

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2841/2017

Kamlakar S/o Ramrao Ballal

..V/s..

State of Maharashtra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.B. Dharmadhikari, Advocate for the petitioner.
Shri Bhagwan M. Lonare, A.G.P. for respondent Nos.1 to 4.

CORAM : RAVINDRA V. GHUGE & S.M. MODAK, JJ.

DATED : 13.2.2020.

1] The petitioner is before us with prayer clauses

(a), (b), (c) and (d), as under:-

“A) to allow this Writ Petition and quash / set aside the impugned order dated 4/12/2015 passed by the learned Maharashtra Administrative Tribunal, Nagpur in OA No.36/2001 (Annexure-J);

B) grant regular pension to the petitioner including the arrears from the date of his resignation;

C) in the alternative, grant disability / invalid pension to the petitioner including arrears from the date of his resignation till date;

D) allow this petitioner to apply afresh for the grant of invalid / disability pension and direct the respondents to examine the petitioner and further consider his application for grant of invalid / disability pension.”

2] The petitioner had joined duties with respondent Nos.2 and 3 as a Sub-Auditor in 1959. In 1969, he met with an accident and suffered a fracture in his waist region. He was sanctioned medical leave for almost a year and after he resumed duties, he found himself unable to perform any work on account of the severity of the accident. While working, he had to bend low from his waist and used to suffer excruciating pain in the leg which was affected by the accident.

3] Since the petitioner was working as a Sub-Auditor and was required to travel extensively, he requested the Divisional Special Auditor to transfer him to the previous post / other suitable department which would not involve travelling and frequent movement. His request fell on deaf ears and finally, being exasperated, he resigned from employment on 22.2.1971.

4] He had approached the Maharashtra Administrative Tribunal by filing an Original Application No.82/2001, after a prolonged correspondence with the Authorities from February, 1994. By order dated 20.2.2001, the original application was dismissed on the ground that the claim of the petitioner for pension or invalid pension was time barred.

5] The petitioner approached this Court in Writ Petition No.1188/2015 and by the judgment dated 3.9.2015, this Court concluded that such a claim cannot be said to be time barred. The petition was partly

allowed and the matter was remitted to the learned Tribunal.

6] By order 4.12.2015, the Tribunal rejected the original application by concluding in paragraph No.11 as under:-

“11. The learned counsel for the applicant made feeble attempt to point out that, the applicant ought to have been granted disability / invalid pension. For that, there is an express provision under Rules 200 to 206 of the BCS Rules. To claim invalid pension, an employee has to apply. Then, he is required to appear before the Medical Officer. Declaration is required to be given by the Medical Officer to the effect that, an employee has been completely and permanently incapacitated for the further service. It is not known what was the nature of disability suffered by the applicant. Fact remains that the applicant, instead of availing the provision of applying for an invalid pension, chosen to resign which he did at this peril. It seems that, over a period of about 23 years he kept mum and did not at all agitate about not granting him pensionary benefits.”

7] The learned Advocate for the petitioner has strenuously canvassed that though the petitioner is about 80 years of age today and is in a frail health, he is willing to be subjected to medical examination by any Board as this Court may direct and the Medical Board may decide as to whether the petitioner could be said to have

become completely invalid in 1969. If such a conclusion is drawn by the Medical Board, the petitioner would be entitled for invalid pension since he has put more than 12 years in service as a permanent employee.

8] The learned A.G.P. appearing on behalf of the respondents, submits that the learned Maharashtra Administrative Tribunal has rightly observed in paragraph 11 that Rules 200 to 206 under the Bombay Civil Services Rules, which were applicable in 1971, require an employee to apply for invalid pension. He then has to appear before the Medical Officer and if it is concluded that he has been completely and permanently incapacitated, he would be entitled for invalid pension.

9] We have considered the strenuous submissions of the learned Advocate for the petitioner, who has made a valiant attempt to convince us that the ends of justice would be met by referring the petitioner to the Medical Board even at the age of 80 years.

10] We are unable to be persuaded to pass such an order for the reason that the Rules applicable mandate a medical examination of the employee at the time when he has claimed invalid pension. Time would be the essence in such matters because the Medical Board has to draw a conclusion that such an employee is completely and permanently incapacitated and, therefore, he would be unable to perform any light or alternate work. We are afraid, that after a passage of 51

years from the date of the accident in 1969 and when the petitioner is aged about 80 years and the body, by natural law of degeneration, has become frail, that the Medical Board could examine the petitioner today to conclude that 51 years ago at a young age of about 30 years, he would not have recovered from the effect of the accident.

11] We find that any direction to subject the petitioner to such a medical examination would amount to unnecessarily keeping alive a flicker of hope for the petitioner at the age of 80 years. He would remain in perpetual expectation with the belief that he would be entitled for invalid pension. This is a second round of litigation up to the High Court with two rounds before the learned Maharashtra Administrative Tribunal. We are of the view that he should now be relieved of a false hope.

12] In view of the above, this petition is **dismissed**. No costs.

(S.M. MODAK, J.)

(RAVINDRA V. GHUGE, J.)