

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

WRIT PETITION NO.2137 OF 2022

Chandrashekhar s/o Devidas Deshmukh,
 Aged about 69 years,
 Occupation-Retired,
 R/o. C/o. Vijayrao Rajeshwar Deshmukh,
 Chaya Colony, Behind Adivasi Hostel,
 Old Akoli Road, Amravati.

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Petitioner

.. Versus ..

1. Amravati Municipal Corporation,
 through its Commissioner,
 Amravati.

2. Deputy Commissioner (Admn.),
 Amravati Municipal Corporation,
 Amravati.

3. State of Maharashtra,
 through Secretary, Department of
 Urban Development, Mantralaya,
 Mumbai.

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Respondents

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Mr. Prakash D. Meghe, Advocate for the petitioner,
 Mr. J.B. Kasat, Advocate for respondents 1 and 2,
 Mr. N.S. Rao, A.G.P. for respondent 3-State.

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CORAM : ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 28.02.2023.

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Heard. **Rule.** Rule made returnable forthwith by consent of the parties.

2. The petition is preferred seeking the following substantive reliefs :

“(i) Quash and set aside the enquiry report at Annexure-X by holding that the enquiry conducted by the respondent no1-Commissioner, AMC, Amravati on the basis of charge sheet dated 28.08.2002 (Annexure-III) is illegal and contrary to principles of natural justice.

(ii) Further hold and declare that the enquiry report submitted by the section enquiry officer dated Nil at Annexure-X as illegal and unsustainable in the eyes of law.

(iii) Quash and set aside the order of removal dated 22/05//2007 issued by the respondent nos.2-Deputy Commissioner (Admin.) Amravati Municipal Corporation at Annexure-XII.

(iv) Direct the respondents to reinstate the petitioner along with full back wages from 27/05/2007 till the date of his retirement i.e. 31/08/2010.

(v) Further, direct the respondents to release the arrears of pension from 01/09/2010 along with gratuity and interest @ 12% per annum.

(vi) Direct the respondent no.1-Commissioner, Amravati Municipal Corporation to pay amount of

GPF and Group Insurance and arrears of 5th Pay Commission to petitioner along with interest @ 12% p.a.”

3. While issuing notice, vide order dated 28th April, 2022, the Coordinate Bench recorded the statement made by the learned counsel for the petitioner that the challenge in respect of prayer clauses (i) to (iv) is not pressed, inasmuch as the challenge is hit by delay amounting to laches. In view of the said statement, notice was confined to the submission that the petitioner is entitled to pensionary benefits.

4. Facts are broadly undisputed :

(a) The petitioner was working as Tax Collector on the establishment of the Amravati Municipal Corporation.

(b) A departmental enquiry was conducted against the petitioner in respect of the charge that the petitioner collected the tax amount from the citizens, and instead of depositing the amount of tax, misappropriated the same.

(c) The departmental enquiry culminated in finding of guilt. The charge that the petitioner misappropriated amount of Rs.2,28,999/- during 1997-98 and 2000-2001, and an amount of Rs.31,000/- during the period 12.2.2000 and

31.3.2001 was held duly proved.

(d) The petitioner was removed from service vide order dated 22.5.2007.

(e) It appears that the petitioner was also prosecuted and the prosecution culminated in acquittal. It is averred in the petition that the petitioner was acquitted for offences punishable under Sections 406 and 409 of the Indian Penal Code vide judgment dated 12.10.2017.

(f) Be that as it may, the acquittal is of no relevance insofar as the issue which is involved in the petition is concerned.

5. We heard Mr. Meghe for some time on 21.02.2023 and indicated that since the petitioner is removed from service on the charge of misappropriation, the submission that the petitioner is nonetheless entitled to pension appears to be farfetched. Mr. Meghe responded with the statement that he would persuade us to change our prima facie view.

6. It is not in dispute that the rules which are applicable are the Maharashtra Civil Services (Pension) Rules, 1982 (Rules). Mr. Meghe invites our attention to Rule 19 to buttress

the submission that there is a fundamental difference between removal and dismissal. We may extract Rule 19 verbatim, as under :

“Rule 19 : Removal or compulsory retirement from service for misconduct insolvency or inefficiency :

A competent authority may remove any Government servant subject to these rules from Government service, or may require him to retire from it, on the ground of misconduct, insolvency or inefficiency :

Provided that before any such order is issued, the procedure referred to in rules 8 to 15 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, shall be followed :

Note 1 – In the case of police Officers of Subordinate ranks a competent authority in the Police Department can exercise his discretion under this rule after observing the procedure laid down in Chapter XIII of the Bombay Police Manual, 1959. Volume I and Section 26 of the Bombay Police Act, 1961.

Note 2 - Except where it is expressly stated otherwise, ‘removal’ includes the case of a government servant who has been asked to retire under this rule.”

7. The other Rule which Mr. Meghe relies on is Rule 101 of the

Rules which deals with grant of compassionate pension in deserving cases.

Rule 101 of the Rules reads thus :

“Rule 101 : Grant of Compassionate Pension in deserving cases by Government :

(1) A Government servant who is removed from service shall forfeit his pension and gratuity :

Provided that if the case is deserving of special consideration, Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compassionate pension.

(2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.

(3) A dismissed Government servant is not eligible for Compassionate Pension.”

8. In addition to the statutory provisions which Mr. Meghe has pressed in service, equally, if not more relevant provisions are Rules 26 and 27 of the Rules. Rule 26 envisages that pension is subject to good conduct and Rule 27 deals with the right of employer to withhold or withdraw the pension. Rules 26 and 27 read thus :

“Rule 26 : Pension subject to good conduct :

(1) Future good conduct shall be an implied condition of every grant of pension or family pension. Government may, by order in writing, withhold or withdraw a pension or family pension or part thereof, whether permanently or for a specified period, if the petitioner or family pensioner is convicted of a serious crime or is found guilty of grave misconduct.

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

(2) Where a pensioner or family pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if Government considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under sub-rule (1), follow the procedure as laid down in rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for imposing a major penalty.

(4) The Maharashtra Public Service Commission shall be consulted before an order under sub-rule (1) is passed in respect of Officers holding posts within their purview.

27 : Right to 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 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.

(5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government Servant.

(6) For the purpose of this rule :

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police

officer, of which the Magistrate takes cognizance is made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

9. The reliance placed by Mr. Meghe on Rule 19 does not take the case of the petitioner any further. We do not read Rule 19 to suggest that if the employee is removed on the charge of proved misconduct or misappropriation, then the order of removal shall not be an impediment in claiming pension. Insofar as Rule 101 is concerned, rather than furthering the case of the petitioner, the substantive rule provides that an employee, who is removed from service, shall forfeit his pension and gratuity. Reliance is placed on the proviso. It is well settled that a proviso cannot be understood as limiting or diluting the legislative intent as is discernible from the substantive provision. The proviso contemplates an exceptional situation, where if a case deserves special consideration, the employer may sanction compassionate pension. Further the proviso must be understood on the touchstone of Sub-Rule (3) which provides that a dismissed employee shall not be eligible for compassionate pension.

10. The use of expression ‘removal’ in a given situation may only be a matter of semantics. A matter of form rather than of substance. However, we are not required to delve deeper in that broader question. In the facts obtaining from the record, we are more than satisfied that the petitioner has

not demonstrated entitlement in law to pension.

11. Mr. Meghe invites our attention to a decision in **Anna Deoram Londhe, deceased through his L.R. Smt. Indirabai w/o Anna Londhe .vs. State of Maharashtra, 1998 (3) Mh.L.J. 435**. The employee was removed from service since he was convicted under Section 302 of the Indian Penal Code, which conviction was altered by the High Court to Section 325 of the Indian Penal Code. The Hon'ble Supreme Court granted liberty to the employee to make a representation to the Government for compassionate pension under Rule 100 read with Rule 101 of the Rules. Even before a decision could be taken on the representation, the employee expired and in the peculiar and glaring facts of the case, the High Court held that family pension be paid to the widow of the employee.

12. In our considered view, the decision in **Anna Deoram Londhe** supra is rendered on facts. The conviction for a bodily offence cannot be compared with misappropriation of the funds of the citizens which are held in trust. We find no reason to permit the petitioner to make a representation to the employer qua compassionate pension, which is the suggestion of Mr. Meghe.

13. At this stage, Mr. Kasat submits that such representation was already made and rejected.

14. In **Kulkarni Shashikant Bhavani .vs. Bombay Physical Culture Association and others**, 2019 (5) Mh.L.J. 198, the Coordinate Bench considered similar if not identical situation and noticing the provisions of Rule 26 and 27 of the Rules held that an employee, who is removed from service on the proved charge of misconduct which involved element of moral turpitude, is not entitled to pension. We may extract the relevant observations in the said decision which reads thus :

24. In the present case, the petitioner is removed from service on a proved charge of grave misconduct involving moral turpitude. This being the position, if respondent no.2 has rejected the claim of the petitioner for pension on the ground that the petitioner is removed from service on account of proved charge of grave misconduct, we do not find the action of the respondents is contrary to the rules or in any manner arbitrary. No doubt, pension is a right of the petitioner, but the same is governed by the said Rules. A plain reading of Rules 26 and 27 makes it amply clear that the Government has a power to withhold permanently a pension, if the petitioner is found guilty of grave misconduct. The petitioner was removed from the service before he attained the age of superannuation. The removal from the service before he reaches the age of superannuation will hardly be of any consequence, for when claim for pension is made upon cessation of service, the same would be governed by the provisions of the Rules 26 and 27 of the said Rules. The conduct of the petitioner and grave nature of the proved misconduct involving moral turpitude for which

the petitioner is removed from service would disentitle the petitioner to claim pensionary benefits. It is not possible to fathom a situation where an employee is held eligible for pension though he is removed from service upon a proved misconduct of a serious nature before attaining the age of superannuation or on completion of pensionable service; whereas in respect of an employee who has retired, his right to receive pension is made subject to good conduct in future. Subject to the provisions of Rules 26 and 27, departmental proceedings can be held even against a retired employee and if held guilty of grave misconduct, his pension can be forfeited.

15. On the holistic consideration, we find no substance in the petition.

16. We have held that the petitioner is not entitled to pension. We note that the other grievance is non payment of G.P.F. amount and non payment of arrears of salary in view of the recommendation of Fifth Pay Commission. We expect the Municipal Council to consider the surviving grievance as expeditiously as possible and in any event, in next eight weeks, in accordance with law.

17. Subject to observations supra, the petition is dismissed with no order as to costs.