

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2820 OF 2019

1. Mrs. Padmini Nandakumar Nair
1901, Platino-C, Lodha Splendora
complex, GB Road, Near
Bhayanderpada, Thane, Maharashtra.

...Petitioner

Versus

1. The Honourable High Court of
Judicature at Bombay, through its
Registrar General, Mumbai
2. The State of Maharashtra
Law and Judiciary Department,
Mantralaya Mumbai
3. The Enquiry Officer, (Present President,
MACT, Mumbai) Hajarimal Somani Marg
Azad Maidan, Fort, Mumbai – 400 001.

...Respondents

Mr. R. S. Apte, Senior Advocate, for the Petitioner.

Mr. A. B. Borkar, for Respondent no.1.

Dr. K. R. Kulkarni, AGP for Respondent nos.2 & 3/State.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

**RESERVED ON: 6th JUNE, 2019
PRONOUNCED ON: 14th JUNE, 2019**

JUDGMENT:- (Per N. J. JAMADAR, J.)

1. Leave to amend. Amendment be carried out forthwith.
2. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.
3. The Petitioner, a retired Judicial Officer, in the rank of District Judge, assails the initiation and continuation of

disciplinary proceedings, post acceptance of her request for voluntary retirement. By amending the petition the Petitioner has also assailed the order dated 21st November, 2018, passed by the learned Enquiry Officer, whereby the application of the Petitioner (Exhibit 121) assailing legality and continuation of the disciplinary proceedings, initiated vide the memorandum dated 7th December, 2016, came to be rejected.

4. The background facts necessary for determination of this petition can be summarised as under:

The Petitioner joined Maharashtra State Judicial Service in the cadre of Civil Judge, Junior Division and Judicial Magistrate, First Class, on 7th September, 1992. Eventually, the Petitioner came to be promoted as District Judge in the year 2011. In the month of October-2016 the Petitioner came to be selected for the post of Presiding Officer, National Highway Tribunal. On 25th October, 2016, the Petitioner requested Respondent no.1 to relieve her from the post of District Judge to join the said post of Presiding Officer, National Highway Tribunal, with permission to keep lien on the post of the District Judge. It is the claim of the Petitioner, since no response was received from Respondent no.1, the Petitioner sought voluntary retirement by addressing communication dated 3rd December, 2016. In the meanwhile, on 7th December, 2016, the High

Court, on the administrative side, took a decision to institute disciplinary proceedings against the Petitioner and accordingly a memorandum with articles of charges came to be served upon the Petitioner, under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 ('the Rules, 1979'). On 13th January, 2017, vide Government Resolution, the request of the Petitioner for grant of voluntary retirement was accepted by the appointing authority, subject to the condition of continuation of disciplinary proceedings against the Petitioner. In terms of the said Government Resolution, Respondent no.1, in turn, issued a communication on 13th January, 2017 and the Petitioner stood voluntarily retired.

5. The Petitioner assailed the said condition of acceptance of the notice of voluntary retirement subject to continuation of the disciplinary proceedings against her by filing Writ Petition No.3905 of 2017. A Division Bench of this Court, by order dated 11th September, 2017 refused to sustain the challenge to the continuation of the disciplinary proceedings. The Division Bench was of the view that the Petitioner had voluntarily accepted the order dated 13th January, 2017 and acted upon it by handing over charge of the post held by her. Therefore, in writ jurisdiction, the Petitioner could not have challenged the condition imposed in the Government Resolution dated 13th

January, 2017. The Division Bench was, however, of the view that the Petitioner can always raise a contention about the legality of the disciplinary proceedings at an appropriate stage in the said proceedings.

6. The Petitioner assailed the aforesaid order of the Division Bench before the Supreme Court by way of SLP (C) No.1163 of 2018. The Apex Court did not find any ground to interfere with the aforesaid order passed by the Division Bench of this Court and the Special Leave Petition came to be disposed of with a direction to conclude the pending enquiry expeditiously and, as far as possible, within six months from the date of the said order i.e. 23rd February, 2018. A review petition preferred by the Petitioner also came to be dismissed by the Supreme Court on 31st July, 2018.

7. The Petitioner thereafter challenged the legality of the disciplinary proceedings before the learned Enquiry Officer. The learned Enquiry Officer, after appraisal of the rival contention, was persuaded to reject the challenge holding, *inter alia*, that the Petitioner had accepted the order of voluntary retirement subject to continuation of the departmental enquiry. Being aggrieved, the Petitioner has again approached this Court

assailing the initiation and continuation of the said departmental proceedings.

8. We have heard Mr. Apte, the learned Senior Counsel for the Petitioner, Mr. Borkar, the learned Counsel for Respondent no.1 and Dr. Kulkarni, the learned AGP for the State/Respondent nos.2 and 3.

9. Mr. Apte, the learned Senior Counsel, endeavoured to impress upon the Court that the instant petition, which also assails the order passed by the learned Enquiry Officer, refusing to drop the disciplinary proceedings, is in pursuance of the liberty reserved to the Petitioner, by the Division Bench of this Court in its order dated 11th September, 2017 in Writ Petition No.3905 of 2017, to challenge the legality of the disciplinary proceedings. Amplifying the submission, an attempt was made to demonstrate that the Division Bench of this Court while deciding Writ Petition No.3905 of 2017 has not delved into the aspect of tenability of the disciplinary proceedings, after the jural relationship between the Petitioner and Respondent no.2 stood severed by acceptance of the voluntary retirement. Consequently, according to the learned Senior Counsel, the continuation of the departmental enquiry, originally initiated under Rule 8 of the Rules, 1979, on the premise that the notice of retirement was accepted subject to

the condition of continuation of the disciplinary proceedings, is legally untenable. It was submitted that there is no provision which permits the conversion of an enquiry initiated under the Discipline and Appeal Rules, 1979 into a proceedings under the Maharashtra Civil Services (Pension) Rules, 1982 ('the Pension Rules, 1982').

10. Though we propose to deal with the submissions canvassed on behalf of the Petitioner, as regards the legality of the continuation of the disciplinary proceedings initiated against the Petitioner, yet we are not fully impressed by the bold submission on behalf of the Petitioner that the issues of the acceptance of notice of voluntary retirement subject to the continuation of the disciplinary proceedings and the legality of the said proceedings were not at all dealt with by the Division Bench in Writ Petition No.3905 of 2017. As observed earlier, the Division Bench specifically observed that the Petitioner did not protest about the two conditions and, in particular, the condition of continuation of disciplinary proceedings, while or before acting upon the order dated 13th January, 2017. The following observations of the Division Bench, in paragraph 9 of the order in the said writ petition, indicate the manner in which the Division Bench has dealt with the challenge to the continuation of the disciplinary proceedings.

“9.Thus, the conduct of the petitioner shows that the petitioner voluntarily accepted the order dated 13th January, 2017 and voluntarily acted upon it by handing over the charge of the post held by her. The petitioner did not protest about the two conditions and in particular, the condition of continuation of disciplinary proceedings while or before acting upon the order dated 13th January, 2017. Therefore, in writ jurisdiction, now she cannot challenge the conditions imposed in the order dated 13th January, 2017. Prayer clause (a) of this petition is for setting aside the order of continuation of the disciplinary proceedings.”

11. The Division Bench further observed in paragraph 11 thus:

“11. Thus, the stand of the High Court Administration is that continuation of disciplinary proceedings will be now in accordance with sub Rule 2(a) of Rule 27 of the Maharashtra Civil Services (Pension) Rules. Hence, at highest, if any adverse order is passed in the disciplinary proceedings, only the pension is likely to be affected.”

12. The aforesaid observations, in our view, lead to a legitimate inference that the Division Bench was alive to the situation that the Petitioner had since retired and the disciplinary proceedings would, at best, entail the consequence of withholding of pension as contemplated by Rule 27 of the Pension Rules, 1982. The Division Bench thus dealt with the aspect of the consequence of severance of employer - employee relationship between the Petitioner and Respondent no.2. What accentuates the situation is the fact that this order of the Division Bench in Writ Petition No.3905 of 2017 got the imprimatur of the Supreme Court by virtue of the disposal of Special Leave to Appeal (C) No.4552 of 2018 by order dated 23rd

February, 2018. Upon perusal of the grounds, in the Special Leave Petition, we found that the Petitioner had, in fact, raised the ground of legality of continuation of the disciplinary proceedings in terms of Rule 27(2) of the Pension Rules, 1982, therein.

13. In our view, the Petitioner could not have agitated the self-same ground before the learned Enquiry Officer and even re-agitated the same before this Court in the instant writ petition. In the backdrop of the observations in paragraph 9, extracted above, in any event, the Petitioner cannot be permitted to contest the fact that the Petitioner voluntarily acted upon the order of acceptance of the notice of voluntary retirement subject to the condition of continuation of the disciplinary proceedings.

14. A feeble attempt was made on behalf of the Petitioner to show that the Petitioner had, in fact, accepted the said order under protest. To this end, reliance was sought to be placed on an endorsement, below the copy of Government Resolution dated 13th January, 2017, to the effect that the Petitioner was compelled to accept the said order under protest and without prejudice to her rights, purportedly made by the Petitioner on 16th January, 2017. We are not persuaded to accord much weight to the aforesaid submission as the Division Bench of this Court has recorded a categorical finding that the Petitioner

voluntarily accepted the order, whereby her notice of voluntary retirement was accepted subject to said condition. It would be now not open for the Petitioner to re-agitate the said issue, especially when the challenge to the order passed by the Division Bench in Writ Petition No.3905 of 2017 failed before the Supreme Court.

15. Mr. Apte, the learned Senior Counsel, urged with tenacity that despite the acceptance of the order dated 13th January, 2017, under the weight of the circumstances in which the Petitioner found herself, the unsustainability of the course of the action adopted by the Respondents of continuing the disciplinary proceedings even after the retirement of the Petitioner can be challenged by the Petitioner on legal premise. The aforesaid submission was rested on the premise that a disciplinary proceedings initiated under Rule 8 of the Rules, 1979, can under no circumstances be continued, or converted into a proceedings under Section 27 of the Pension Rules, 1982, as the two provisions operate under totally different spheres. On this sole premise, according to the learned Senior Counsel, the disciplinary proceedings is required to be quashed and set aside.

16. To lend support to the aforesaid submissions, the learned Senior Counsel placed a strong reliance upon two judgments of

this Court in the case of (1) ***Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur & anr vs. Bhujgonda B. Patil.***¹ and (2) ***Dhairyasheel A. Jadhav vs. Maharashtra Agro Industrial Development Corporation Ltd.***².

17. Before advertng to deal with the propositions expounded in the aforesaid rulings, it may be apposite to first note the relevant provisions of Rule 27 of The Maharashtra Civil Services (Pension) Rules, 1982.

“27. Right of Government to withhold or withdraw pension.

1(a) in sub-rule (1), for the words “Government may” the words “Appointing authority may” shall be substituted and shall be deemed to have been substituted with effect from the 2nd June, 2003; 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

1 2003 (3) Mh.L.J. 602.

2 2010 (5) Bom. C.R. 307.

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 (b) in sub-rule (2) in clause (b), in sub-clause (i), for the words "the Government" the words "Appointing authority" shall be substituted and shall be deemed to have been substituted with effect from the 2nd June, 2003.

(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) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of and event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned."

18. A conjoint reading of the aforesaid sub-rules of Rule 27 indicates that the appointing authority is invested with the power to withhold or withdraw the pension, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Good conduct of the pensioner is an implied condition for the receipt of pension and if subsequently the pensioner is

found guilty of misconduct or negligence in relation to the acts or omissions during the services rendered by the pensioner, the pension can be withheld or withdrawn. The retirement of an employee does not, therefore, completely preclude the appointing authority from initiating action for dealing with the misconduct of the employee during currency of the service. The retirement does not confer complete immunity from the action for the misconduct during period of employment. The nature of the action is, however, restricted to withdrawal or withholding of pension.

19. Clause (a) of Sub-rule (2) in express terms provides that 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 by the authority in the same manner as if the Government servant had continued in service. The initiation or continuation of the disciplinary proceedings, against a retired employee is, however, subject to certain safeguards to protect the interest of the employee. Clause (b) of sub-rule (2) stipulates conditions for continuation of the disciplinary proceedings if not instituted while the Government servant was in service. Sub-rule (3)

provides a time-limit of four years so that the pensioner is not under a threat of action for eternity. In all the cases, where the departmental enquiry is instituted either before or after retirement, sub-rule (4) mandates sanction of provisional pension as provided in Rule 130.

20. If we consider the fascicles of the provisions in Rule 27 of the Pension Rules, 1982, it becomes evident that the rules do envisage initiation of the disciplinary action even after retirement of a Government servant, on superannuation or otherwise, in addition to the continuation of the disciplinary proceedings, which was instituted before the retirement of the Government servant. The broad submission canvassed on behalf of the Petitioner that after retirement of a Government servant no disciplinary proceedings can be instituted/continued runs counter to the express mandate of clause (a) of sub-rule (2) of Section 27, extracted above, which incorporates a deeming provision and, by a legal fiction, mandates that the disciplinary proceedings instituted before the retirement shall be deemed to be a proceedings under Rule 27 and continued and concluded in the same manner as if the Government servant had continued in service. The broad submission therefore cannot be countenanced.

21. The legal position as regards the institution / continuation of disciplinary proceedings after the retirement of an employee, seems to have been crystallised to the effect that the employer can institute/continue the disciplinary proceedings against an employee who has retired, provided the rules which govern the services of the employee permit such a course of action. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Girijan Co-operative Corporation Ltd. Andhra Pradesh vs. K. Satyanarayan Rao***³, wherein after referring to the previous pronouncements, on this aspect, the following observations were made:

“14. There cannot be any doubt or dispute that an employer can initiate a departmental proceedings and/or continue the same only in terms of the rules framed by it. It is also a well-settled law that the disciplinary proceedings are initiated only when a charge-sheet is issued. [See *Union of India v. K. V. Jankiraman (sic)* (1991) 4 SCC 109].

15. This Court in *UCO Bank v. Rajinder Lal Capoor* ((2007) 6 SCC 694), has held as under: (SCC pp. 702-03, para 21)

“21. The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceedings be allowed on the basis of the legal fiction created thereunder i.e. continue “as if he was in service”. Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent

officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceedings, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued (see *Union of India v. K. V. Jankiraman* (1991) 4 SCC 109). This aspect of the matter has also been considered by this Court recently in *Coal India Ltd. v. Saroj Kumar Mishra* ((2007) 9 SCC 625) wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge-sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations.”

(See also *Ramesh Chandra Sharma v. Punjab National Bank* ((2007) 9 SCC 15) and *Punjab National Bank v. M. L. Kalra* (2008) 3 SCC 494.)

16. In absence of any rules, therefore, a disciplinary proceeding against a retired employee should not have been continued.”

(emphasis supplied)

22. We may now revert to the judgments, on which a strong reliance was placed on behalf of the Petitioner, in the cases of ***Bhujgonda Patil*** (supra) and ***Dhairyasheel Jadhav*** (supra).

23. In the case of ***Bhujgonda Patil*** (supra), a learned Single Judge after a reference to the provisions contained in Rule 27(1) and 27(2)(a) of the Pension Rules, 1982 had enunciated the legal position as under:

“**13.** All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in rule 27 of the Pension Rules are wholly and solely in relation to the issue pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly sub-rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his

service or during his re-employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.”

24. In the case of ***Dhairyasheel*** (supra), after a reference to the provisions contained in Section 27(2)(a) of the Pension Rules, 1982, a Division Bench of this Court has observed as under:

“**9.**It is thus clear that in the event departmental proceedings was instituted it can be continued and concluded “as if the Government servant has continued in service”. Thus, by a deemed fiction though relationship of employer and employee has ceased, the rules continue the relationship pursuant to which the departmental proceedings can be proceeded with. There is no provision in the Maharashtra Civil Services (Discipline & Appeal), Rules, which provide for continuation of enquiry for major misconduct by issuing of charge-sheet. The penalties are set out under section 5. If a Government servant is not in service then none of those penalties can be imposed. Thus, any enquiry initiated and in which there is no provision for continuing enquiry must cease on the employee being allowed to superannuate, in the absence of the provisions like Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.”

(emphasis supplied)

25. On a careful perusal of the aforesaid judgments it becomes abundantly clear that the aforesaid propositions do not advance the cause of the submission put-forth on behalf of the Petitioner. In the case of ***Bhujgonda Patil*** (supra) it was observed in clear and explicit terms that Rule (2)(a) of the Rule 27 clarifies that the proceedings spoken of for the purpose of order relating to pension under Rule 27(1), though initially may be for disciplinary action while the pensioner was in service, those proceedings would be deemed to have been continued only for the purpose of action under Rule 27(1) relating to the pension and not for disciplinary action. Whereas, in the case of ***Dhairyasheel*** (supra) it was observed that any enquiry initiated and in which there is no provision for continuing enquiry must cease on the employee being allowed to superannuate, in the absence of the provisions like Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

26. Indubitably, the Petitioner is governed by the provisions contained in Pension Rules, 1982. It is incontrovertible that the disciplinary enquiry was instituted against the Petitioner on 7th December, 2016, much before the notice of voluntary retirement came to be accepted. In fact, the Petitioner had even replied to the memorandum and article of charges served upon

her, and the notice of voluntary retirement was accepted subject to the express condition that the disciplinary enquiry would continue. The case would thus be covered by Clause (a) of sub-rule (2) of Rule 27.

27. Consequently, the challenge to the continuation of the disciplinary proceedings instituted, while the Petitioner was in service, does not merit acceptance. Undoubtedly, even if the Petitioner is found guilty of the misconduct, the consequence the said misconduct would entail, would be only withdrawal or withholding of the pension or part of it, in terms of sub-rule (1) of Rule 27.

28. For the forgoing reasons, we are inclined to hold that the petition is devoid of substance. The petition, thus, stands dismissed. However, in the circumstances, there shall be no order as to costs.

29. Rule discharged.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]