IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.978 OF 2013
IN
EXECUTION APPLICATION NO.864 OF 2013

The Government of Maharashtra & Ors. ..Applicants
In the matter between

Naresh Govind Vaze ..Claimant/Petitioner
Vs.
The Govt. of Maharashtra & Ors ..Respondents

Mr. Naresh Vaze Claimant appeared in person
Ms Geeta Shastri, AGP for Respondent Nos.1 and 4 and for Applicants in CHS/978/2013
Ms Minal Jadhav I/b Mr. Rajesh Datar for Respondent Nos.2 and 3
Mr. S. S. Bodke, Senior Accounts Officer from the Accountant General Office present in court.

CORAM : K.R.SHRIRAM, J.
DATE : 7th FEBRUARY, 2019

P.C.:

1 This chamber summons has been taken out by the Government of Maharashtra for reliefs as mentioned therein.

2 The gist of the matter could be found in paragraphs 2, 3, 4, 5 and 7 of the order dated 30th January, 2017. The same read as under:

> "2. I am making it clear that I intend to hear the Petitioner, a former Judicial Officer, on interpretation of the relevant Maharashtra Civil Services (Pension) Rules. Specifically: that his pension, which was permitted inter alia under an order of a Division Bench passed on 21st January 2011 in Writ Petition No. 10422 of 2010, is to be calculated under Rule 100, without reference to Rule 110(2)(b).

3. The Petitioner was compulsorily retired. His challenge to the compulsory retirement failed up to the Supreme Court. At his own admission he has been paid the amount of Rs. 4,16,682/-. The Petitioner however claims that he is entitled to an amount of Rs. 24,07,124/-. It is to be noted at this stage that the Petitioner served for 10 years. Before the Division Bench, the stand of the government was that his case could not be considered as qualifying for pension unless 74 days of extraordinary leave was condoned. For the reasons set out in the order dated 20th January 2011, the Division Bench held that the Government's own order of 14th December 2005 amounted to condoning his leave for 74 days. Thus the Petitioner was said to have been reached the qualifying years of service of 10 years.

4. What the Petitioner seems to seek is pension on the basis of a full 33 years of service which is the maximum outer limit on the footing that since he was compulsorily retired, his case is for compensation pension and therefore he is entitled to 2/3rd of the pension as payable on completion of 33 years of service. This is the narrow issue that falls for consideration in the execution application.

5. On previous occasions including before another Division Bench the Petitioner had alleged contempt against the Government saying it had failed to meet the Petitioner's demand. The Division Bench (SJ Vazifdar J, as he then was, and Mrs MR Bhatkar J) noted on 8th January 2013 that the Petitioner was himself unable to indicate the amount of pension payable.

7. All these applications are postulated on two assumptions — and both are only assumptions:- (1) that the 20th January 2011 order of the Division Bench is executable as a decree in the first place; and (2) that the Petitioner's interpretation of law as to the applicable Civil Services (Pension) Rules is in fact correct, that is to say that the Petitioner has been able to show that since he was compulsorily retired having completed 10 years of service (with a condonation of 74 days' leave), he is entitled to claim a pension based on a full 33 years of service. It is a decision on these questions, that will determine everything else. Mr Vaze has to establish first as a matter of law that he is correct in his assertions. That is something he has so far not done before any Court. As to the first question noted above, it seems to me that the Division Bench order of 20th January 2011 did not actually relate to the quantum of pension at all. No such question arose before the Division Bench. The only question was whether the 74 days' extraordinary leave was condoned or not. If it was then the Petitioner's service would be reckoned as 10 years. The Division Bench did not quantify the pension. It would therefore need to be seen as a matter of law whether such order can ever be put into execution in the first place. This affects the maintainability of the parent execution application."

3 Petitioner was working as Civil Judge, Junior Division and Judicial Magistrate First Class at Patan, District Satara, from 21st September, 1998 to June 2001. A departmental enquiry was held against petitioner and by order dated 14th December 2005, on the recommendations of the Hon'ble Chief Justice and the Hon'ble Judges of this court, being the Disciplinary Authority, the Government of Maharashtra, decided to accept the recommendations and impose punishment of compulsory retirement from service, upon petitioner, as prescribed under clause (vii) of sub-Rule(1) of Rule (5) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The Government of Maharashtra also granted 2/3rd compulsory retirement pension as admissible under Rule 100 of Maharashtra Civil Services (Pension) Rules, 1982 (the rules).

4 Petitioner challenged this order and finally the Division Bench of this Court in Writ Petition No.10422 of 2010, while disposing the petition, opined that the Government having already directed by order dated 14th December, 2005 that petitioner is entitled to grant of 2/3rd compulsory retirement pension as admissible under Rule 100 of Maharashtra Civil Services (Pension) Rules, 1982, would amount to the Government holding that petitioner had qualifying service for pension to his

credit. The Government was directed to release arrears of pension within two months and then continue to pay pension to petitioner in accordance with law, regularly. The Government paid an amount of Rs.4,85,884/- to petitioner and admittedly is continuing to pay the pension. The break up of the amount paid is given in paragraph 14 of affidavit of one Balasaheb Deshmukh, affirmed on 17th December, 2013. How, the pension has been calculated, can be found at page 12, Exhibit – 3 of this chamber summons and the same reads as under:

"CALCULATION OF PENSIONARY BENEFITS OF SHRI N.G. VAZE COMPULSORILY RETIRED ON 16.12.2005.

As per provisions under Rule 100 of MCS (Pension) Rules 1982 amended vide Maharashtra Civil Services (Pension) (Amendment) Rules, 1994 Shri N.G. Vaze is entitled to compulsory retirement Pension at the rate of two-third Pension and Gratuity.

Total Qualifying Service	: 10 Years 1 month & 1 day. (Taken as 20 six monthly spells)
Pay Scale	: 9,000-14,550.
Last Pay drawn	: Rs.11,650+D.P.5,825 =17,475/-
Average Pay	: Rs. 17,475/-
Pension:	: Rs. 17,475 x $\frac{50}{100}$ x $\frac{20}{66}$ = 2,648/- Rs. 2,648 x 2/3 = Rs. 1,766/- raised to minimum of **Rs. 1,913/-**
Gratuity :	: Rs. 17,475 x 20 x 1/4 = Rs. 87,375/- Rs. 87,375 x 2/3 = **Rs. 58,250/-**
Family Pension	: 17,475 x 30% = Rs. 5242.50 rounded off to= **Rs.5, 243/-"**

5 Shri Vaze submitted that Rule 100 of the Rules, provides for 2/3rd of pension to be paid and that will be 2/3rd of the average pay of Rs.17,475/-. Shri Vaze states that Rule 110, which mentions amount of pension, is not applicable to his case because the order of Division Bench says 2/3rd compulsory retirement pension as admissible under Rule 100 of the said Rules. Shri Vaze also submitted that the amount was paid by the Government sometime at the end of 2013 and, therefore, Maharashtra Civil Services (Pension) (Amendment) Rules 2016, will be applicable to him and under these Rules, it does not mention 50%. Shri Vaze also submitted that even under the notification issued by the Government on 30th March, 2011, petitioner will be entitled to 50% of the basic pay, which will be more than the amount, that has been paid by the Government.

6 In my view, Shri Vaze fails in all fronts. Since I am concluding that the Government has made no mistake in its calculation of pension, I am not going into the issue as to whether this execution application itself is maintainable.

7 Mr. Vaze stated that he was in service from 16th September, 1995 to 16th December, 2005, when he was compulsorily retired.

Rule 100 reads as under :

<u>"100. Compulsory Retirement Pension-</u>

1. A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than two-third and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.
2. Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of the power of review) awarding a pension less than the full compensation pension admissible under these rules, the Maharashtra Public Service Commission shall be consulted before such order is passed.
Explanation – In this sub-rule, the expression "Pension" includes gratuity.
3. A Pension granted under sub-rule (1) shall not be less than the minimum pension as fixed by Government."

Under this Rule 100, what a Government Servant, who has compulsorily been retired from service, gets will be pension or gratuity or both at the rate not less than 2/3rd and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. Whether he gets 2/3rd or full compensation, will depend on the order passed while compulsorily retiring the Government Servant. The order dated 14th December, 2005 states 2/3rd compulsory retirement pension. This also is reiterated by the Division Bench while allowing the Writ Petition. Rule 100 does not define what is the pension payable or the quantum of pension to be paid. That is found in Rule 110, which reads as under:

<u>"110. Amount of pension-</u>

1. In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.

2. (a) In the case of a Government servant retiring on Super- Annuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of the "Pensionable Pay", subject to a maximum of Rs. 4,000 per month.

(b) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in Accordance with the provisions of these rules before completing qualifying service of thirty-three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than [rupees three hundred and seventy-five] per mensem.

3. In calculating the length of qualifying service, fraction of a year equal to [three] months and above shall be treated as a completed on-half year and reckoned as qualifying service.

4. The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2) shall be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee".

7 The notification dated 30th March, 2011 or the Maharashtra Civil Service (Pension) (Amendment) Rules, 2016, are not applicable to Shri Vaze. The notification dated 30th March 2011, states that those who have retired before 1st January, 2006, will get pension as per the Rules then prevailing under Maharashtra Civil Services (Pension) Rules, 1982. Shri

Vaze was compulsorily retired on 14th December, 2005. Maharashtra Civil Service (Pension) (Amendment) Rules, 2016, Shri Vaze submitted, applies retrospectively. Rule 12 of the amended Rules states that in Rule 110 of the Principal Rules (i.e., 1982 Rules), sub-rule(2) shall be deemed to have been substituted, w.e.f., 27th February, 2009. Hence, even this amendment Rules do not help Shri Vaze, as he was compulsorily retired on 14th December 2005.

8 Therefore, Rule 2(a) and 2(b) of Rule 110, is what we have to look into. Under Rule 2(a), if the qualifying service is not less than 33 years, the amount of pension shall be calculated at 50% of the pensionable pay, subject to maximum of Rs.4000/- per month and if the qualifying service is less than 33 years, the amount of pension shall be proportionate to the amount payable of amount of pension admissible, if the Government Servant had completed not less than 33 years. Petitioner had 10 years, 1 month and 1 day, as qualifying service. Shri Vaze accepted that the average pay on which his pension should be calculated is Rs.17,475/-. The service was 10 years, therefore, the pensionable pay under Rule 110 2(a) read with 2(b), will be Rs.17475/- X 50/100 X 10/33 which equals to Rs.2,648/-. The compulsory retirement order and the Division Bench state that petitioner will be entitled to 2/3rd of the pensionable pay. This works out to (2/3 X 2648) = Rs.1766/-.

9 Ms Shastri states that minimum prescribed amount as on 16th December, 2005 was Rs.1913/-, which was more than Rs.1766/- and hence petitioner was paid this amount of Rs.1913/- per month.

10 I have personally calculated these figures and I am satisfied that the calculations of the pensionary benefits of petitioner at Exhibit-3, as quoted above, is correct. As stated in paragraph 14 of the affidavit of Balasaheb Deshmukh, and which is not disputed by petitioner, petitioner has been paid interest also on the delayed payment made.

11 Therefore, I find nothing wrong in the amount paid by the Government of Maharashtra, to petitioner.

12 Execution application and chamber summons and all other proceedings in this execution application, are accordingly disposed.

13 Warrant of attachment also stand cancelled.

14 All to act upon authenticated copy of this order.

(K.R. SHRIRAM, J.)