

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

WRIT PETITION NO.5052/2011

Madhav s/o Ramchandra Bende
(Dead through LRs)

- i. Mangesh s/o Madhavrao Bende,
aged about 40 years, Occ. Pvt.
r/o Plot No. 57, Kabir Nagar,
Mire Layout, Nehru Nagar, Near
Corporation Office, Nagpur-9.
- ii. Manoj s/o Madhavrao Bende,
aged about 32 years, Occ. Pvt.
r/o Plot No. 57, Kabir Nagar,
Mire Layout, Nehru Nagar, Near
Corporation Office, Nagpur-9.
- iii. Manisha w/o Sunil Ingle,
aged 38 years, Occ. Housewife,
r/o Flat NO. 409, Tech Of Height,
Techofcity, Near Sanjuba High School,
Umred Road, Nagpur – 440 034.
- iv. Mina w/o Prakash Bonde,
aged 36 years, Occ. Housewife,
r/o Fat No. 401, 'A' Wing, Sai Atharva
Apartment, Opposite Yash Sankalp
Building, Near Swaraj Garden Restaurant,
Pimple Saudagar, Pune.
- v. Manda w/o Madhavrao Bende,
aged 62 years, Occ. Housewife,
r/o Plot No. 57, Kabir Nagar,
Mire Layout, Nehru Nagar, Near
Corporation Office, Nagpur-9.

.....PETITIONERS

...VERSUS...

1. Forest Development Corporation Ltd.
Through the Managing Director,
Rawel Plaza, Plot No. 12, Kadbi Chowk,
Kamptee Road, Nagpur.
2. Regional Manager, Nagpur Regional
Forest Development Corporation Ltd.
Gaddigodam, Nagpur.
3. Divisional Manager, Nagpur F.P.D.
Forest Development Corporation Ltd.
Hingna Road Nagpur.

...RESPONDENTS

Mr. Harish Dangre, Advocate for petitioners.
Mr. V. P. Maldhure, Advocate for respondent nos. 1 to 3.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 25.08.2022

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

The matter is already admitted on 27.08.2012. Heard Mr.Dangre, learned counsel for the petitioners and Mr. Maldhure, learned counsel for respondent nos. 1 to 3.

2. The petitioners have put forth the following prayers:

“(1) issue any appropriate writ, order or directions in the nature of mandamus and thereby quash and set aside impugned order dated 18.05.2011 passed by the respondent no.2 Regional Manager, Nagpur Region (Annexure-I) and order dated 31.05.2008, passed by the

respondent no.3 Divisional Manager, Nagpur F.P.D. in the interest of justice.”

The petitioner expired on 11.06.2017 and the petition is being prosecuted by his legal representatives as the cause to prosecute survives.

3. The short question, that requires answer is; whether the disciplinary proceedings would continue even after superannuation?

4. We have considered the rival contentions. The charge-sheet came to be issued to the petitioner on 16.04.2007. The petitioner retired on 30.06.2007. According to learned counsel for the petitioner, the disciplinary proceedings commenced on 03.07.2007 in terms of Rule 7 (j) of the Employees Service (Discipline and Appeal) Rules, which reads thus:

“7. (a) to (i) -----

(j) The inquiry shall be commenced on the date fixed in that behalf by the Enquiring Authority and shall be continued thereafter on such date or dates as may be fixed from time to time by that authority.”

5. Mr. Maldhure, learned counsel for the respondents contends that the inquiry would commence when the substance of imputation and articles of charge are drawn against the delinquent employee in terms of Rule 6 (1)(a)(b) of the Rules of 1989.

6. Though the learned counsel for the parties have canvassed their arguments on the point of commencement of the disciplinary proceedings, we need not delve upon the said point in the present case inasmuch as the question before us for consideration is whether the disciplinary proceedings could have been continued after superannuation of the delinquent, in absence of any provision to that effect.

7. Our attention has been drawn by learned counsel for the respondents to a Board Resolution dated 18.09.1995, by which the Managing Director was authorized to adopt the Government Resolution/Circular in connection with the establishment and service matters where no specific rules exist for the respondent-Forest Development Corporation of Maharashtra Limited. Upon inquiry, learned counsel for respondents, fairly submits that the Maharashtra Civil Services (Pension) Rules, 1982, have not been adopted.

8. If that be so, the respondents cannot invoke Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, which provides for initiation of a departmental inquiry post retirement, to withdraw or withheld the pensionary benefits

9. The issue involved is squarely covered by the judgment relied upon by learned counsel for the petitioner in the case of

*Dev Prakash Tewari Vs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and Ors.*¹ wherein the Hon'ble Supreme

Court held in paragraphs 7 and 8 as under:

“7. In a subsequent decision of this Court in U.P. Coop. Federation case; (2007) 2 SCC (L&S) 804 on facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management. While dealing with the above case, the earlier decision in Bhagirathi Jena's case; (1999) SCC (L&S) 804 was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein.

8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the

¹ (2014) 7 SCC 260

respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

Thus, it is clear that after retirement, disciplinary proceedings could not be continued, as it stands lapsed.

10. We, therefore, proceed to pass the following order

(i) The impugned order dated 18.05.2011 passed by respondent no.2-Regional Manager, Nagpur Region, Nagpur and order dated 31.05.2008 passed by respondent no.3-Divisional Manager, Nagpur FPD are quashed and set aside.

(ii) The retiral benefits as are permissible in law, shall be extended to the petitioners, if not already extended.

(iii) Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)