

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

WRIT PETITION NO. 3587/2008

- 1) The State of Maharashtra
Through the Secretary
Higher and Technical Education Department
Mantralaya, Mumbai-32.
- 2) The Joint Director
Higher Education
Nagpur Division, Nagpur.
- 3) Shri P.K. Lakhe
Lecturer in Economics and Inquiry officer
Institute of Science, Nagpur. .. **PETITIONERS**

v e r s u s

Ramesh s/o Pandurang Bhangade
Aged about 60 years, occu: Retired
Near Govt. Science College
Gadchiroli. .. **RESPONDENT**

.....
Mr. I.J. Damle, Asst. Govt. Pleader for the petitioners
None for respondent
.....

**CORAM: DIPANKAR DATTA, CJ &
PUSHPA V. GANEDIWALA, J.
DATED: 2nd February, 2021**

ORAL JUDGMENT : (PER DIPANKAR DATTA, CJ.):

1. The judgment and order dated 1st August 2007, passed by
the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur,

allowing Original Application No.369/2006 is challenged in this writ petition by the State of Maharashtra and two of its officers. The original application was at the instance of the sole respondent in this writ petition, a retired Government servant.

2. On the allegation that the respondent had embezzled Rs.1,24,559.50, prosecution was launched against him. He was also placed under suspension. However, the criminal court acquitted the respondent and held him 'not guilty'. The period spent under suspension was regularised and the respondent was paid the benefits which had accrued in his favour. In due course of time, the respondent retired from service on 31st August, 2005 on attaining the age of superannuation. His retiral dues were released withholding a sum of Rs.1,48,203. Till such time the respondent was in service, no departmental proceeding was initiated against him for recovery of the alleged loss caused by him to the Government. Even after retirement, no departmental proceeding was drawn up; instead, a Committee was formed which was directed to conduct an enquiry into the act of embezzlement causing loss to the Government. Withholding of a part of his retiral dues prompted the respondent to move the original application before the Tribunal. Upon hearing advocates for the parties, the Tribunal proceeded to allow the original application by directing the respondents therein (the petitioners here) to pay to the original applicant Rs.1,48, 203 at the earliest and, in

any case, within a period of one month from the date of the order together with interest @ 8.5 % compound rate, admissible to him, as per the existing rules in the manner as indicated.

3. We have heard Mr. I.J.Damle, learned Assistant Government Pleader for the petitioners.

4. None appears for the respondent.

5. We have no hesitation in holding that the impugned judgment and order of the Tribunal is unexceptionable. During the period the respondent was in service, no departmental proceeding was instituted against him. It is true that Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 confers power on the Governor to withhold/withdraw pension if a Government servant is found to be guilty of gross misconduct or negligence while in service. However, Rule 27(2)(b)(ii) of the said Rules ordains that there can be no departmental proceeding in respect of acts of omission/commission which occurred during the period of four years preceding such institution. In the case at hand, not only no departmental proceeding has been instituted by issuance of a charge-sheet, the alleged act of embezzlement by the respondent, if at all, took place during 1984-85. In view thereof, the bar created by Rule 27(2)(b)(ii) squarely got attracted and the Tribunal by interdicting the action initiated by the petitioners in constituting a Committee did not, in our opinion, commit any infirmity, far less legal

infirmity, warranting interference. The writ petition is thoroughly without merit and accordingly stands dismissed.

6. The order of the Tribunal, if not complied with, shall be complied with at the earliest but not later than a month from date.

7. Since the respondent has not appeared before us today, office shall forward a copy of this order to him.

JUDGE

CHIEF JUSTICE

sahare