No costs.

(A. M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)