

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12735 OF 2018

ULHAS MAHADEORAO KHAMBAYATKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Abhijit More h/f.
Mr. Chaudhari Nitin K.

AGP for Respondents No. 1 & 2 : Mr. S. B. Narwade

Advocate for Respondents No. 3 & 4 :
Mr. M. N. Navandar

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CORAM: S. V. GANGAPURWALA &
SMT. VIBHA KANKANWADI, JJ.

DATE: 14th OCTOBER, 2019

PER COURT:

1. Mr. More, learned counsel for the petitioner submits that, the petitioner stood retired on attaining the age of superannuation on 31.07.2017. After the retirement of the petitioner, the petitioner was granted provisional pension and his other retiral benefits were withheld. On 20.02.2014, the petitioner received show-cause notice seeking explanation from the petitioner with regard to the work done in the year 2011-

2012. The petitioner replied the show-cause notice on 04.03.2014 contending that the work which is attributed in the show-cause notice is not within his realm. Thereafter, repeated representations are given to release retiral benefits along with interest but to no avail.

2. Mr. Navandar, learned counsel for respondents no. 3 and 4 submits that, after the show-cause notice was issued to the petitioner on 20.02.2014, the respondents forwarded the proposal to the Government, however, for all these five years, no information is received from the Government.

3. We have heard learned Assistant Government Pleader also.

4. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 reads thus:

27. Right of Government to withhold or withdraw pension.

(1) Appointing authority may, by order in writing, withhold or withdraw a pension or any part of it whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to

Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the Appointing authority.

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) to (6) -----.

5. It is undisputed that the petitioner stood retired on 31.07.2017 and till the date of his retirement, no departmental proceedings were initiated. For the first time show-cause notice was issued to the petitioner on 20.02.2014. The petitioner promptly replied the show-cause notice. Still, as yet no departmental proceedings are commenced. Rule 27(b) specifically states that, the departmental proceedings, if not instituted while the Government servant was in service, shall not be instituted save with the sanction of the Government, and it further states, that shall not be in respect of any event which took place more than four years before such institution.

6. The departmental enquiry is deemed to be instituted on the date on which the statement of charges is issued. The events alleged are of the year 2011-2012 i.e. more than seven years prior to the present date. Even on that count, now it would not be permissible to institute the departmental enquiry against the petitioner. It is candidly accepted by the respondents that as yet no

departmental enquiry is instituted nor any sanction from the Government is received.

7. The case of the petitioner would be covered by Rule 27(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982.

8. In light of the above, the respondents shall release the amount withheld of the retiral benefits as admissible to the petitioner within a period of three months from today. The respondents shall also forward the pension proposal of the petitioner for regular pension within a period of six weeks from today. The same shall be processed and the regular pension be disbursed within a period of three months thereafter.

9. As far as grant of interest is concerned, it is a fact that the show-cause notice was issued to the petitioner on 20.02.2014. Even for period of four years after the retirement, the departmental enquiry can be initiated. The institution had forwarded the proposal to the Government for sanction as contended by the learned counsel for

the respondent, however, the Government did not respond. In view of that, we are not inclined to grant interest.

10. If the amount is not paid as directed above and within the time stipulated, then the respondents shall pay interest at the rate of 10% p.a. for the delayed period.

11. The writ petition is accordingly allowed.

[SMT. VIBHA KANKANWADI, J.] [S. V. GANGAPURWALA, J.]

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