



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2761 OF 2024

Kalpana Jaannath Chaudhari ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

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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

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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 10.08.2006 to 12.08.2008.

2. Petitioner was appointed in Education Department of Panchayat Samiti, Nandurbar as a Primary Teacher on 15.07.1985. She was promoted on 24.07.2008 as Subject Teacher. She claims to have unblemished service record. According to Petitioner, an offence bearing Crime No. 155 of 2006 came to be registered

against her at Dhule City Police Station for the offences punishable under Sections 406, 409, 420, 468, 471, 201, 120-B of the Indian Penal Code and Sections 146 and 147 of the Co-operative Societies Act read with Section 590 of the Bombay Stamp Act. The allegation in the said complaint was that some of the teachers, employees and Directors of District Government Employees Co-operative Bank Ltd, Dhule committed misappropriation while obtaining loan and the Petitioner was the guarantor to one of such loan proposals. The Petitioner was suspended from 10.08.2006 and later on reinstated on 12.08.2008. During the period of suspension, she was paid 50 % salary. On 31.05.2017 she was promoted as Cluster Head in Panchayat Samiti, Nandurbar. On attaining age of superannuation, she has now ceased to be employee with effect from 30.04.2020. Though she superannuated on that day, her pensionary benefits are not released by the Respondents for the reason of pendency of criminal proceeding in connection with Crime No. 155/2006. The Petitioner made representation dated 20.10.2022 requesting release of pensionary benefits, gratuity and commutation of pension, which came to be rejected.

Hence, this Petition.

3. Perusal of the documents placed on record indicate that by order dated 13.12.2019, from 30.04.2020 after office hours Petitioner superannuated on attaining age of 58 years. The communication dated 03.11.2020 indicates that the Petitioner was granted provisional pension and her proposal for regular pension was not considered for want of information with regard to the crime pending against her being Crime No. 155/2006.

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 enquiry is 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 enquiry 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. 155/2006 has

nothing to do with the employment of the Petitioner. The said offence came to be registered against the Petitioner in respect of District Government Employees Co-operative Bank, Dhule. In such circumstances, Respondents are not justified in withholding the retiral benefits of the Petitioner on account of pendency of said criminal proceedings against her.

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 10.08.2006 to 12.08.2008, 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

Petition and the Petitioner shall submit an undertaking to Respondent No. 4, to repay any such amount as directed in the pending criminal proceeding.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)