



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

WRIT PETITION NO.7331 OF 2023

State of Maharashtra, Thr. Secretary, Dept. of Works (Roads), Mantralaya, Mumbai and ors.

-vs-

Omprakash S/o Janbaji Patil, Beltarodi, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Hrishikesh Marathe, Assistant Government Pleader for petitioners.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : November 28, 2023

P. C.

1. This petition is preferred by the State Government questioning the judgment and order dated 02/12/2022 passed by the Maharashtra Administrative Tribunal in O.A. No.977/2020 preferred by the respondent No.1 with a prayer for issuance of directions to the State Government to pay him arrears of retirement benefits and pension, with interest that was recovered from the respondent No.1 and future interest on retirement benefits at the rate of 12% per annum from the date of retirement i.e. 31/05/2023 till the date of such payment.

2. Vide impugned order dated 02/12/2022 the petitioner-State is directed to pay all the pensionary benefits to respondent No.1-employee which were recovered by the petitioner-State as per the calculations reflected in Exhibit-X alongwith interest as shown in the chart. The said chart is reproduced in the impugned order of the Tribunal. The

Tribunal has further directed the petitioner-State to sanction the dues of respondent No.1 for the period for which he was not on duty and in lieu of balance leave if any, salary for the same was directed to be paid in accordance with law.

3. The facts necessary for deciding the petition are as under :

The respondent No.1-employee was initially appointed as Senior Clerk on 13/02/1984. He was promoted to the post of First Clerk on 09/10/2006. After completing the service of 23 years, on 29/03/2007 the respondent No.1 applied for voluntary retirement and submitted notice of three months in that regard. During the notice period he proceeded on medical leave.

4. On the last day of completion of notice period i.e. on 28/06/2007, the respondent No.1 resumed his duties and submitted Medical Certificate. On the same day, he made a written request to permit him to withdraw the application for voluntary retirement. Such request of the respondent No.1 came to be rejected prompting him to move the Tribunal vide O.A. No.584/2007. Vide order dated 26/02/2008 the Tribunal allowed O. A. No.584/2007 and directed reinstatement of respondent No.1. The respondent No.1 accordingly was reinstated in service on 24/02/2009. However, the rounds of litigations with regard to his voluntary retirement continued.

5. The acceptance of the proposal for voluntary retirement has prompted the petitioner-State to process the pension papers. Accordingly the respondent No.1 was paid pension of Rs.99,470/- for the period from 27/06/2007 to 24/02/2009. The Tribunal held the respondent No.1 entitled to receive salary of Rs.99,470/- as it was held that the services of respondent No.1 from 27/06/2007 to 24/02/2009 as continuous service.

6. Pursuant to the order of the Tribunal dated 02/08/2019 post reinstatement the amount of pension paid to the respondent No.1 of Rs.99,470/- was recovered on 24/02/2009. It was the case of respondent No.1 that he was not only entitled to receive the said amount though he stood retired on 31/05/2013 but also to receive the amount of pension which was not paid to him from 01/06/2013 to 30/04/2014, and as such he was entitled for the amount of Rs.1,67,589/-. He had also claimed for balance amount of gratuity of Rs.74,528/-, salary and other dues.

7. In the aforesaid Original Application No.977/2020 the claim of respondent No.1 came to be allowed and hence the present petition is preferred by the State.

Shri Hrishikesh Marathe, learned Assistant Government Pleader would invite our attention to the fact about the conduct of respondent No.1-employee of tendering application for voluntary retirement on

29/03/2007, application for withdrawal of the same on 28/06/2007 and inspite of the same dishonestly receiving pension which was recovered from him. According to the learned Assistant Government Pleader by virtue of the order impugned, the respondent No.1 is held to be entitled for retirement benefits, interest on delayed payment etc. without there being any legal basis. According to him, it is the respondent No.1 who has created artificial situation before the employer i.e. the petitioner herein by tendering and withdrawing his application for voluntary retirement of which he is trying to take undue mileage of, by claiming not only the amount of arrears of pension but also interest thereon and salary.

8. With the assistance of the learned Assistant Government Pleader we have perused the entire record of the proceedings.

The compliance of a direction to reinstate the respondent No.1 in pursuance of the order of the Administrative Tribunal has taken to its logical end by the petitioner-State. It is also pertinent to note that the petitioner has failed to demonstrate before this Court as to the mode and manner in which it can be said that the respondent No.1 was not entitled to receive the payment of retirement benefits that too with interest. The Tribunal in its order dated 02/08/2019 in O.A. No.584/2007 has recorded a finding in favour of respondent No.1 and the respondent No.1 has been held to be entitled to all the service benefits. It is really unfortunate that irrespective of the aforesaid order

of the Tribunal, the petitioner-State had not released the entire retirement benefits of the respondent No.1. The said default on the part of the petitioner-State has rightly prompted the Tribunal to saddle interest on the aforesaid amount in accordance with law.

9. In the aforesaid backdrop we hardly see any reason to cause interference in the impugned order/judgment of the Tribunal thereby directing the payment of retirement benefits with interest to respondent No.1-employee. We hardly see any statutory or otherwise illegality in the impugned order. That being so, the writ petition stands dismissed. No order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)