



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2765 OF 2024

Dadabhai Lotan Sarode

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

...

Mr. T. M. Venjane, Advocate for the Petitioner

Mr. S. K. Tambe, APP, for the Respondent No. 1/State

Mr. R. N. Jain, Advocate for the Respondent Nos. 2 to 4

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MARCH 12, 2024

ORDER (PER R. M. JOSHI, J)

1. Petitioner is seeking direction to the Respondents to release pensionary benefits such as, gratuity, commutation of pension as well as release of remaining salary for the period of suspension from 26.03.2015 to 08.01.2019.

2. Petitioner was appointed in Education Department of Panchayat Samiti, Nandurbar as Assistant Teacher on 08.02.1989. He claims to have unblemished service record. According to Petitioner, an offence bearing Crime No. I-39 of 2015 came to be registered against him at Chandwad Police Station, Dist. Nashik

for the offences punishable under Sections 420 and 34 of the Indian Penal Code and Sections 2(1)(kh) and 3 of Abolition of Superstitions Act, 2013. The trial in respect of the said crime is pending. The Petitioner was suspended from 26.03.2015. On 22.12.2016 Chief Executive Officer initiated Departmental Enquiry against the Petitioner due to the registration of above said crime. Thereafter, on 08.01.2019 Petitioner was reinstated in services, however, the Petitioner was not paid difference of salary allowance for the suspension period. On 31.05.2022 after attaining age of superannuation, Petitioner retired from service, however, pensionary benefits are withheld by the Respondents due to the pendency of proceedings in pursuance to the above said crime. On these averments, the Petitioner is seeking release of pensionary benefits, gratuity and commutation of pension.

3. Perusal of the documents placed on record indicate that from 31.05.2022 after office hours Petitioner was superannuated on attaining age of 58 years. The communication dated 13.01.2023 indicates that the Petitioner was granted provisional pension and

his proposal for regular pension was not considered for want of information with regard to the crime pending against him being Crime No. I-39 of 2015.

4. Learned Counsel for Respondent No. 2 – Zilla Parishad submits that in view of rule 130(1)(c) of the Maharashtra Civil Services (Pension) Rules, 1982, where judicial proceeding or departmental inquiry pending against the employee, he/she is not entitled to get pensionary and other retiral benefits.

5. In order to appreciate the said submissions, it would be necessary to consider relevant rule which reads thus:

130. Provisional pension where departmental or judicial proceedings may be pending.

1(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders therein.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant]

6. Perusal of the said rule indicates that if in case an inquiry is pending against Government Employee,

he is not entitled to seek gratuity or other pensionary benefits till completion of departmental enquiry. It also refers to judicial proceedings. Pertinently, judicial proceeding has not been defined in the relevant rules. Judicial proceeding cannot be considered as any judicial proceeding in order to deny the pensionary and/or other retiral benefits to the Government employee. If term judicial proceeding is considered as any proceeding, even in case of civil proceeding filed between the private individuals that would disentitle the employee to get such benefits. In our view, such interpretation is not permissible. The judicial proceeding could be the one, which has some nexus with employment of the Government servant. In the instant case, undisputedly Crime No. I-39 of 2015 has nothing to do with the employment of the Petitioner. In such circumstances, Respondents are not justified in withholding the retiral benefits of the Petitioner on account of pendency of said criminal proceedings against him.

7. In view of the above, withholding of the retiral benefits of the Petitioner by the Respondents

cannot be justified and hence, not sustainable.

8. The Writ Petition, therefore, is allowed. Respondent No. 4 is hereby directed to pay retiral benefits including pension and difference in suspension allowance and salary for the period of suspension from 26.03.2015 to 08.01.2019, within a period of 90 days from today, unless there is any other legal impediment in doing so

9. We hereby clarify that the said release of benefits would be subject to any order passed against the Petitioner in pending proceeding with regard to recovery of any amount from the service benefits of the Petitioner and the Petitioner shall submit undertaking to repay any such amount as directed in the pending criminal proceeding against him.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)