IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4245 OF 2021

Mr. M. C. Thoms … Petitioner
Retired Head Master,
Fr. Agnel Technical School,
3G-302, Morya Garden Residency CHS
Vichumbe, Panvel – 410 221
Dist. - Raigad

Versus

1. State of Maharashtra … Respondents
Through The Principal Secretary,
Department of Skill Development &
Entrepreneurship, Mantralaya,
Mumbai – 400 032.
(To be served through the Government
Pleader, High Court, Appellate Side, Mumbai)
2. The Director,
Directorate of Vocational Education &
Training, Maharashtra State,
3, Mahapalika Marg, P.O. Box No.10036,
Mumbai – 400 001.
3. The Joint Director,
Vocational Education & Training,
Mumbai Regional Office,
49, Ali Yawar Jung Marg,
Govt. Polytechnic Campus
Kherwadi, Bandra (E),
Mumbai – 400 051.
4. District Officer,
District Vocational Education & Training,
Mumbai Suburban,
ITI Campus, Mulund (West),
Mumbai – 400 081.

5. Society of St. Francis Xavier Pillar, India,
Fr. Agnel Ashram,
Band Stand, Bandra (West),
Mumbai – 400050.

6. Head Master
Fr. Agnel Technical School Band Stand Bandra
West, Mumbai - 400050.

Mr. T. R. Yadav for the Petitioner.
Ms. A. A. Purav, AGP for the Respondent Nos.1 to 4 – State.
Mr. Amitkumar D. Sale for the Respondent Nos.5 & 6.

CORAM : NITIN JAMDAR AND
M.M. SATHAYE , JJ.

DATE : 31 JANUARY 2024.

P.C. :

1. Petitioner is a retired head of the Respondent – Technical School which is run by Respondent No.5 – Management. Petitioner was appointed on 28 February 1983 and approval for his appointment as full time teacher was received on 20 October 1983. Approval was granted by the Respondent – State to the Petitioner's appointment and was continued till the Petitioner's retirement from the service on 31 March 2018. Proposals submitted by the Respondent – Management for the pensionary benefits to the Petitioner have been returned to the Respondent – Management on several occasions and being aggrieved by non disbursal of the pensionary benefits, the Petitioner is before us.

2. We have heard Mr. T. R. Yadav, learned counsel for the Petitioner, Ms. A. A. Purav, learned Additional Government Pleader for Respondent Nos.1 to 4 – State and Mr. Amitkumar D. Sale, learned counsel for Respondent Nos.5 & 6.

3. Show cause notice was issued to the Respondent – Management on 11 September 2009 in respect of lapses in recruitment of staff. The Respondent – Management submitted explanation to the show-cause notice. An order of recovery of Rs.25,00,264/- was ordered against the Respondent – Management. In Writ Petition filed bearing No.5961 of 2011, by order dated 28 January 2019, the said order of recovery was set aside.

4. As regards the non payment of pensionary benefits to the Petitioner is concerned, considering the fact that the Petitioner was an approved teacher and retired as approved teacher, the matter was adjourned on several occasions for the learned AGP to take instruction as to the provisions under which the pensionary benefits of the Petitioner are withheld. Today, the learned AGP states that the action of the Respondent – State is as per Rule 27 of the Maharashtra Civil Service (Pension) ("MCSP") Rules, 1982.

5. Rule 27 of MCSP Rules, 1982 reads thus:

27. Right of Government to withhold or withdraw pension;

(1) [Appointing Authority 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 re-employment 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 re-employment, 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 [Appointing Authority],

(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 and 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 whether department 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 (1) 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 is made, and

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

Thus, though the State has power to withhold the Petitioner's pensionary benefits, there are certain conditions upon which the power can be exercised being in the departmental or judicial proceedings or if the pensioner is found guilty of grave misconduct or negligence during the period of his service including re-employment.

6. Upon repeated queries, the learned AGP on taking instructions from the Authorities is unable to show us findings, in any judicial proceedings qua the Petitioner that he is found guilty of grave misconduct. It needs to be noted that when the show cause notice was issued to the Respondent – Management on the ground of irregular appointments, the list of those irregularly appointed teachers was prepared and the Petitioner's name does not figure in the same. Only the copy of the recovery order was served on the Petitioner being the head of the School. Even this order has been set aside by the Court. There are no disciplinary proceedings. Therefore, it is clear to us that Rule 27 of the MCSP Rules, 1982 cannot be invoked in the case of the Petitioner. No other provision of law is shown to us as to how and under which provision the disbursement of pensionary benefits can be withheld or the recovery can be made from the Petitioner's pension.

7. As regards the return of proposals in respect of pensionary benefits of the Petitioner is concerned, the only ground given by the Respondent – State is that there is recovery contemplated and,

therefore, the proposal cannot be accepted. This ground, as stated above, cannot be applied to the case of the Petitioner.

8. Therefore we find no cogent reason on record to how the Petitioner's pensionary benefits can be withheld or it being adjusted, as the conditions under Rule 27 of the MCSP Rules, 1982 are not satisfied. That being the position, the Petitioner is entitled to the pensionary benefits.

9. The Respondent – Management will submit the Petitioner's proposal for pensionary benefits within a period of three weeks from the date the order is uploaded. The necessary order of disbursement of pension shall be passed by the Respondent-State within eights weeks thereafter.

10. We make it clear that we have consciously placed this time limit considering the delay that has been occurred and considering the untenable action taken by the Respondent – State to withhold the pension of the Petitioner. If there is any interest payable as per the Rules, the same shall be paid.

11. It is only on indulgence that we have not imposed costs for the untenable stand taken by the Respondent – State against the Petitioner to deprive him of the pensionary benefits.

12. As far as stand of the State Government as against the Respondent - Management is concerned, we have not entered into that issue and we have examined only the case of the Petitioner that Rule 27 of the MCSP Rules, 1982 is not applicable to him.

13. Writ Petition is disposed of in the above terms.

(M.M. SATHAYE, J.) (NITIN JAMDAR, J.)

VINA ARVIND KHADPE Digitally signed by VINA ARVIND KHADPE Date: 2024.02.14 19:24:38 +0530