

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPURWRIT PETITION NO.4270 OF 2019

Bhaskar s/o Khushalrao Sawarkar,
 aged about 63 years, occupation :
 retired, r/o old R.T.O. Road,
 Kirti Nagar, Akola, Taluq and
 District Akola.

... Petitioner

- Versus -

- 1) State of Maharashtra,
 through its Principal Secretary,
 Department of Public Works,
 Mantralaya, Mumbai.
- 2) Superintending Engineer,
 Public Works Circle,
 Gorakshan Road, Akola.
- 3) Chief Executive Officer,
 Zilla Parishad, Buldana.
- 4) Chief Executive Officer,
 Zilla Parishad, Akola.

... Respondents

Shri A.J. Thakkar, Advocate and Shri D.S. Patil, Advocate for
 petitioner.

Ms. N.P. Mehta, Assistant Government Pleader for respondent nos.1
 and 2.

Shri B.N. Jaipurkar, Advocate for respondent no.3.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : DECEMBER 4, 2020

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Rule. Rule is made returnable forthwith. Heard finally by consent of learned Counsel for the parties.

2) After going through the order passed by the Maharashtra Administrative Tribunal on 29/1/2019, it has become clear that the order of cancellation of promotion given to the petitioner has been quashed and set aside and it would mean that the petitioner would have to be taken as having retired while holding the promotional post, which was undoubtedly not on the establishment of the Zilla Parishad, but on the establishment of the Public Works Department. So, if there is any question regarding payment of retiral dues to the petitioner, the answer to it would have to be unequivocal in terms that it would be only the responsibility of Public Works Department to make payment of all the retiral dues.

3) Next question that would arise in the present case would be relating to any authority under the law available with the Department of Public Works to withhold payment of all the retiral

dues including pension to the petitioner. There is no provision of law under the Maharashtra Civil Services Rules, which confers any authority on the employer to withhold payment of retiral dues in the absence of any departmental action having been taken or contemplated. Ms. Mehta, learned Assistant Government Pleader for respondent nos.1 and 2, also could not show to us existence of any such provision of law. There is no dispute about the fact that neither any departmental action was taken nor was contemplated ever. It would then mean that the petitioner would be entitled to receive all his retiral benefits including the pension. In any case criminal prosecution pending against the petitioner has no nexus whatsoever with the discharge of his duties while functioning on the promotional post. This is the reason why the Department has not thought it fit to proceed departmentally against the petitioner by reason of initiation of criminal proceedings against him by some private party, which related to some dispute as between the petitioner and the private party.

4) In the result, we find that the action of non payment of retiral benefits including pension to the petitioner is illegal and it deserves to be quashed and set aside. Accordingly, the petition is

allowed. The respondent no.1 is directed to pay all the retiral benefits including pension along with interest accrued under Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 read with relevant provisions of law and applicable Rules and arrears of salary for the month of March 2016 within a period of four months from today.

5) Rule is made absolute in the above terms. No order as to costs.

JUDGE

JUDGE

khj