

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
REVIEW APPLICATION (ST) NO.25669 OF 2019
IN
WRIT PETITION NO.5814 OF 2019
WITH
CIVIL APPLICATION NO.11669 OF 2019
IN
REVIEW APPLICATION (ST) NO.25669 OF 2019**

The State of Maharashtra & Ors. ..APPLICANTS

Versus

Shri. Chudaman S/o Daga Pawar ..RESPONDENT

...
Mr. S. B. Yawalkar, A.G.P. for the Applicants.
...

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 27th SEPTEMBER, 2019.

PER COURT:-

1. Mr. Yawalkar, learned counsel for applicants submits that while passing judgment and order under review this Court has not considered Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rule, 1982. The said Rule also could not be brought to the notice by the learned A.G.P. at the time of arguing the matter.

2. According to the learned counsel, when the employer is under suspension, the departmental proceedings shall be deemed to be instituted on the date when the Government employee is placed under suspension. According to the learned A.G.P. in

view of the same the suspension could not have set aside.

3. The present non-applicant has filed Original Application before the Tribunal challenging his suspension.

4. The Tribunal allowed the Original Application filed by the present non-applicant. The State had filed writ petition before this Court. The said writ petition was dismissed pursuant to the judgment under review.

5. While dismissing the writ petition we had observed that the present non-applicant stood retired on attaining the age of superannuation on 31.05.2013. The non-applicant was suspended about one and half months prior to his date of superannuation. On the date of superannuation no departmental enquiry was initiated. The sanction for initiating departmental enquiry was granted for the first time on 09.05.2016 that is three years after the non-applicant stood superannuated. The certificate is also issued by the present applicants to the non-applicant that no departmental enquiry was pending against him. Moreover, the present applicant has also sanctioned pension to the non-applicant.

6. Taking all the aforesaid facts cumulatively, it would transpire that the present

applicant has allowed the present non-applicant to retire on attaining the age of superannuation. After superannuation suspension order certainly would not continue. The present applicant had option of not allowing the non-applicant to retire on the ground that he is under suspension and departmental enquiry is initiated against him. However, that was not the case.

7. In light of the above, review application alongwith with civil application is disposed of. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-19