

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

WRIT PETITION NO.8462 OF 2018

Dr. Prakash S/o. Mahadeorao Hiwarkar,
Aged 62 Yrs., Occu.: Retired Principal,
R/o. 404, B-1, Shivraya Samruddhi Sankul,
MHADA Flats, Amravati Road, Civil Lines,
Nagpur- 440 001

.... **PETITIONER**

// VERSUS //

- 1. The State of Maharashtra,**
Through Principal Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai -32
- 2. The Director of Higher Education,**
State of Maharashtra, Pune
- 3. The Joint Director of Higher Education,**
Nagpur
- 4. The Accountant General,**
Maharashtra-II, Nagpur
Civil Line, Nagpur
- 5. Shri Chaitanyeshwar Shikshan Mandal,**
Plot No. 108, Pandurang Gawande
Nagar, Nagpur, through its Secretary
Shri. Bhojrajji Charmode, Umred Road,
Nagpur
- 6. Hazrat Baba Tajuddin Arts and**
Commerce College, Nagpur through
its Administrator.

.... **RESPONDENTS**

Mr Firdos Mirza, Advocate for the petitioner
Mr K.L. Dharmadhikari, AGP for respondent Nos.1 to 4

CORAM : SUNIL B. SHUKRE AND
G. A. SANAP, JJ.
DATED : 21.09.2022

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

1] Heard. **RULE.** Rule made returnable forthwith. Heard finally by consent.

2] Shri Firdos Mirza, learned counsel for the petitioner submits that under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, pension of retired Government Servant cannot be withheld or withdrawn unless Government Servant is found guilty of grave misconduct or negligence in a departmental inquiry held against him. He submits that in this case, no departmental inquiry was ever held and there is no authority, who has recorded any finding of the petitioner being guilty of grave misconduct or negligence. He further submits that the objection Nos. 1 to 4, mentioned in paragraph 8 of the impugned order, do not exist and therefore, there is no reason, even otherwise, to withhold or withdraw the pension of the petitioner.

3] Shri K. L. Dhamardhikari, learned Additional Government Pleader submits that there has been an inquiry initiated against petitioner by anti-corruption bureau into allegation of misappropriation of funds of the college, received from the Government and therefore, unless and until the inquiry is completed and the

petitioner is given clean cheat this Court may not entertain this petition. He also submits that objection No.2 regarding submission of essential documents relating to service of the petitioner needs to be removed by the petitioner.

4] Insofar as the submission relating to the conditions necessary for withholding or withdrawing of pension of a Government Servant is concerned, we find great substance in the submission. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is very clear. It requires finding of guilt of grave misconduct or negligence in a departmental inquiry held against the employee, which is not the case here. Therefore, there is no authority in law for the Joint Director of Higher Education, Nagpur Division to withhold pension of the petitioner. Therefore, on this ground alone we are of the view that this petition deserves to be allowed.

5] Even otherwise, the objection No.1 regarding making of illegal appointments we must say that the Joint Director is way off the mark. The illegal appointments were allegedly made in Hazrat Baba Tajuddin Arts and Commerce College (For Short 'H.B.T. College') and they pertain to appointments of Dr. Farkhunda Anis Khan as Associate

Professor on 10.07.1999 and one Shri. P. T. Rathod, as Peon on 01.07.1997. When these appointments were made, it is an admitted fact, the petitioner was not working in H.B.T. College where the appointments were made. The petitioner had worked in H.B.T. College as its Principal with effect from 12.10.2000 to 07.08.2009 and with effect from 08.08.2009, he was appointed as Principal of respondent No. 5-college, that too on the basis of no objection given by H.B.T. College. So, the petitioner had nothing do with the alleged illegal appointments of said employees and yet, Joint Director, Nagpur is accusing the petitioner of being responsible for making illegal appointments. The statement so made by the Joint Director is reckless. This is not the way how, duties and functions of the office of Joint Director Higher Technical Education, a very responsible post, should be discharged.

6] About the non submission of 'essential documents', we do not understand what is exactly meant by the Joint Director. If the petitioner, in his opinion, had not submitted 'essential documents', the Joint Director was under a duty to specify which of the documents were not submitted by the petitioner. Unless and until he specifies or names the documents which are required by him, petitioner would not

be able to comply with the requirement. In fact, the record shows, as can be seen from the paper book of this case and also the findings recorded by this Bench in earlier round of litigation, which was ***Writ Petition No. 1089 of 2015 (Dr. Prakash Mahadeorao Hiwarkar .v/s. State of Maharashtra and ors.) decided on 14.06.2016***, the petitioner had submitted all the 'essential documents'. Therefore, there was no reason for the Joint Director, Nagpur to have taken any objection in this respect.

7] As regards the objection No. 3, which is about non signing of Form No. 3 by the Chairman/Secretary, we find that even this objection does not hold any water as the Form No. 3 has already been signed by the Chairman/Secretary under his signature, a copy of which has been filed at Page 50. About objection No. 4, regarding non submission of the orders of the Government recognizing the concerned colleges, we find that this objection is irrelevant and it has nothing to do with the case of the petitioner.

8] Thus, we are of the view that on facts of the case as well on law applicable to the case of the petitioner, the petitioner is entitled

to receive his pension and he must be paid the pension without any further delay.

9] We, therefore, allow the petition and direct the respondents to issue the pension order and also the order for payment of all retiral dues due to the petitioner within four weeks from the date of receipt of copy of this judgment.

10] Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Namrata