

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5545 OF 2012

Babulal s/o Soma Borse, ... **Petitioner**
Age 71 years, Occu: Retired Primary Teacher
R/o Koliwada, Ghat Road, Chalisgaon,
District Jalgaon

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Rural Development & Water Conservation
Department, Mantralaya, Mumbai 32
2. The Desk Officer, ... **Respondents**
Rural Development & Water Conservation
Department, Mantralaya, Mumbai 32
3. Zilla Parishad, Jalgaon
Through its Chief Executive Officer

Mr. R. K. Ingole h/for Mr. P. R. Patil, Advocate for the petitioner
Mr. P. K. Lakhotiya, AGP for Respondent Nos 1 and 2
Mrs. Chitali Choudhari Kutti, Advocate for Respondent- 3

CORAM : **RAVINDRA V. GHUGE, &**
Y. G. KHOBRAGADE, JJ.

DATE : **07.09.2023**

JUDGMENT (Per- Y. G. Khobragade, J.)

1. By the present Petition, the Petitioner prays to quash and set aside the impugned order dated 23-02-2012 passed by the Respondent no. 2 Desk Officer, whereby the appeal filed by the present Petitioner has been rejected on the ground of delay and laches.

2. It is a matter of record that, on 26th March, 2014, the co-ordinate bench of this Court (Coram: S.S. Shinde & V.K. Jadhav, JJ.) was pleased to dismiss the petition on the ground of delay and laches which reads as under:

"1. At the outset, the learned Counsel for the Respondent No. 3 has raised preliminary objection that the petitioner has challenged belatedly after 16 years of the fixation of pension by the respondent authority. He therefore, submits on this ground alone, the petition is required to be rejected.

2. Learned Counsel for Petitioner submits that the order dated 22nd June, 1996 is illegal and de hors to the Pension Rules and, therefore, the same may be quashed.

3. On the ground of delay and laches, we are not inclined to entertain this petition. Hence, the petition stands dismissed."

3. Then, the petitioner filed a Review Application No. 98 of 2014 and prayed for recalling of order dated 26-03-2014. Accordingly, on 09th October, 2015, the same co-ordinate bench passed an order and allowed said review application and restored the petition to it's original stage on the ground that, as per the ratio laid down in the case of ***Shiv Dass Vs. Union of India & others, 2007(9) SCC 274*** ,in the case of pension the cause of action actually continues from month to month and if the petition is filed beyond a reasonable period, say three years, normally

the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

4. Facts emerging from the petition are that, on 15-06-1960 the Petitioner was appointed as a Primary Teacher with the Zilla Parishad, Dhule. In the year 1968, he was transferred to the Respondent No. 3 Zilla Parishad, Jalgaon. During his service tenure, he was transferred at several places including Khadgaon and Kothali, Tq. Bhadgaon, village Tambole (Bk.) Tq. Chalisgaon. On 22-12-1992, when the Education Extension Officer surprisingly visited the Petitioner's School, he was not found present in School. He had gone in to a village for medical treatment of a patient. The Petitioner was found doing unauthorised Medical Practice without Medical Degree and without permission from the competent authority. The Chief Officer of the Municipal Council, Chalisgaon published the list of bogus Doctors in which petitioner's name was enlisted. Since name of the Petitioner was found in the list of Bogus Medical Practitioners, he was suspended vide order dated 18-03-1993. Accordingly, the petitioner was served with the charge sheet. The Charges were duly enquired through the Enquiry Officer. As per Enquiry Report dated 28-02-1994, charges levelled against the petitioner are duly proved. Therefore, on 17-02-1995, Respondent No. 2 passed an order of punishment and compulsorily retired the Petitioner from

service from the date of order. Being aggrieved by said order, on 11-11-2-11, the petitioner presented a Departmental Appeal before the Appellate Authority i.e. Respondent No. 2, however, on 23.02.2012 the said appeal has been dismissed on the ground of delay.

5. The learned counsel for the petitioner canvassed that, the petitioner was kept under suspension w.e.f. 18-03-1993 to 17-02-1995, however, subsistence allowance was not paid to the petitioner. Therefore, entire enquiry proceeding are vitiated and the petitioner is entitled for full salary for the suspension period. So also, Respondent no. 2 passed an order dated 23-02-2012 without providing opportunity of hearing. Further, the impugned order does not reflect whether the suspension period w.e.f. 18-03-1993 to 17-02-1995 is treated either as a duty period or absence period. He further canvassed that, since the petitioner was compulsorily retired on 17-02-1995, therefore, he was on duty till then and by considering last pay of the petitioner, the pension could have been calculated. But Respondent no. 3 wrongly deducted Rs. 317 per month and wrongly computed monthly pension of the Petitioner, hence, prayed to quash and set aside the impugned order.

6. Mr. P. K. Lakhotiya, the learned AGP, appearing for Respondents Nos. 1 & 2 vehemently canvassed that, the petitioner was compulsorily retired vide order dated 17-2-1995 for proved charges

after holding domestic enquiry. Though the petitioner presented departmental appeal, his appeal has been dismissed. The Petitioner had filed W.P. 4665/1995 before this Court, instead of approaching the State Government. On 17-10-1995, said petition came to be dismissed. The period w.e.f. 18-03-1993 to 17-02-1995 was treated as suspension period, therefore, the petitioner is not eligible to receive difference of pay, allowances for the said period and full salary. Therefore, prayed for dismissal of the petition.

7. Respondent No. 3 filed a Reply and strongly opposed the petition. Mrs. Chaitali Choudhary, the learned counsel appearing for Respondent No. 3 canvased that initially, the petitioner filed W. P. 4665/1995 and had challenged order of compulsory retirement. On 17-10-1995, said petition was dismissed and after lapse of 16 years, the petitioner filed appeal before the State Government and after the impugned order is passed, the petitioner again filed present petition. Hence prayed for dismissal of the petition. The learned counsel further canvased that, the petitioner prayed for monetary benefits after lapse of 16 years, which is already time barred. Though the petitioner claimed illegal deduction of Rs. 317/- from his pension, however, petitioner has not given any details about illegal deduction of said amount, hence, prayed for dismissal of the petition.

8. We have considered the strenuous submissions canvased on behalf of the respective parties. It is a matter of record that, on 15-06-1960, the petitioner was appointed as a Primary Teacher with the Zilla Parishad, Dhule and in the year 1968, the petitioner was transferred to the Respondent No. 3 Zilla Parishad, Jalgaon. Lastly, he was posted at Zilla Parishad School, Tambole (Bk.) Tq. Chalisgaon. On 22-12-1992, when the Education Extension Officer visited the said school, the petitioner was not found present in School and he was found unauthorisedly practicing in Medical field without Medical Degree. Name of the petitioner was published in the list of bogus Doctors published by the Chief Officer of the Municipal Council, Chalisgaon. Accordingly, preliminary enquiry was conducted through the Block Education Officer. Since the name of the Petitioner found in the list of Bogus Medical Practitioner, therefore, vide order dated 18-03-1993 issued by Respondent no. 3 the petitioner was kept under suspension. The petitioner was served with the charge sheet and the charges were duly enquired through the Enquiry Officer.

The Enquiry Officer submitted its report dated 28-02-1994 holding that, the charges levelled against the petitioner/delinquent are proved. On 17-02-1995, Respondent No. 2 passed an order and compulsorily retired the Petitioner from service from the date of order.

9. It is submitted that, the petitioner had filed departmental appeal before the Divisional Commissioner, Nashik but said appeal came to be dismissed on 30-06-1995. The petitioner had filed Writ Petition No. 4665 of 1995 before this Court and had challenged the order of compulsorily retirement as well as order dated 30-06-1995. On 17-10-1995, the coordinate bench of this Court dismissed said petition holding that, order of compulsory retirement is passed upon holding a departmental enquiry against the petitioner. Thereafter, the petitioner filed a departmental appeal before competent authority i.e. Respondent no. 2, however, on 23-02-2012, said appeal came to be rejected on ground of delay and laches.

10. The entire service period of the petitioner appears to be considered for his service benefits including pensionary benefits. The petitioner served more than 34 years i.e. w.e.f. 15-06-1960 to 17-02-1995 (including the suspension period i.e. w.e.f. 18-3-1993 to 17-02-1995).

11. Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 mandates completion of 20 years qualifying service for pensionary benefits. Rule 100 provides for Compulsory Retirement Pension which reads as under:

100. Compulsory Retirement Pension:- (1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than two-third and not more than full compensation or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the Government passes an order (with or without original, appellate or in exercise of the power of review) awarding a pension less than the full compensation pension admissible under these rules, the Maharashtra Public Service Commission shall be consulted before such order is passed.

Explanation.- In this sub-rule, the expression "Pension" includes gratuity.

(3) A pension granted under sub-rule (1) shall not be less than the minimum pension as fixed by the Government."

12. Undoubtedly, the petitioner completed more than 34 years of service. The Petitioner contended in para 9 as well as in ground nos. VIII & IX of the petition that, no suspension allowance was paid to him w.e.f. 18-03-1993 to 17-02-1995, so also, Rs. 317/- per month illegally deducted from his pension amount. Further his basic pay of Rs. 634/- was considered instead of Rs. 950/- for computation of pension. However, the petitioner has not brought any substantial material on record to show that he was entitled for basic pay of Rs. 950/- at the time of his compulsory retirement. The petitioner further prayed for full

salary for the period of 18-03-1993 to 17-02.1995 i.e. during suspension period with interest @ 18 % per annum. However, it is not the contention of the petitioner that, he had not received suspension allowances during his suspension period. Needless to say, the suspension period w.e.f. 18-03-1993 to 17-021995 has not been treated as duty period. The petitioner presented this petition after lapse of 17 years from the date of punishment, therefore, petitioner's claim for the recovery of salary for suspension period is absolutely barred by limitation. Therefore, the petitioner is not entitled for full salary for the suspension period.

13. Further, the petitioner claimed that, his basic pay of Rs. 634/- has been considered while computation of his monthly pension instead of basic pay of Rs. 950. However, the petitioner has not brought any substantial material on record to show that, Respondent no. 3 wrongly fixed his basic pay of Rs. 634. Therefore, impugned order does not appear to be illegal and improper. Since the petitioner is compulsorily retired after rendering 34 years service, the petitioner is certainly entitled for other retiral benefits like gratuity, earned leaves etc. In view of above discussion we proceed to pass the following order:

ORDER

1. The Petition is partly allowed.

2. Respondent no. 3 is directed to pay the monetary retiral
benefits to the petitioner, if not already paid.
3. No order as to cost.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan