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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

<u>WRIT PETITION NO.9187 OF 2022</u>

Shri. Sudhir Santuji Murkute,
Age : 62 years, Occupation : Retired,
R/o. Sayali, Sai Garden Society,
Pipe Line Road, Kale Nagar No.3,
Nashik – 422 007. ...Petitioner

<u>Versus</u>

1. State of Maharashtra.

2. The Joint Director,
Higher Education, Pune Division
Pune.

3. The Secretary,
Maratha Vidya Prasarak Samaj
Nashik, Shivaji Nagar,
Gangapur Road, Nashik – 2.

4. The Principal,
SVKT College, Deolali Camp,
Nashik.

5. The Secretary,
Poona University, Pune. ...Respondents

Mr. Sachin Gite for the Petitioner.

Mr. N. C. Walimbe, Addl. G. P. a/w. Mr. A. R. Deolekar, AGP for Respondent Nos.1 and 2.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

Date : 20th FEBRUARY 2024.

Judgment (Per Jitendra Jain, J.) :-

1. **Rule**. Rule made returnable forthwith. By consent of the parties, the writ petition is taken up for final hearing.

2. By this petition, the Petitioner seeks to challenge action of Respondent No.1-State and Respondent No.2-State and Joint Director, Higher Education in refusing to grant pension and other retirement benefits after the Petitioner having served for almost 38 years as Librarian in the college run by Respondent No.3-Trust.

3. Before we proceed to adjudicate the present proceedings, we wish to observe that we are deeply pained that a person in his twilight years after serving for close to four decades is sought to be denied his legitimate dues on a ground which Respondent Nos.1-State and 2-Joint Director, Higher Education could have brought to the notice of the Petitioner and Respondent Nos.3-Trust and 4-The Principal at the time of his appointment and not after availing his services for four decades. We hope that the State would take appropriate steps in such type of cases to put their house in order so that if any procedure in the process of recruitment of a person has not been followed then the same would be communicated immediately to that person on being appointed and not after availing his services till the date of his superannuation. The State should take care that retired employees in such type of matters do not have to knock the doors of this Court for their legitimate dues.

4. We may now, briefly, narrate the facts of the present Petition.

5. **Narrative of Events:-**

(i) In the year 1982, the Petitioner was appointed as a library clerk by Respondent No.3-Trust for the college run by the said Trust. This appointment was subject to the approval of the education department.

(ii) On 16th March 1989, the Petitioner was promoted as Assistant Librarian in the institution run by Respondent No.3-Trust. The said order issued by Respondent No.3-Trust categorically states that the promotion and placement of the Petitioner is as per the instructions given in the Circular of 10th August 1981 and Government Resolution dated 18th September 1980 issued by Respondent Nos.1-State and 2-Joint Director, Higher Education. The said order further states that salary of the Petitioner is subject to the approval of Respondent Nos.1-State and Respondent No.2-Joint Director, Higher Education.

(iii) The Petitioner after having served Respondent No.3-Trust for a period of almost 20 years was promoted to the post of librarian which is evident from the letter dated 18th August 1999 addressed by Respondent No.5-University to Respondent No.3-Trust approving the appointment/promotion w.r.e.f. 25/26th November 1991. The Petitioner continued to serve the institution in his capacity as librarian till the last day of his retirement which was 30th January 2020.

(iv) On 4th August 2020, Respondent No.3-Trust addressed a letter to Respondent Nos.1-State and 2-Joint Director, Higher Education and sent the proposal of the Petitioner along with the documents for approval and payment of retirement benefits. The said letter records that all the necessary documents are enclosed herewith.

(v) On 10th August 2020, Respondent Nos.1-State and 2-Joint Director, Higher Education issued a certificate certifying that the Petitioner has retired on 30th January 2020 and his pay matrix is Rs.57,700-1,82,400 and total basic pay is Rs.95,300/-. The said certificate has not been withdrawn till today.

(vi) On 23rd November 2020, Respondent No.3-Trust once again reminded the Respondent Nos.1-State and 2-Joint Director, Higher Education with respect to the aforesaid proposal and once again enclosed all the necessary documents for processing the said proposal for grant and payment of the retirement benefits.

(vii) On 26th January 2021, Respondent Nos.1-State and 2-Joint Director, Higher Education addressed a letter to Respondent No.3-

Trust stating that the Petitioner did not possess the qualification required for the post of Librarian. Furthermore, the transfer of the Petitioner from one institution to another institution was without the approval of Respondent No.5-University. It further states that without the NET/SET exam being cleared by the Petitioner, the appointment was not in accordance with the procedure prescribed and hence the proposal of Respondent No.3-Trust to process the retirement benefits of the Petitioner cannot be considered.

(viii) On 15th February 2021, the Petitioner addressed a letter to Respondent Nos.1-State and 2-Joint Director, Higher Education giving details of various qualifications attained by him, namely M.Com in 1985, B.Lib. (Sci.) in 1987, M.Lib. (Sci.) in 2001 and M.Phil in 2008 and requested to process his claim of retirement benefits.

(ix) On 17th March 2021, Respondent No.3-Trust once again requested Respondent Nos.1-State and 2-Joint Director, Higher Education to process the proposal of retirement benefits of the Petitioner. Thereafter, there were correspondences exchanged between the Petitioner and Respondents. However, the Petitioner did not succeed in getting his dues and therefore has filed the present Petition seeking the reliefs as prayed for in the Petition.

<u>Submissions of the Petitioner</u> :-

6. The Petitioner submits that he has rendered services for almost 38 years and at no point of time Respondent Nos.1-State and 2-Joint Director, Higher Education objected to his appointment inspite of the fact that in the appointment / promotion letters his salary was subject to the approval of Respondent No.2-Joint Director, Higher Education. The Petitioner submits that Respondent No.3-Trust has filed all the documents for processing of the claim of retirement benefits with the office of Respondent Nos.1-State and 2-Joint Director, Higher Education and the Respondent No.2-Joint Director, Higher Education has given a certificate dated 10th August 2020, giving the details of pay matrix and total basic pay which is to be considered for the purpose of retirement benefit. The Petitioner submits that the action of Respondent Nos.1-State and 2-Joint Director, Higher Education in refusing to give the retirement benefits are unfair, unreasonable and therefore, the present Writ Petition be allowed.

<u>Submissions of the Respondents</u>:-

7. Per contra, the Respondents submitted that the Petitioner has not been appointed in accordance with Statute No.415 (1) and (2) of Respondent No.5-University. The Respondent Nos.1-State and 2-Joint Director, Higher Education further submitted that the transfer of the Petitioner to College of Pharmacy Nashik was also not in accordance with the Notification issued by the Ministry of Human Resources Development Department dated 28th February 1989. The Respondent Nos.1-State and 2-Joint Director, Higher Education, therefore submitted that on account of these reasons, the Petitioner is not entitled to the retirement benefit therefore, the Petition requires to be dismissed.

Analysis and Conclusions:-

8. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the Petition and the Affidavit-in-reply filed by the Respondents.

9. At the outset, we wish to state that there is no dispute that the Petitioner has rendered services to the Institutions managed by the Respondent No.3-Trust for a period of almost 38 years. The salary of the Petitioner as per the terms and conditions was subject to the approval of the Respondent No.2-Joint Director, Higher Education. The necessary deductions were made from the salary of the Petitioner on account of various emoluments which are supposed to be returned to the Petitioner as retirement benefit. Any act of refusing such retirement benefits now would amount to Respondent Nos.1-State and 2-Joint Director, Higher Education appropriating the amount deducted from salary resulting in manifest injustice. At no point of time prior to the retirement of the Petitioner, Respondent Nos.1-State and 2-Joint

Director, Higher Education questioned the procedure and eligibility of the Petitioner for being appointed to the said post although the salary of the Petitioner was subjected to the approval of the Respondent No.2-Joint Director, Higher Education. Infact, Respondent No.2-Joint Director, Higher Education on 10th August 2020 issued a certificate giving details of the basic pay etc. for the purpose of retirement benefits. We have not been shown any reason as to why Respondent Nos.1-State and 2-Joint Director, Higher Education did not object to the appointment of the Petitioner for last 38 years. In our view, it would be unfair on the part of the Respondent Nos.1-State and 2-Joint Director, Higher Education to now refuse the claim of the Petitioner for his retirement benefits. The Respondent No.3-Trust and the Petitioner have already submitted all the documents necessary for processing the proposal for the retirement benefits. Therefore, in our view, the refusal of Respondent Nos.1-State and 2-Joint Director, Higher Education to grant retirement benefits to the Petitioner is illegal and bad in law and that too after the Petitioner having served for almost 38 years during which period the Respondent Nos.1-State and 2-Joint Director, Higher Education had never objected at any point of time till he attained superannuation age.

10. In this connection, it is relevant to note the decision of the

Supreme Court in the case of ***D. S. Nakara vs. Union of India***[1] wherein the Supreme Court observed 40 years ago that the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court was held to be swept under the carpet by the decision of the Constitution Bench in ***Deoki Nandan Prasad Vs. State of Bihar***[2]. The Supreme Court had authoritatively ruled that pension is a right and payment of it does not depend on the discretion of the Government and would be governed by the rules. It was held that a Government servant falling within those rules was entitled to claim pension. It was further held that the grant of pension did not depend upon anyone's discretion. It was also held that only for the purpose of quantifying the amount having regard to the service and other allied matters, that it was necessary for the authority to pass an order to that effect, but the right to receive pension would flow to the employee not because of any such order but by virtue of the rules. The Supreme Court further held that the pension is neither a bounty nor a matter of grace depending on the sweet will of the employer. It was held that it was a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer for an assurance that in their old age

1 AIR 1983 SC 130
2 AIR 1971 SC 1409

they would not be left in lurch. It was held that it was not an incentive but a reward for the past service.

11. In our view, present case of the Petitioner squarely falls within the contours of the Supreme Court dictum.

12. The claim of the Petitioner is also justified based on doctrine of "legitimate expectation" since from the salary of the Petitioner various amounts were deducted towards his retirement benefit and there had been no objection to his appointment procedure for a period of 38 years. Therefore, there is a justified expectation on the part of the Petitioner that at the time of his retirement he would be entitled to the said benefits. This is an apt case where the claim of the Petitioner also deserves to be allowed on the basis of the said doctrine.

13. The impugned action of Respondent No.1-State and Respondent No.2-Joint Director, Higher Education, in our view, would also be contrary to the expansive interpretation propounded by the Supreme Court of India on Article 21 of the Constitution of India. An employee on his retirement makes various plans to lead a decent life and discharge his moral and social duties towards his family based on the amount to be received on retirement. If such a claim is denied on a ground raised for the first time after 38 years of service, then certainly intervention of this Court under Article 226 is warranted to prevent injustice being done to the Petitioner if such an action of the State is not set aside.

14. The impugned action of the State would also be against the Directive Principles enshrined in Part IV of our Constitution. Article 39(a) provides that the policy of the State should secure, that the citizens have the right to an adequate means to livelihood. The State is under negative obligation under Article 39(a) of the Constitution not to deprive a retired employee of his right to retirement benefits after a period of 40 years on a ground which they had never raised although such a ground was available from inception and employee having discharged his duties successfully with unblemished record. In case of an employee the means of livelihood after he superannuates are the retiral benefits and therefore any illegal action which would impinge upon same would be unconstitutional.

15. We may observe that similar issue has come up for consideration before various Court where the retirement benefits were sought to be denied on ground that initial appointment was not in accordance with the procedure and the Court in following cases have rejected such a contention and gave relief to the employees:

(a) Harijan Paniben Dudabhai Vs. State of Gujarat, reported in (2016) 12 SCC 801.

(b) Man Singh Vs. State of U.P., reported in 2022 SCC Online SC 726.

(c) Porbandar Municipality Vs. State of Gujarat & Ors., reported in 2018 SCC Online Guj 475.

16. Before passing the operative order, we may observe the thoughts of a person on the last day of his superannuation which may be on following lines :-

> *"Navigating the golden years of one's life ought to be a time of celebrating and relishing life's journey, being secure in the knowledge that decades of loyal and faithful service have been valued and rewarded through assured retirement benefits."*

17. In view of above, we pass the following order :-

<u>O R D E R</u>

(i) The Writ Petition is allowed in terms of prayer clause (a) which reads thus:-

> *"(a) This Hon'ble Court may by appropriate writ, direction or order, direct the Respondent No.2 to sanction and release the Pension of the Petitioner along with all the retirement benefits including Gratuity, Leave encashment etc forthwith from the date of retirement of the Petitioner i.e. 30.9.2020".*

(ii) The Respondent Nos.1 and 2 are directed to release the retirement benefits as claimed by the Petitioner within a period of three months from the date of receipt of copy of this order.

(iii) Rule is made absolute in above terms with no order as to costs.

[JITENDRA JAIN, J.] **[A. S. CHANDURKAR, J.]**