



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.1602 OF 2023

r s/o Thawaraji Dongare Vs. The State of Maharashtra, thr its Secretary, Skill Development and
Entrepreneurship Department, Mumbai and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.S. Khubalkar, Advocate for petitioner.
Mr. I.J. Damle, AGP for respondent Nos 1 to 6.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATED : 10-12-2024

Mr. Khubalkar learned Counsel for the petitioner seeks leave to challenge the show cause notices dated 17.3.2021 and 2.6.2022 (pages 149 and 161). Leave is granted. Amendment be carried out forthwith.

2. Mr. Damle, learned AGP, upon instructions, makes a statement that the amount of interest has been deposited with this Court on 5.12.2024 amounting to Rs. 1,74,097/-. That leaves the petitioner alive only in respect of the claim in prayer clause 3 regarding quashing of the show cause notices dated 17.3.2021 and 2.6.2022.

3. Mr. Khubalkar, learned Counsel, in this context submits, that since the proceedings were initiated against the petitioner for imposing punishment in terms of Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, the provisions of Section 27 of the Maharashtra Civil Services (Pension) Rules, cannot be invoked for the purpose of imposing a penalty upon the petitioner as they act in a different arena altogether. He also submits that considering

the factual position, on account of delay also the proceedings needs to be quashed.

4. The disciplinary proceedings were initiated in the year 2016 in respect of the incidents, which were of the year 2012, as is indicated from the communication dtd 25.7.2016 (page 86) and the charges annexed thereto (page 89 onward). The enquiry officer, vide his report 31.12.2019 (page 148) exonerated the petitioner from all charges. However, since the disciplinary authority was not agreeable to the same, vide communication dated 17.3.2021 (page 149), it called upon the petitioner to show cause, failing which it indicated that another enquiry would be initiated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979, against the petitioner.

5. By another communication dtd 2.6.2022 (page 161) another show cause notice was issued calling upon the petitioner as to why on account of the charges having been found to be proved, as the explanation given by the petitioner to the first show cause notice dated 17.3.2021 was found to be unsatisfactory, a punishment of deduction of 6% amount from the pension of the petitioner for the next five years in terms of Rule 27 of the Maharashtra Civil Services (Pension) Rules 1981 should not be imposed upon the petitioner.

6. It would be trite to point out, that the first show cause notice dated 17.8.2021 and the second show cause 2.6.2022 are contradictory to each other inasmuch as, when the first show cause notice having found that the petitioner stands exonerated by the report of the Enquiry Committee, calls

upon the petitioner to show cause and in absence thereof, indicates initiation of another department enquiry, the second show cause 2.6.2022 on the other hand, finds the explanation to the show cause notice unsatisfactory and holds the petitioner guilty and also proposes to impose punishment as indicated thereupon. We find that the finding of guilt, of the petitioner as indicated in the 2nd show cause dated 2.6.2022, is clearly unsustainable in law as the same is without any enquiry or for that matter, without recording any reasons, whatsoever, specifically when the report of the Enquiry Committee exonerates the petitioner. Such an action, therefore, cannot be sustained in law.

7. That apart, in such a contextuality, the provisions of Rule 27 (1) are also not satisfied, as it would be applicable only where in a departmental proceedings, the petitioner is found guilty of a grave misconduct or negligence during his period of service on account of which pecuniary loss is caused to the employer which sought to be recovered. In the instant matter, as already indicated above, there is no finding by the disciplinary committee of any misconduct been done by the petitioner or any loss been caused on account of misconduct. On the contrary, it exonerates the petitioner of any misconduct and consequent liability. That being the situation, the action on part of the respondents in rendering a finding of misconduct in the show cause notice dtd 2.6.2022, would clearly be unsustainable in law.

8. So also, the indication in the 1st show cause notice regarding initiation of enquiry after the superannuation of the petitioner which has already happened in November 2020,

for the incidences, which are of the year 2012 is also not maintainable in view of the express language of Rule 27(2) (b) (ii) of the Maharashtra Civil Services (Pension) Rules which does not permit holding a departmental enquiry against an employee even for which it is to be held is earlier to four years from the date of superannuation and the petitioner having already superannuated in November 2020, in view of which, we do not see any reason to permit continuation of the departmental enquiry against the petitioner as indicated in the show cause notice dated 17.3.2021.

9. We therefore, allow the petition, by quashing the show cause notices dated 17.3.2021 and 2.6.2022 (pages 149 and 161). Since only provisional pension has been granted to the petitioner, the respondents will now be liable to fix the pension of the petitioner considering the above judgment and grant all retiral benefits to the petitioner within a period of six weeks from today. The amount deposited in this Court on account of interest on delayed payment of the leave encashment since the leave encasement has already been received by the petitioner, is permitted to be withdrawn. The petition stands disposed of in the above terms.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)