2024:BHC-AUG:6538-DB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6873 OF 2020

Ashok Ramrao Kadam,
age 58 years, Occ. Retired Head Master,
R/o Samta Colony, Near Mahatma Phule
School, Majalgaon, Tq. Majalgaon,
District – Beed. Petitioner

Versus

1. The State of Maharashtra,
through it's Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 32.

2. Maharashtra Shikshan Sanstha,
Moha, Tq. Parli (V),
District Beed Through it's Secretary.

3. Maharashtra Secondary and
Higher Secondary School,
Moha, Tq. Parli (V),
District Beed Through it's Head Master.

4. The Education Officer,
Zilla Parishad, Beed. Respondents.

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Dr. R. J. Godbole, advocate for the petitioner.
Mr. P. S. Patil, AGP for Respondent Nos.1 & 4.
Mr. Kedar Warad h/f Mr. S.V. Warad, Advocate for Respondent Nos.2 and 3.

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**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

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Reserved on : 01st March, 2024.
Decided on : 15th March, 2024.

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JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at admission stage.

2. The Petitioner approaches this Court under Article 226 of the Constitution of India with following prayers.

> "B. By an appropriate writ or order, direct respondents to forward his pension papers to competent authorities and prohibit respondent Management as well as Enquiry committee members from conducting Enquiry against the Petitioner as per charge-sheet dated 3.6.2020 received by the Petitioner on 13.7.2020.
>
> C. By an appropriate writ or order, respondents are required to be directed to forward pensioner's pensionary papers to competent authority w.e.f. 1.7.2020 and to grant pension alongwith all consequential benefits as per 7th Pay Commission.
>
> D. By an appropriate writ or order, direct respondents to pay to petitioner Employee Provident Fund, Gratuity and other consequential benefits."

3. The Petitioner contends that on 9.8.1984, he was appointed as an Assistant Teachers and his services were approved by the Education Officer. On 1.5.2011, he was promoted as 'Head Master' at Asubai Secondary and Higher Secondary School, Mandekhel, Tq. Parli, District Beed. Approval was granted to his promotion by the Education Officer. The petitioner was transferred as 'Head Master' to Godavari Vidyalaya, Tq. Majalgaon and then Maharashtra Secondary and Higher Secondary School at Moha. He discharged his duties as Head Master till the date of his superannuation i.e. 30.6.2020.

4. According to the Petitioner, for best reasons known to the Management, when he was at the verge of his retirement, a show cause notice dated 1.6.2020 was issued to him leveling various frivolous allegations. The Petitioner replied the same on 5.6.2020 and denied all such allegations. After retirement, petitioner was relieved. He handed over the charge. Thereafter, on 13.7.2020 he was served with a copy of charge-sheet dated 3.6.2020. Respondent-Management, only with intention to harass the petitioner, served the charge-sheet. Request of the petitioner to process his pension papers is also turned down vide communication dated 23.8.2020. According to the Petitioner, Enquiry could not have been initiated against him after his retirement on attaining the age of superannuation. Such an Enquiry or Departmental Proceeding is impermissible under law.

5. Respondent Nos.2 and 3/Management filed affidavit-in-reply contending that Departmental Enquiry was already in process before retirement of the petitioner and the same can be continued in terms of the provisions of Maharashtra Civil Service (Pension) Rules, 1982 (for short MEPS Rules of 1982). Rule 27 of the MEPS Rules of 1982 permits continuation of Departmental Enquiry even after retirement of the employee. Retirement of the employee itself is not bar to hold Enquiry regarding misconduct during the period of employment. The employee cannot claim complete immunity from the action only on the ground of his retirement. According to respondents, petitioner was working as a LIC agent while in service, which is evident from his income tax returns. Further, engaging in private tuition or commercial activities is misconduct and punishable under Rule 28(5).

6. Dr. R.J. Godbole, learned advocate appearing for the petitioner vehemently submits that there are no enabling provision in MEPS Act or Rules that permits initiation of the Departmental Enquiry against the retired employee. He would further submit that even provisions of Pension Rules would not attract in the facts of the present case since the petitioner is served with charge-sheet after his retirement i.e. termination of the service contract. In such situation, even Rule 27 of pension rules would not aid the Management to continue with Departmental Enquiry. In support of his contentions, he relies upon the Judgment of this Court in case of **Dr. Dipak Vishvanathrao Muley Vs. State of Maharashtra and others** delivered on 18.1.2022 in Writ Petition No.11955 of 2018. He would also place his reliance on the Judgment of this Court in case of **Shah Babu Education Society, Patur and another Vs. Presiding Officer, School Tribunal, Amaravati and Aurangabad Divisions, Aurangabad and another reported in MEC 252**. He would submit that entire Disciplinary Proceeding initiated against the Petitioner vitiates as it sans authority under law.

7. Mr. Kedar Warad h/f Mr. S.V. Warad, learned advocate appearing for the Respondents-Management vehemently submits that the Petitioner was served with comprehensive show cause notice dated 1.6.2020 containing gist of the charge. Petitioner was called upon to show cause for specific allegations before initiating the appropriate Disciplinary Proceeding. He would point out that the Petitioner replied said notice vide his letter dated 5.6.2020. Mr. Warad, would, therefore, submit that imputations were duly conveyed to the Petitioner and he was given opportunity to reply the same. Therefore, he would urge that, in view of the observations of the Supreme Court of India in case of **Union of India Vs. K.V. Janakiram**

(1991) 4 SCC 109, the Disciplinary proceeding shall be deemed to have been initiated on the date of service of notice. The subsequent retirement of the petitioner on 30.6.2020 would not bestow immunity to Petitioner.

8. Having considered the submissions advanced by the learned Advocates appearing on behalf of the respective parties and after going through the record tendered into service, we could note certain admitted facts, which can be summarized, as under :-

> a] Petitioner was appointed as an 'Assistant Teacher' and retired as 'Head Master' from the Private School run by respondent no.2. As such, his service conditions were regulated by Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977 and rules of 1981 framed thereunder.
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> b] Services of the Petitioner are pensionable since the School was receiving grant-in-aid. Therefore, Maharashtra Civil Services (Pension) Rules, 1982 are applicable as regards to the claims of Pensions and Pensionary benefits receivable to the Petitioners.
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> c] The petitioner retired on superannuation on 30.6.2020 and he was relieved from the service by Respondents/Management.
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> d] On 1.6.2020 petitioner was served with a show cause notice by school management, showing intention to initiate disciplinary action. The petitioner replied the same.
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> e] On 13.7.2020 charge-sheet containing the imputations has been served upon the Petitioner through registered post A.D, although, charge-sheet bears date as 3.6.2020. The request of the petitioner for grant of pensionary benefit and to drop pending Enquiry has been rejected by the Management.

9. According to Respondent nos.2 and 3, notice dated 1.6.2020 contains gist of imputations. The Management had served it

on the petitioner while he was in service. Therefore, the date of initiation of the Disciplinary Proceeding must be treated to be 1.6.2020. However, according to petitioner, since the charge-sheet is served upon him on 13.7.2020, date of initiation of disciplinary proceeding can be taken as 13.7.2020 and not the date of service of show cause notice.

10. Looking to the provisions contained under MEPS Act and Rules, it can be gathered that Rule 29 provides for penalties in case employee found guilty of misconduct, moral turpitude, willful and persistent neglect of duty and incompetence and can be punished by imposing penalties. Rule 31 provides for classification of penalties i.e. minor and major penalties. Rule 32 and 33 prescribes for procedure for imposing of the penalties. Rule 36 provides for the Constitution of the Enquiry Committee. Conjoint reading of the procedure prescribed under Rule 32, 33 and 36 Management is required to issue a notice calling upon written explanation from employee regarding allegations and after considering such explanation, Enquiry needs to be conducted through the Enquiry committee. Rule 37 prescribes that Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with statement of allegations with explanation of the employee to conveyor of Enquiry committee. The copy of charge-sheet needs to be served to employee by way of registered post.

11. The survey of aforesaid Rules would depict that the Enquiry shall be conducted through the competent Enquiry committee after serving a charge-sheet upon the delinquent employee. Issuance of a show cause notice is primary step towards initiation of the Enquiry/Disciplinary proceeding. We find that service of show cause

notice dated 1.6.2020 upon the petitioner cannot be construed as commencement of the Department Enquiry. Only date of Service of charge-sheet upon the petitioner would constitute the date of commencement of Departmental Enquiry.

12. In the aforesaid background, if contentions raised on behalf of the Respondents are considered for the purpose of Rule 27 of the Civil Services Pension Rules, 1982, it would be difficult to hold that the Respondents can justify continuation of Departmental Enquiry proceeding against the petitioner on his superannuation. Rule 27 of the Pension Rules of 1982 reads thus :-

> *"27. Right of Government to withhold or withdraw pension :-*
> *(I) Government 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 reemployment 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 reemployment, 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 the Government,

(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 (I) 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 in made, and

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

13. The clause 6 of Rule 27 would be more relevant in the facts of the present case. Sub-clause 6(a) makes it clear that Departmental Proceedings would be deemed to be instituted on the date on which statement of charges is issued to the Government Servant or Pensioner. Therefore, there is no scope to countenance submissions advanced on behalf of the Respondents that date of show cause notice would constitute date of Institution of Departmental Proceeding. The Supreme Court of India in case of **Bhagirathi Jena Vs. Board of Directors O.S.F.C. and others while dealing with the provisions of Orissa State Financial Staff Regulation, 1975** observed as under :-

> "6. It will be noticed from the above-said regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental Enquiry nor was any provision made for continuance of departmental Enquiry after superannuation.
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> 7. In view of the absence of such provision in the above-said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. **Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement**."

14. Similarly, the Supreme Court of India, in case of **Union of India Vs. K.V. Janakiraman reported in (1991) 4 SCC 109,** observed, it is a trite law that departmental proceeding is not initiated merely by issuance of show cause notice. It is initiated only when charge-sheet is issued. Similar position is reiterated in case of **Coal India Ltd Vs. Saroj Kumar Mishra (2007) 9 SCC 625,** wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as result, thereof a charge-sheet issued, would be the date on which Disciplinary Proceedings are said to have been initiated and not prior thereto. Pendency of Preliminary Enquiry, therefore, by itself would not constitute initiation of Disciplinary proceeding. The gamut of the aforesaid discussion would lead this Court to hold that drawing up of charge-sheet is a condition precedent for initiation of disciplinary proceeding and in absence of statutory rules operating in the field, resorting to Preliminary Enquiry would not by itself be enough to hold that departmental proceeding has been initiated (refer observations by the Supreme Court of India in case of Vijay Kevalram Randive Vs. The Chairman & Competent Authority Vidharbha reported in (2016) 6 Mh.L.J. 863). This Court has reiterated the aforesaid legal position in case of Dr. Dipak Vishwanathrao Muley Vs. The State of Maharashtra (Writ Petition no.11955 of 2018)

15. In that view of the matter, we have no hesitation to hold that Departmental Enquiry has been illegally initiated against the Petitioner and it will have to be declared as invalid. Consequently, the Petitioner would be entitled for release of retirement benefits, as prayed for. Resultantly, we proceed to pass the following order.

ORDER

i. The Writ Petition is allowed.

ii. We hold and declare that the Disciplinary Proceeding initiated against the Petitioner as per Charge-sheet dated 03.6.2020, served on 13.7.2020, is invalid.

iii. Consequently, the Respondents are directed to process Pension papers of the Petitioner and release him all the retirement benefits as are admissible as per Rules.

iv. Writ Petition is accordingly disposed off. Rule is made absolute in above terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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