



(REPORTABLE)

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

914 WRIT PETITION NO. 9831 OF 2022

Anand s/o Govindrao Nagargoje,
Age : 60 years, Occu. - Retired (Pensioner),
R/o House No.1/9/553, Shrinagar,
Hanuman Mandir Road, Nanded,
Dist.Nanded.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Deputy Commissioner,
Commissioner Office,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded,
Dist. Nanded.
4. The Education Officer (Primary),
Zilla Parishad, Nanded,
District : Nanded.
5. The Block Development Officer,
Zilla Parishad, Nanded.

...RESPONDENTS

...
Ms.Kavita S. Bhale, Advocate for the Petitioner.
Shri S.R. Yadav Lonikar, AGP for Respondent Nos.1 and 2/State.
Shri N.S. Kadam, Advocate for Respondent Nos.3 to 5.

...

**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 13th June, 2024

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. On 27.09.2022, after we heard the learned Advocate for the Petitioner and the learned AGP, we had passed the following order:-

- “1. The petitioner has put forth prayer clauses ‘A’, ‘B’, ‘C’ and ‘D’ as under :-
- A] By issuing the writ of Mandamus or any other appropriate writ or directions under Art.226 of Constitution of India This Hon’ble Court may be pleased to direct the Respondents to release the pension and gratuity of petitioner with effect from the date of retirement i.e. 31/7/2020 forthwith.
- B] By issuing the writ of Certiorari or any other appropriate Writ This Hon’ble Court may be pleased to quash and set aside the impugned order dtd. 13th Oct. 2021 passed by respondent no. 3. Annexed at “Exh.J”.
- C] Pending hearing and final disposal of this Writ Petition implementation execution, of the impugned order dtd 6th September 2022 may kindly stayed.
- D] By issuing the writ of certiorari or any other

appropriate Writ This Hon'ble Court may pleased to quash and set aside entire departmental proceedings initiated against petitioner by Respondents.

2. *Issue notice to the respondents, returnable on 14th November, 2022. The learned AGP waives service of notice on behalf of respondent Nos. 1 and 2.*
3. *It is contended that the departmental enquiry was commenced after the retirement of the petitioner. The chargesheet cum show cause notice has been served. In the event, the Enquiry Officer has not been appointed, we direct that the departmental enquiry shall not proceed. In the event, the Enquiry Officer has been appointed, the authorities may proceed with the departmental enquiry.*
4. *Nevertheless, the proposal for provisional pension shall be forwarded so as to initiate the payment of provisional pension to the petitioner.*
5. *All office objections shall be removed."*

3. It is undisputed that the Petitioner superannuated on 31.07.2020 and the chargesheet -cum- show cause notice was issued on 13.10.2021. Apparently, the procedure for commencing the departmental enquiry against the Petitioner was initiated after 15 months of his retirement.

4. Though the learned Advocate for the Zilla Parishad has vehemently opposed this petition, he is unable to point out

any such provision which would permit the Zilla Parishad to commence a departmental enquiry after retirement of an employee. Even a show cause notice was not issued prior to the superannuation of the Petitioner. We are informed that the Petitioner has been granted all retiral benefits, save and except, an amount of Rs.1,06,358/-, which has been held back on the presumption that if the charge against the Petitioner is proved, the amount to be recovered would be quantified at Rs.1,06,358/-.

5. It is well settled that unless the Service Rules permit initiation of an enquiry post retirement, an enquiry post retirement cannot be initiated. The employer-employee relationship would not exist between the former employer and erstwhile employee. In the absence of any specific provisions under the Service Rules, a former employer cannot initiate a departmental enquiry against an ex-employee.

6. In view of the above, this **Writ Petition is allowed**. The impugned charge sheet dated 13.10.2021 stands quashed and set aside. All remainder retiral benefits/ monetary benefits of the Petitioner shall be released by the Zilla Parishad, within a period

of 60 days.

7. Insofar as the amount of gratuity, out of the unpaid retiral benefits, if any such gratuity amount is not paid, interest at the rate of 10% per annum as is prescribed under the Payment of Gratuity Act, 1972, shall be payable to the Petitioner and the same shall be calculated from 01.09.2020 until the said amount is paid, as the gratuity becomes payable after 30 days of severing employer-employee relationship. Let such arrears of gratuity, if any, be paid along with the above stated interest, within 60 days.

8. Rule is made absolute in the above terms.

kps (Y. G. KHOBRADE, J.) (RAVINDRA V. GHUGE, J.)