

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 4507 OF 2017**

Chandrakant Govardhan Berad,
Age : 62 Years, Occu. : Nil – Pensioner,
R/o 'Kshitij', Kothari Complex,
Govindpura, Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai 400 032.
2. The Principal District & Sessions Judge,
Ahmednagar.
3. The High Court of Bombay,
Through the Registrar General,
High Court Building, Fort, Mumbai.
4. The Accountant General of
Maharashtra (Accounts &
Entitlement) – 1,
Pratishta Bhavan (Old CGO
Building), 101, Maharshi
Karve Marg, Mumbai 400 020. .. Respondents

Shri Ajay S. Deshpande, Advocate for the Petitioner.
Smt. Vaishali N. Patil Jadhav, A.G.P. for the Respondent Nos. 1
and 4.
Shri Rajendra Deshmukh, Senior Advocate a/w Ms. Ashwini
Sahastrabudhe, Advocate i/by Shri C. K. Shinde, Advocate for
the Respondent Nos. 2 and 3.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.
DATE : 25.08.2022**

JUDGMENT (*Per Sandeep V. Marne, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner faces a unique conundrum. Extension in service opted by him on the post of Stenographer (Higher Grade) after retiring from service on the post of Personal Assistant has resulted in a anomalous situation where he is drawing lesser pension than what he would have drawn had he not opted for extension.

3. Some factual narration as a prologue to our judgment would be necessary. The petitioner joined the District Judicial Service on the post of Stenographer (Lower Grade) in June 1976 and came to be promoted on the post of Stenographer (Higher Grade) in June 1981. He was further promoted to the post of Personal Assistant to the Principal District and Sessions Judge, Ahmednagar on 07.12.1993 and retired on attaining age of superannuation on 31.01.2014. The post of Personal Assistant carried the Pay Band of Rs. 9300 – 34800 with Grade Pay of Rs. 5200. The last pay drawn by him at the time of retirement was Rs. 31,790 + Grade Pay Rs. 5200 = Rs. 36,990.

4. Possibly on account of shortage of Stenographers, the Principal District and Sessions Judge, Ahmednagar offered to grant one year extension to the petitioner after his retirement and the petitioner opted for it. Ideally the extension in service

ought to have been on the post of Personal Assistant on which he retired. However, for some unknown reasons the Principal District and Sessions Judge, Ahmednagar issued order dated 05.02.2014 granting extension of service to the petitioner for a period of one year with effect from 01.02.2014 on the lower post of Stenographer (Higher Grade). It was further directed that on the post of Stenographer (Higher Grade) he would draw salary in the pay which he was drawing at the time of his retirement. It was further directed that the petitioner would stand retired on superannuation on 31.01.2015.

5. The extension of service granted to the petitioner on the post of Stenographer (Higher Grade) resulted in a situation that he started drawing lesser pay than what he drew as Personal Assistant. This is because of the difference in Grade Pay admissible to the two posts. While post of Personal Assistant carried Grade Pay of Rs 5200, the Grade Pay admissible for the post of Stenographer (Higher Grade) was Rs. 4,400/-. Therefore, even though he was granted pay protection at Rs. 31,760 (pay drawn by him as Personal Assistant), even after his extension on the post of Stenographer (Higher Grade), there was difference of Rs. 800 in the basic salary on account of difference in Grade Pay. Therefore as against total basic pay of Rs. 36,990 which he drew as Personal Assistant on the date of his retirement, he was granted total basic pay of Rs. 36,190 on the post of Stenographer (Higher Grade). He made representations on 24.02.2014 and 01.03.2014. However, no response was received. In the

meantime he requested by letter dated 28.07.2014 for his retirement on 31.10.2014 and this is how his extension in service came to an end.

6. The petitioner filed Writ Petition No. 2764 of 2015 on account of non finalization of his retiral benefits, which was disposed of by order dated 29.08.2016 with liberty to file appeal before the Administrative Committee. Accordingly he filed Administrative Appeal dated 21.09.2016 and by communication dated 07.03.2017 his appeal was rejected.

7. On account of the fact that the petitioner drew total basic pay of Rs. 36,190 on the post of Stenographer (Higher Grade) during preceding 10 months from 31.10.2014, his average emoluments for pension were considered at Rs. 36,190/-. Had he not opted for extension, his average emoluments would have been Rs. 36,990. This has led to receipt of lesser pension and other pensionary benefits. He has therefore prayed for determination of his pensionable pay by considering his date of retirement as 31.01.2014.

8. Appearing for the petitioner Mr. Ajay Deshpande, the learned advocate submits that the petitioner stood retired from service on 31.01.2014 and, therefore, the extension of service granted to him is irrelevant for the purpose of computation of his pensionable pay. He further submits that the petitioner cannot be put to loss for the voluntarily working during extended period

due to shortage of staff. He further submits that if the petitioner was made aware of possible reduction in pensionable pay, he would have never opted for extension of service.

9. Per contra, Mr. Rajendra Deshmukh, learned senior advocate for the High Court Administration has defended the impugned action. He submits that the petitioner lastly worked on the post of Stenographer (Higher Grade). Therefore, pay drawn on the post of Personal Assistant becomes irrelevant. He further submits that the petitioner did not raise any grievance when lower basic pay was offered to him on the post of Stenographer (Higher Grade). He further submits that for the purpose of pension, the average emoluments during last 10 months are to be taken into consideration and the actual pay drawn by the petitioner during last 10 months has rightly been taken into consideration for deciding his pension.

10. Rival contentions of the parties now fall for our consideration.

11. Lifelong pension is one of the main features which attracts job aspirants to government service. A government servant strides to climb the hierarchical ladder during his service career under a hope that he becomes entitled to higher amount of pension. Steady rise of pay with passage of each year is assured, unless interdicted by unusual eventualities of a punishment or suspension. More service resulting in higher amount of pay is

thus the normal law. Reduction of pay on account of putting in additional service is uncommon in service jurisprudence. However present is the case where additional service has resulted in decrease of pay. Normal rule is broken and an abnormality has crept in. Under these unique circumstances we are tasked upon to solve the predicament being faced by petitioner.

12. The correspondence brought on record by the High Court Administration suggests that the pension proposal of the petitioner was initially sent to the office of the Accountant General by treating his pensionable pay as Rs. 31,790 + Grade Pay Rs. 5200 = Rs. 36,990. It is the office of the Accountant General who raised an objection vide letter 12.12.2014. On account of such objection, the District Court Ahmednagar sent pension proposal of the petitioner treating his last pay drawn as Rs. Rs. 31,790 + Grade Pay Rs. 4400 = Rs. 36,190. Even on the revised proposal, objections were raised by the office of the Accountant General seeking clarification about his date of retirement. The District Court clarified that the date of retirement of the petitioner as per Rule 19(1) of the Rules of 1982 is 31.01.2014. No justification seem to have been provided for taking into consideration last pay drawn by the petitioner on the post of Stenographer (Higher Grade) as his pensionable pay.

13. The problem, according to us, is caused by two factors. Firstly, Petitioner was granted extension on post lower than the

one from which he retired. If the word 'extension' was to be used (as has actually been used), he ought to have been granted same post of Personal Assistant on which he worked till his retirement. If he was to be offered another post, the appropriate word for the arrangement was 'reemployment'. Secondly, the Principal District Judge, in our opinion, did not have the authority to make a declaration that Petitioner would retire on 31.01.2015. Petitioner's retirement is governed by Rules and not by the covenants of the extension order.

14. The anomalous situation in the present case has essentially been created on account of grant of extension to the petitioner on the lower post which was lower in scale than the one on which he retired. Had he been granted extension on the post of Personal Assistant, the situation could have been prevented. Be that as it may. According to us, the period during which the petitioner worked as Stenographer (Higher Grade) by way of extension in service is wholly irrelevant for the purpose of determining his pensionable pay. He become entitled to pension on the date of attaining the age of superannuation. Therefore, any service that he rendered thereafter, in whatever capacity, becomes wholly irrelevant for the purpose of application of provisions of Maharashtra Civil Service (Pension) Rules, 1982 (hereinafter referred to as 'the Rules of 1982').

15. Sub Rule (1) of Rule 60 of the Rules of 1982 provides thus:

60. Pensionable Pay.

- (1) The “Pensionable pay” means the average pay earned by a Government servant during the last ten months’ service.

It is on account of provision of Rule 60(1) that petitioner’s pay drawn during extension of service appears to have been treated as pensionable pay.

16. However Rule 60(1) would also have to be read with Rule 10(1). Sub Rule 1 of Rule 10 of the Rules of 1982 provide as under :

10. Age of retirement.

- (1) Except as otherwise provided in this rule, every Government Servant, other than a Class IV Servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years :

Provided that, a Government Servant who had attained the age of 58 years prior to issuance of Government Resolution, Finance Department o. PEN. 1099/34/SER-4, dated the 2nd February 1999 and who has been continued thereafter in service shall retire from 28th February 1999 (a.n.)

17. Thus on attaining age of 58 years, the petitioner stood retired from service by operation of Sub Rule (1) of Rule 10 of the Rules of 1982. His service after attaining age of superannuation would not count for pension. Therefore, the average emoluments drawn by the petitioner 10 months prior to 31.01.2014 would alone become the basis for determining his pensionable pay.

18. It is trite in service jurisprudence that if two interpretations are possible, the one which is more beneficial to the working class should be adopted. Pension Scheme under the Rules of 1982 is a beneficial provision for employees. It cannot be interpreted in such a manner that its strict interpretation would result in a situation where the employee gets lesser pension than his entitlement. Therefore the provision of Rule 60 of the Rules of 1982 are required to be interpreted in such a way that the pay drawn by petitioner during last 10 months of his extended service should not result in drawl of lesser pension than the one which he would have otherwise drawn had he not opted for extension.

19. Seen from any angle, we do not find any justification for treating Rs. 36,190 drawn by the petitioner while working on the post of Stenographer (Higher Grade) during extended period as his pensionable pay.

20. We are therefore of the considered view that an error has crept in while determining the pensionable pay of the petitioner and the same deserves to be corrected. We hold that the petitioner stood superannuated on 31.01.2014 from the post of Personal Assistant and his pension will have to be fixed accordingly. Consequential benefits arising out of redetermination of the pensionable pay be paid to the petitioner within a period of four (04) months from today.

21. The writ petition is accordingly allowed. Rule is made absolute in above terms, however, without any order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

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