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

WRIT PETITION NO.3075 OF 2019

Purushottam s/o Sadashiv Gite
Aged about 56 years, Occ. Retired,
r/o behind Mukharji Bungalow,
Raut Wadi, Akola,
Tq. and Distt. Akola … Petitioner

-vs-

1. Municipal Corporation,
   Akola, Through its Commissioner,
   Off- At Gandhi Road, Akola,
   Tq. and Distt. Akola

2. State of Maharashtra,
   Through the Secretary,
   Urban Development Department,
   Mantralaya, Mumbai-32 … Respondents

Shri C. A. Joshi, Advocate for petitioner.
Dr Anjan De, Advocate for respondent No.1.
Ms Hemlata N. Jaipurkar, Assistant Government Pleader for respondent No.2.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.
DATE : October 11, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

At the outset, learned counsel for the petitioner, on instructions, does not press clause [2] of the writ petition.

2. The petitioner was serving as Internal Auditor in the Accounts Department of the Municipal Corporation, Akola. On 02/04/2018 he gave a notice seeking to voluntarily retire from service with effect from 02/07/2018. The Municipal Corporation through its Additional Commissioner however passed an order on 29/06/2018 by which it was stated that the petitioner would superannuate from 30/06/2018. The petitioner issued various communications raising protest that he had indicated that he desired to superannuate from 02/07/2018 and hence the action of accepting his voluntary retirement from 30/06/2018 was illegal. Being aggrieved the petitioner has challenged the aforesaid action.

3. The learned counsel for the petitioner by relying upon Rule 65(1)(a) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, the said Rules) submitted that a government servant/employee who proposes to retire on completion of qualifying service can give a notice in writing three months prior to the date of which he desires to retire. The petitioner gave such notice on 02/04/2018 and indicated the proposed date of retirement as 02/07/2018. The same ought to have been accepted by the Municipal Corporation. By retiring the petitioner from 30/06/2018 the rights of the petitioner have been affected. The petitioner was deprived of an annual increment by

directing his voluntary retirement on 30/06/2018. Hence this action of the Municipal Corporation was illegal.

4. The learned counsel for the Municipal Corporation supported the action of retiring the petitioner from 30/06/2018. Since the petitioner's notice was dated 02/04/2018 and the period of 90 days came to an end on 30/06/2018, the petitioner was rightly retired on that date. It is further stated that an increment of Rs.520/- would not be available to the petitioner for this reason. Hence there was no illegality in the action of the Municipal Corporation.

5. On hearing the learned counsel for the parties we find that the petitioner's intention behind indicating the date of retirement as 02/07/2018 is to enable the petitioner to receive the annual increment that becomes due on 1st July every year. Notwithstanding the fact that the petitioner was to retire from 30/06/2018 as per the Municipal Corporation, we find that in view of the decision of this Court in *Pandurang Vithobaji Dhumne and ors. vs. State of Maharashtra and ors.* ***2022(4) Mh.L.J. 270,*** the petitioner would be entitled for the annual increment that became due on 01/07/2018 notwithstanding his retirement on 30/06/2018. It has been held therein that service having been rendered for one year prior to that date would entitle such

employee to receive the annual increment. Since this was the reason for indicating the date of retirement, we find that even if the stand of the Municipal Corporation is accepted, the petitioner would be entitled to receive such annual increment. In these facts therefore we do not propose to go into the question whether the petitioner was justified in seeking to indicate his date of retirement as 02/07/2018 by relying upon Rule 65(1)(a) of the said Rules. That question is kept open.

6. Hence for aforesaid reasons it is held that the petitioner would be entitled to annual increment that fell due on 01/07/2018 notwithstanding the fact that the petitioner retired from service on 30/06/2018.

The petitioner would be entitled to pensionary benefits in the light of aforesaid directions.

The pensionary benefits of the petitioner be released within a period of three months from today.

Rule is made absolute in aforesaid terms with no order as to costs.

(M. S. Chandwani, J.) **(A. S. Chandurkar, J.)**