AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4259 OF 2018

Arvind Purshottam Sathe … Petitioner.
V/s.
State of Maharashtra & Others … Respondents.

Mr. Kaplesh U. Patil, for the Petitioner.
Mr. N.C. Walimbe, AGP, for Respondent Nos. 1 & 2-State.
Mr. Rahul Nerlekar, for Respondent No. 3.
Mr. Shaikh Nasir Masih, with Moinuddin Chowdhari, for Respondent No. 4.

CORAM : SUNIL B. SHUKRE, AND
AMIT BORKAR, JJ.

DATE : 23rd FEBRUARY 2022.

P.C. :

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. By this petition, the Petitioner is claiming refund of the remaining amount paid by the Petitioner towards Management's share of Provident Fund along with appropriate rate of interest and also interest on delayed payment of retiral dues to the Petitioner.

3. Learned Counsel for the Petitioner submits that the Petitioner

who retired as Associate Professor from Respondent No. 3 – College was never given any option to join the pension scheme of the Government in the years 1983, 1987 and 1993 and, therefore, the Petitioner could not avail the benefit of the Government pension scheme by taking into consideration his permanent service in Respondent No. 3 – College from the year 1983 and onward till his retirement in the year 2013. He further submits that at the time of retirement, the Petitioner was given to understand that he would be getting benefits of the Government pension scheme by considering his entire service from the year 1983, provided he paid an amount of Rs. 3,33,569/-, which was share of the Management towards provident fund, which was earlier part of contributory pension scheme. He further submits that the Petitioner did pay this amount believing that this amount would be refunded to him after the pension was paid to him, but to the surprise of the Petitioner, out of the said amount of Rs. 3,33,569/- the Management of Respondent No. 3 – College refunded only an amount of Rs. 1,66,785/-, i.e. 50% of the amount of Rs. 3,33,569/-. It is this amount, learned Counsel for the Petitioner submits, the Petitioner is entitled to receive from Respondent No. 3 – College.

4. Learned Counsel for Respondent No. 3 – College submits that for not getting the full benefit of the Government pension scheme, it was only the Petitioner who is to be blamed and not the Management. He submits that if the Petitioner had submitted his option for Government pension scheme firstly in the year 1983, or

secondly in 1987, or thirdly in the year 1993, there would have been no occasion for the Petitioner to bear the share of the Management towards provident fund. He submits that the Petitioner and two more employees, at the time of their retirement in the year 2013, realized their mistake and felt that they would not be getting full benefit of the Government pension scheme on account of their not opting for the same during previous years, and so they requested the Management for moving the Government for granting them full benefit of the pension scheme, and at that point of time the Government put a condition that if the share of the Management towards provident fund was deposited with the Government, the Government would apply pension scheme to the Petitioner with all benefits treating his continuous service from the year 1983. It was upon such condition of the Government, that a meeting was held between the Petitioner and two other employees on one hand and representatives of the Management on the other wherein it was agreed by the employees, including Petitioner that they would initially pay the entire share of the Management's contribution to the provident fund and thereafter the Management would only refund to them 50% of the amount which they would remit to the Government as Management's contribution towards provident fund and undertaking was also given by these employees including the Petitioner and this was done by the Management out of of sympathy for the employees like the Petitioner, so submits by the learned Counsel for the Petitioner. He further submits that these relevant facts are not mentioned by the Petitioner for reasons best known to him, but the fact remains that it is only the Petitioner who is responsible for the situation in which he has found himself after his retirement. It is also submitted that in spite of mistake on the part of the Petitioner, the Petitioner is now getting pension regularly and he has also withdrawn full amount of General Provident Fund and, therefore, no loss whatsoever has been caused to the Petitioner.

5. Mr. N.C. Walimbe, learned AGP and Mr. Rahul Nerlekar, learned Counsel for Respondent No. 3 - Management also submitted that the Petitioner is not entitled to any of the reliefs claimed in this petition.

6. On going through the contentions made in the petition and the reply of the Management, which is relevant for deciding the controversy involved in this petition, we find great substance in the argument of the learned Advocate for Respondent No. 3 and no merit in the submissions of the learned Counsel for the Petitioner. The argument put forward on behalf of the learned Advocate for Respondent No. 3 – College is almost entirely reflected in the reply filed by Respondent No. 3 and, therefore, if the same is stated once again, it would be only repetition of what is already noted above.

7. It can thus be seen that in spite of option given to the Petitioner, the Petitioner did not care to exercise any of the options which came his way in the years 1983, 1987 and in 1993 for joining the Government pension scheme. Of course, learned Advocate for

the Petitioner has argued that no such options were given to the Petitioner but, the argument in our opinion appears to be the result of some incorrect instructions given to him by the Petitioner. The Petitioner was well aware of the option given to the employees for joining Government pension scheme on previous three occasions and the Petitioner had also realized his mistake in not joining the Government pension scheme earlier and that is the reason why the Petitioner gave an undertaking on 20th July 2012 to the Management that he was willing to bear the Management's share and interest thereon. This fact of submission of undertaking by the Petitioner to the Management ought to have been disclosed by the Petitioner in the petition, which the Petitioner for reasons best known to him did not do so. But, the inference that can be drawn from said undertaking and also conduct of the Petitioner in suppressing the undertaking is that the Petitioner was well aware of the possibility of his joining Government pension scheme at least on three occasions considering his service tenure, and that he had also realized his mistake of not having joined the Government pension scheme at the fag end of his teaching career and, therefore, on his request to the Management, the Management moved the Government for applying pension scheme to the Petitioner with all its benefits by treating his continuous service from the year 1983 which request was conditionally accepted by the Government. It can also be seen that as a part of this condition, an amount of Rs. 3,33,569/- was required to be deposited with the Government towards Management's share in the provident fund. Since this was the concession being specially given to the Petitioner, there was compromise between the Petitioner and the Management, as a result of which the Petitioner himself agreed to bear the Management's share subject to the condition that 50% amount thereof would be reimbursed to him by the Management. The Management did repay 50% amount to the Petitioner and there is no dispute about this fact of having received 50% of the amount from out of the amount of Rs. 3,33,569/- deposited by the Petitioner with the Government. Now the Petitioner cannot go back on his undertaking and claim the remaining 50% amount from the Management. So, the first part of the petition is without any substance and, therefore, cannot be granted.

8. As regards the second prayer for award of interest, we find that this petition itself is based upon suppression of several material facts and, therefore, we are not inclined to grant this request as well.

9. Reliance upon the provisions to Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982 has been placed by the learned Advocate for the Petitioner to claim interest for delay in payment of retiral dues to the Petitioner. But, essential condition of this provision of law is of an administrative lapse in delaying payment of retiral dues. Considering the fact that the mistake in not joining Government pension scheme at right time was of the Petitioner, the Petitioner cannot say that the delay which occurred in the present case was purely on account of any administrative lapse on

the part of the Competent Authority. Even otherwise, at the cost of repetition, we would say that the Petitioner, having suppressed material facts from this Court, is not entitled to any reliefs.

10. The Writ Petition stands dismissed. Rule is discharged. No costs.

(AMIT BORKAR, J.) (SUNIL B. SHUKRE, J.)