

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

WRIT PETITION NO.5037 of 2021

[Satish s/o Ganpatrao Dabhade .vs. The State of Maharashtra and others]

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri Shyam Dewani, Advocate for the Petitioner,
 Ms. H.N. Jaipurkar, Assistant Government Pleader for Respondent No.1-State,
 Smt. Kalpana Pathak, Advocate for Respondent Nos.2 and 3.

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CORAM : SANDEEP K. SHINDE AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 08/12/2022.

Heard the learned counsel for the parties.

2. The petitioner, an employee of the Maharashtra Labour Welfare Board, retired upon attaining the age of superannuation on 31.07.2019, as Assistant Welfare Commissioner. As he was not paid retiral benefits, he filed petition on 09.03.2021, seeking directions to the respondents to release the post retiral benefits. Pending petition, departmental enquiry was initiated against him on 28.10.2021 by filing chargesheet.

3. Petitioner's grievance is that, he has not been paid the gratuity nor the pension, although Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules 1982') do not empower the respondents to withhold the pension unless delinquent employee is held guilty of misconduct. To appreciate Petitioner's case, it would be advantageous to reproduce Rule 27 (1), (2) (a) (b), (3) and (4) of the Maharashtra Civil Services (Pension) Rules, 1982 :

“27. Right of Government to withhold or withdraw pension - (1) Appointing authority may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement :

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview :

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-

(i) Shall not be instituted save with the sanction of the appointing authority,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and

at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

4. The plain reading of Sub-Rule (1) of Rule 27 of the Rules 1982 convey that the appointing authority is empowered to (i) withhold or withdraw a pension or any part of it, either permanently or for a specified period, and (ii) order recovery from such pension, provided, in departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during the period of his service including service or during the period rendered upon re-employment after retirement. Whereas Clause (b) of Sub-Rule (2) of Rule 27 of the Rules 1982, lay down the procedure for instituting departmental enquiry, if not instituted while the Government servant was in service.

5. In the case on hand, we are concerned with the issue, whether the appointing authority i.e. respondent no.2 could withheld the pension of the petitioner, against whom,

departmental enquiry has been imitated, two years after the retirement and who has not been found guilty of the alleged misconduct. The answer is in negative, for the simple reason that, the scheme of Rule 27 of the Rules 1982 does not admit power of appointing authority to withhold the pension of the government servant, pending departmental enquiry, initiated when he was not in the service.

6. Petitioner, contention, is resisted by the respondent no.2 and State. Both relied on Government Resolution dated 15.06.2020. We have perused this Government Resolution. This Government Resolution has been issued pursuant to judgment of the Hon'ble Supreme Court in Civil Appeal No.8928/2015. It relates and speaks about government servants, who had retired or opted the voluntary retirement or expired, but could not or did not submit that the caste validity certificate, yet the benefits of the caste had been extended to and availed of by them. Thus, the Government Resolution has no application to the facts of the case at hand. Therefore, the contention of the respondents is rejected.

7. For the reasons stated above, the respondents are directed to release the pensionary benefits of the petitioner within eight weeks from today with all consequential benefits.

8. Petition is partly allowed and disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(SANDEEP K. SHINDE, J.)