IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6655 OF 2006

1. The State of Maharashtra
   Through the Secretary,
   Water Resources Department,
   Mantralaya, Mumbai.

2. The Chief Engineer,
   Water Resources Department,
   Aurangabad

3. The Executive Engineer,
   Hetwane Canal Division No.1,
   Kolad, Tq. Roha, District Raigad

4. The Accountant General,
   Maharashtra, Nagpur. … PETITIONERS

VERSUS

1. Anjanaiah Narismhappa Kuntimal,
   Age 66 years, Occu. Retired Government
   Servant, R/o Plot No.129, N-3, CIDCO,
   Aurangabad

2. The Chief Executive Officer,
   Zilla Parishad, Beed.

3. The Chief Executive Officer,
   Zilla Parishad, Jalna.

4. The Chief Executive Officer,
   Zilla Parishad, Aurangabad … RESPONDENTS

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Mrs. M.A. Deshpande, A.G.P. for petitioners

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

DATE: 23rd September, 2019

PER COURT :

1. A very short point arises for consideration. We have heard learned A.G.P. for the petitioner, but on account of non representation from the side of the respondents, we do not have the respondents' version it happens like this.

2. The respondent No.1, an employee of the State of Maharashtra was working in the Water Resource Department. Alleging lack of supervision, causing pecuniary loss in sum of Rs.54,458/-, two charge sheets came to be issued for major penalty proceedings. The proceedings continued till when the respondent superannuated from service on 31/5/1997. The respondent being held guilty but having superannuated from service by the time the indictment came, was liable to be proceeded as

against for levy of penalty relatable to the pension which he was drawing.

3. Though not required by law in view of the Constitutional 42nd Amendment, on 19/11/1998 the disciplinary authority issued a show-cause to the respondent requiring him to show a cause to the notice issued as to why 10 % cut in the pension with permanent effect be not levied by way of penalty. The respondent replied to the show-cause-notice.

4. The disciplinary authority forwarded the file to Maharashtra Public Service Commission which opined on 4/1/2001 that the appropriate penalty should be 25 % cut in pension and based thereon vide order dated 9/3/2001, penalty of 25 % cut in pension was inflicted upon the respondent by the disciplinary authority.

5. He immediately rushed to the Maharashtra Administrative Tribunal and filed Original Application No.303/2001 to question of indictment and the penalty.

6. Challenge to the indictment on merits failed, but the Tribunal held that on the facts which we have noted about the penalty levied could

not be more than 10 % cut in pension. The decision terminates in quashing the penalty of 25 % cut in pension. The penalty has been substituted with which was proposed in the show cause notice dated 19/11/1998.

7. Suffice it to state, the opinion taken by the petitioner from Maharashtra Public Service Commission after the show-cause-notice was issued on 19/11/1998 was not supplied to the respondent.

8. Thus, mechanically applying the opinion of Maharashtra Public Service Commission, the penalty dated 9/3/2001 could not have been imposed.

9. Whilst there is merit in the contention of the learned A.G.P. for the petitioners that under the circumstances, the Tribunal ought to have directed advice given by Maharashtra Public Service Commission to be supplied to the first respondent for his response and thereafter pass the penalty order and under no circumstances could the Tribunal have substituted the penalty.

10. We refrain from doing so for the reason the respondent suffered disciplinary proceedings for nearly 15 years. The respondent superannuated from service on 31/5/1997. 22 years have gone by. Superannuating on attaining the age of 58 years he would be, if in the word of the living, 80 years as of today. Curtains need to be brought down. The petition is dismissed. Rule discharged.

(R.G. AVACHAT, J.) **CHIEF JUSTICE**

fmp