



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15939 OF 2022

Dr. Ramchandra Bapu Nirmale
Aged 72 years, Occ. Retired
Medical Officer, R/o. 107, Tyagraj,
Lokpuram, Pokharan Road, No.2,
Thane [W].

..Petitioner

Versus

- 1] The State of Maharashtra,
Through the Secretary,
Public Health Department,
Mantralaya, Mumbai – 400 032.
- 2] The Commissioner,
Employee State Insurance
Corporation, having office at
Panchdeep Bhawan, 6th Floor,
N. M. Joshi Marg, Lower Parel,
Mumbai – 400 013.
- 3] The Medical Superintendent,
ESIS Hospital, Wagle Estate,
Road No.33, Thane – 400 604.

..Respondents

Dr. Narendra V. Bandiwadekar, Senior Advocate a/w Mr. Rajendra B. Khaire & Mr. Aniket S. Phaphale i/by Ms. Ashwini N. Bandiwadekar for the Petitioner.

Mr. N. C. Walimbe, Addl. G. P a/w Ms. Reena A. Salunkhe, AGP for the Respondents (State).

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

Date on which the arguments were heard : 4th JANUARY 2024
Date on which the judgment is pronounced : 31st JANUARY 2024

Judgment (Per Jitendra Jain, J.) :-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged an order dated 10th October 2022 passed by the Maharashtra Administrative Tribunal (for short 'Tribunal') dismissing Original Application No.316 of 2021 filed by the Petitioner. The Tribunal upheld the order of the Respondents whereby in calculating the pension of the Petitioner, the punishment imposed by reduction of salary in equivalent grade in 3 stages till the date of the retirement has been reduced for computing last drawn pay.

2. **Briefly the facts are as under :**

The Petitioner was employed with the Respondents as a Medical Officer, Group-A for the period from 20th December 1978 to 31st August 2008, when he retired. On 20th August 1994, a notice was issued to the Petitioner by the Respondent alleging that the Petitioner is taking Non-Practicing Allowance (NPA) and at the same time doing private service. An enquiry was initiated against the Petitioner and he was held guilty of the said charge vide enquiry report dated 9th February 1998. On 31st March 2008, an order came to be passed imposing punishment. The operative portion of the punishment reads thus (official translation):

"Therefore, the Non-practising allowance of Rs.36,060/- (Rupees Thirty Six thousand sixty only) received by Dr. R. B. Nirmale, till he was raided by the Vigilance Squad shall be recovered from him before his

retirement. Further, the Government has taken decision to impose penalty on him by reducing his salary in equivalent grade, in 3 stages till the date of his retirement. Accordingly, (the order of) the said penalty shall be served upon him.

By order and in the name of Governor of Maharashtra.”

3. The Respondents recovered from the Petitioner the amount imposed as per the aforesaid punishment order. However, while calculating pension post retirement, same was calculated by reducing the aforesaid withholding of the reduction in pay scale. On 15th November 2017, the Petitioner made a representation to the Respondents protesting against the same and requested to re-consider his case by calculating the pension by considering the increment. However, the said representation was not considered favourably and therefore, the Petitioner filed Original Application No.316 of 2021 before the Tribunal alleging improper fixation of pension due to incorrect implementation of punishment order dated 31st March 2008. The Petitioner before the Tribunal sought direction against the Respondents for calculating pension on a pay-scale 32790+5400+25% Non-Practicing Allowance.

4. The parties before the Tribunal filed their respective replies, rejoinder and sur-rejoinder. On 10th October 2022, the Tribunal dismissed the application by upholding the action of the Respondents in calculating the pension amount without considering the three increments. It is on this backdrop that the Petitioner is before us.

5. The Petitioner submits that the punishment order dated 31st March 2008 does not mention that for all times to come his salary is to be brought down by three stages. The punishment order only states that an amount Rs.36,060/- to be recovered before the retirement of the Petitioner and to reduce the pay by three stages till the date of his retirement. The Petitioner submits that in the light of this order, the Respondents were not justified in calculating the pension without restoring the earlier pay scale after retirement post recovery of Rs.36,060/-. The Petitioner relied upon Rule 5 (1) (v) of 'Discipline & Appeal Rules of 1979' (D & A Rules) in support of his contentions.

6. Per contra, the Respondents supported the order of the Tribunal and submitted that if the interpretation sought to be canvassed by the Petitioner is accepted then the effect of the punishment order would be wiped out. The Respondents therefore, prayed for dismissal of the Writ Petition.

7. 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 pleadings and reply affidavit of the Respondents.

8. The controversy revolves around interpretation of Rule 5 (1) (v) of D & A Rules and its application to the punishment order dated 31st

March 2008. Rule 5 (1) (v) of D & A Rules, 1979.

“5.(1) *****

(i)

(ii)

(iii)

(iv)

(v) *Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay.”*

(emphasis supplied)

9. Admittedly, the punishment order dated 31st March 2008 only states that an amount of Rs.36,060/- is to be recovered from the Petitioner before his retirement towards receipt of NPA till the raid of the vigilance squad and his pay scale be brought down by three stages till the date of his retirement. There is no further direction as to whether or not the Petitioner will earn increments of pay during the period of such reduction and whether on the expiry of such period of punishment, the reduction will or will not have the effect of postponing future increments of his pay. In our view, Rule 5(1)(v) specifically requires that the punishment order in addition to lowering the pay scale of a delinquent for a specified period should further direct whether or not the government servant will earn increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay. There is no such direction in the punishment order. The Tribunal also in para 13 has given the said finding which has

not been assailed by the Respondents and therefore, the Respondents are not justified in interpreting punishment order to mean that the withholding of increment would apply even post the expiry of the period for which the punishment is imposed. If the contention of the Respondents is accepted then it would amount to modifying the punishment order dated 31st March 2008 which is not permissible. The order of punishment has to be read as it is without any addition or subtraction. Nothing stopped the disciplinary authority from mentioning in the punishment order that the same would be applicable even post retirement. It is a settled position that the punishment order has to be read strictly and the author of the punishment order has to speak his mind in black and white. If the direction as required under Rule 5(1)(v) is not mentioned in the punishment order then the contention of the Respondents that the same would be applicable for calculation of pension post retirement would not be correct.

10. If the interpretation canvassed by the Respondent is accepted then it would amount to a permanent measure of punishment which cannot be borne out from a reading of the relevant Rule with which we are concerned. The intention of the Rule making authority appears to be that the reduced pay scale should adversely affect the employee monetarily for the period of punishment only. Hence if such a

punishment is going to be awarded, it should affect the emoluments during the period of service only and it should not affect the quantum of pension which is post service for if it is going to affect the same then it has to be held as punishment as a permanent measure. Therefore, we are of the opinion that pay prior to coming into effect the penalty order shall be considered for computing pension.

11. Rule 5(1)(v) of the D & A Rules prescribes for a further direction by the concerned authority to specify the effect of future increments in the pay “during the period” for which the lower stage in time scale is specified. The phrase “during the period” used in later part of the Rule 5(1)(v) would mean the period for which penalty is imposed, which in the present case of the Petitioner is upto the date of retirement. Therefore, in our view, on a true reading of Rule 5(1)(v) as a whole the Petitioner is justified in contending that calculation of post-retirement benefit of pension is not governed by Rule 5(1)(v). Provisions of Rule 5(1)(v) would be applicable during the period when an employee is in service and not to the benefits once he retires moreso because “increment of pay” used in the said Rule would be during the tenure of one’s employment and not post retirement.

12. To conclude, in the absence of any direction as mandated by Rule 5(1)(v) of the D & A Rules and punishment under the said Rule

being applicable only during the term of employment, impugned action of giving effect to such punishment for calculation of pension is bad-in-law.

13. Therefore, viewed from any angle and in view of above discussion, we pass the following order :

ORDER

- (i) The impugned order of the Tribunal dated 10th October 2022 and communication dated 16th February 2021 is quashed and set-aside.
- (ii) The Respondents are directed, for the limited purpose of calculation of pension, to consider the last drawn pay prior to coming into effect of the penalty order as salary last drawn.
- (iii) The Respondents are directed to re-calculate the pension amount and pay the difference within a period of eight weeks from today.
- (iv) Writ Petition is disposed of. No order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)