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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO.5022 OF 2021

RAGHUNATH SHRIRAM CHINCHOLKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

....

Mrs Vanita H. Sangole, Advocate for petitioner;

Mr V. M. Kagne, A.G.P. for respondent No.1

Mr G. K. Naik Thigle, Advocate for respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 24th February, 2023

PER COURT:

1. Pursuant to our order dated 01/02/2023, the then Chief Officer Shri. Umesh Manohar Dhakane is present in the Court and has filed an affidavit and tenders an apology. An amount of Rs.10,000/- is donated to the Advocate's Association of Bombay High Court, at Aurangabad.

2. The learned Advocate for the petitioner submits that, since the Municipal Council has now tendered an affidavit-in-reply, the then Chief Officer may be excused. In view of the said statement and the apology tendered, we refrain from taking this issue any further and render it a quietus.

(2)

3. We have considered the submissions of the learned Advocates for the petitioner and the Municipal Council. With their assistance, we have gone through the petition paper book and the record available.

4. The petitioner has not been paid full pension, Gratuity, leave encashment and other monetary benefits in view of the service rendered and his superannuation. The undisputed factors are as under :-

(a) On 30/06/2006, the petitioner had received promotion as the 'Head Clerk'. He stood superannuated on 31/12/2006.

(b) A charge-sheet was issued to the petitioner on 11/06/2009 i.e. after retirement.

(c) The enquiry was concluded on 17/12/2009.

(d) At the time of his superannuation, there was no communication to him, indicating either that a charge sheet is being issued to him or that he is prima facie found to be guilty of any misconduct.

(e) After the conclusion of the Departmental Enquiry, the findings of the enquiry were tendered to the Divisional

(3)

Commissioner on 17/12/2009. No decision has been arrived at in the last 13 years.

(f) The petitioner is receiving provisional pension.

5. It is undisputed that, after the submission of the enquiry report, till today, the entire matter is at a standstill. The Municipal Council, which has received the findings of the Enquiry Officer, has done nothing in the matter. It is 17 years, since the petitioner has superannuated on 31/12/2006 and has yet not received the entire service benefits in the absence of any conclusion by the Disciplinary Authority that the petitioner is guilty of any misconduct, much less, any punishment having been awarded to him.

6. We find the above facts to be so glaring and peculiar, that we are convinced that the extraordinary writ jurisdiction of this Court deserves to be invoked in this case, to quash the enquiry proceedings. An employee of the level of 'Head Clerk', who is charge-sheeted in 2009 and whose enquiry concluded on 17/12/2009, has not suffered any punishment. A second show cause notice or a notice for imposition of punishment pursuant to calling for an explanation on the report of the Enquiry Officer, has

(4)

also not been initiated. [Read : **Union of India and others Vs. Mohd. Ramzan Khan, (1991) 1 Supreme Court Cases 588** and **Managing Director, ECIL, Hyderabad and others vs. B.Karunakar and others, (1993) 4 SCC 727**].

7. The learned Advocate for the petitioner is justified in contending that the petitioner, who is 75 years of age today, is literally begging for his service and retiral benefits. An amount toward provisional pension is being paid to him. Had he been held guilty and punished, he could have at least challenged the said action. Neither has the enquiry report been disclosed to him, nor is it being acted upon, much less, any punishment having been awarded to him. He, therefore, prays for an appropriate relief.

8. In view of the above, **this petition is allowed** with the following directions :-

(a) The Enquiry Proceeding, which have become stale by practically more than 13 years, with total inaction on the part of the employer, stands closed and we render a quietus to the same.

(5)

(b) The Municipal Council shall process the pension papers of the petitioner for regular pension within 30 days from today.

(c) Similarly, the entire Gratuity amount calculated on the basis of the last drawn salary with admissible interest @ 6% p.a. from February, 2007 till March 2023, shall be paid to the petitioner within 60 days from today.

(d) In the event of the 6th Pay Commission recommendations being applicable to the petitioner, appropriate additions by way of pay-fixation, shall be carried out and all retiral benefits shall be calculated in view of the same, so as to be paid to the petitioner within a period of 60 days.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

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