



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

WRIT PETITION NO. 7844 OF 2023

(Satish Keshaorao Khond ..vs.. Hon'ble Registrar General, High Court of Judicature of Bombay High Court and another)

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

Court's or Judge's orders

Mr. S.M. Vaishnav, Counsel for the petitioner (through VC),
Mr. A.M. Kukday, Counsel for the respondent Nos.1 and 2.

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

DATE : 26-11-2024

Heard Mr. Vaishnav, learned counsel for the petitioner and Mr. Kukday, learned Counsel for the respondent Nos.1 and 2.

2. The petition questions the order dated 27-4-2022 (Page No.34) by which punishment of reducing the pay of the petitioner by three increments with cumulative effect under Rule 5(1)(iv) of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 for dereliction of duty and misappropriation of government money and accordingly re-fixation of the salary of the petitioner has been directed. (Page No. 46).

3. The petitioner who was appointed as a Junior Clerk on 14-6-1989 came to be promoted as an Assistant Superintendent on 01-11-2014. On 13-10-2020 a charge-sheet came to be filed against the petitioner and one Shri V.B. Devikar, then Senior Clerk attached to the Civil Court,

Bhivapur in a departmental enquiry for dereliction of duty and embezzlement of Rs.2,500/- of the Taluqa Legal Aid Committee, Bhivapur. During the pendency of the enquiry, the petitioner superannuated on 31-12-2020, however, the punishment as indicated by the impugned order dated 27-4-2022 has been imposed upon the petitioner consequent to his retirement, which is the subject matter of challenge.

4. Mr. Vaishnav, learned Counsel for the petitioner by relying upon ***State Bank of India and Ors. v. Navin Kumar Sinha, Civil Appeal No. 1279/2024*** decided by the Hon'ble Apex Court on 19-11-2024 submits, that disciplinary enquiry, though could have been continued against the petitioner even inspite of his superannuation, however, the punishment as has been imposed upon the petitioner could not have been awarded under Rule 5(1)(iv) of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979, as there is no provision in the said rules for continuing the enquiry initiated against an employee during the course of employment, after his superannuation. He submits, that the provisions of Rule 27 (2)(a) of the Maharashtra Civil Services (Pension) Rules, 1982, would not come to the assistance of the respondents, to impose any penalty or for that matter to enforce recovery of any punishment imposed upon the employee in terms of Rule 5(1)(iv) of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979. He therefore submits, that the action on the part of the respondents, of making a recovery against the petitioner is clearly without any authority of law and therefore cannot be sustained. The learned Counsel in

support of his contentions relies upon *Dhairyasheel A. Jadhav v. Maharashtra Agro Industrial Development Corporation Ltd., Mumbai, 2010 (2) Mh.L.J. 618*; *Manohar B. Patil v. State of Maharashtra and others, 2013 (6) Mh.L.J. 311 (Para No. 15)*; *Nagesh s/o Jagdishrao Deshpande (died) through L.Rs. Namita Nagesh Deshpande and others v. State of Maharashtra, 2021 (6) Mh.L.J. 758* (Para Nos. 34, 35, 36 37 and 38) and so also *State Bank of India* (supra).

5. Mr. Kukday, learned Counsel for the respondent Nos. 1 and 2 basically relies upon Rule 27(2)(a) of the Maharashtra Civil Service (Pension) Rules, 1982 in support of his contention that such a penalty can indeed be imposed.

6. Perusal of the provisions of the Maharashtra Civil Service (Discipline and Appeal) Rules 1979 indicates that it does not contain any provision, for continuing the inquiry consequent to the superannuation of an employee and for imposing penalty in terms of Rule 5 of the said Rules. It is a settled position of law, that no enquiry can be initiated after superannuation of an employee if the Rules in that regard do not so permit, as relationship of employer and employee is necessary to exist for the purpose of an enquiry to be conducted and sustained. It is equally trite law, that even if an enquiry is initiated during existence of a relationship of employer and employee unless the Rules indicate the entitlement of employer to impose punishment in terms of the finding of the enquiry, such punishment cannot be imposed. The position is clearly spelt out in *SBI Vs. A.M. Gupta*,

1997(8)SCC 72, after considering which, the same has been reiterated in ***Bhagirathi Jena Vs. Board of Directors (1999)(3) SCC 666***, as under:

“6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

7. In the instant case, Mr. Kukday, learned counsel for the respondents has been unable to point out any provision in the Maharashtra Civil Service (Discipline and Appeal) Rules 1979, which permit enquiry to be continued post the superannuation of an employee, or for that matter, empower the employer to impose punishment as contemplated by Rule 5 of the Rules of 1979. We have also gone through the provisions of the Maharashtra Civil Service (Discipline and Appeal) Rules 1979 and do not find that any such provision exists therein.

8. All that therefore, remains to be considered is, the provisions of Rule 27(2)(a) of the Maharashtra Civil Services (Pension) Rules 1982, which for the sake of ready reference are quoted as under:

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.

9. The said provisions fell for consideration in case of ***Dhairyashil A Jadhav*** (supra) in which, the following has been held:

9. We have heard the learned Counsel for the parties. We may gainfully refer to sub rule 27 (2)(a) of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under.

"27. Right of Government to withhold or withdraw

pension. (1)

(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."

It is thus clear that in the event departmental proceedings was instituted it can be continued and concluded "as if the Government servant has continued in service". Thus, by a deemed fiction though relationship of employer and employee has ceased, the rules continue the relationship pursuant to which the departmental proceedings can be proceeded with. There is no provision in the Maharashtra Civil Services (Discipline & Appeal) Rules, which provide for continuation of enquiry for major misconduct by issuing of chargesheet. The penalties are set out under Section 5. If a Government servant is not in service then none of those penalties can be imposed. Thus, any enquiry initiated and in which there is no provision for continuing enquiry must cease on the employee being allowed to superannuate, in the absence of the provisions like rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

10. It has again been considered in **Manohar B Patil** (supra) in the following terms:

15. Sub-Rule (1) of Rule 27 of the Pension Rules deals with powers of the Government of reducing or withholding pension. It also confers power to recover from pension the amount of financial loss caused to the Government due to misconduct on the part of a retired employee. The power to withdraw or to reduce pension or power to recover pecuniary loss caused to the Government can be exercised provided the Pensioner is found guilty of misconduct or negligence. Thus, Rule 27 permits initiation of departmental proceedings against the Pensioner for a limited purposes of taking action as provided in Sub-Rule (1) of Rule 27 of the

Pension Rules. We have already adverted to Clause (b) of Sub-Rule (2) of Rule 27 which provides that the departmental proceedings cannot be instituted after superannuation save with the sanction of the Government and the proceedings shall not be in respect of any event which took place more than four years before such institution. If the interpretation that a departmental inquiry cannot be initiated against the Pensioner even for limited purposes of taking action under Sub-Rule (1) of Rule 27 of the Pension Rules is accepted, Clause (b) of sub-Rule (1) of Rule 27 of the Pension Rules becomes completely redundant. Sub-clauses (i) and (ii) of Clause (b) of Sub-Rule (2) of Rule 27 of the Pension Rules provide for safeguards to ensure that a Pensioner is not unduly harassed by initiation of departmental proceedings. Thus we hold that Rule 27 permits institution of departmental proceedings after superannuation of an employee only for the purposes of taking action contemplated by Sub-Rule (1) of Rule 27 in relation to pension and in the said proceedings, no penalty can be imposed in accordance with the Discipline and Appeal Rules. To that extent, we approve the view taken by the learned Single Judge in the case of *Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal*, 2003(3)Mh.L.J.602-2003(5)Bom.C.R. 197.

11. It again came up for consideration in **Nagesh Deshpande** (supra) where the following has been said:

34. In *S.B.I. vs. A.N. Gupta*, (1997) 8 SCC 60 Supreme Court took the view that disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the bank as service rules do not provide for continuation of disciplinary proceedings after the date of superannuation. Again in *Bhagirathi Jena vs. Board of Directors*, (1999) 3 SCC 666, Supreme Court held that after retirement of the delinquent employee a pending departmental enquiry lapses in absence of a specific provision for its continuation after retirement.

35. We have carefully perused the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 but we do not find any provision therein which provide for continuation of enquiry post superannuation. We also do not find any such provision therein for extension of service of a Government servant post

superannuation for the purpose of completion of disciplinary proceeding which was initiated while the Government servant was in service.

36. However, we find that Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 confers right to the Government to withhold or withdraw pension. As per sub-rule (1) the 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 recovery from such pension the whole or part of any pecuniary loss caused to the Government if the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. Such guilt must be found or proved in a departmental or judicial proceeding. The two provisos to sub-rule (1) are not relevant for the present discourse and are therefore not referred to. 36.1. Clause (a) of sub-rule (2) provides that 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 Rule 27 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.

36.2. Clause (b) of sub-rule (2) deals with institution of departmental proceedings post superannuation. The same is not relevant for the present case and, therefore, need not be dealt with.

36.3 Rule 27 (1) and (2) (a) being relevant is extracted hereunder :-

"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."

36.4. At the first glance, from a reading of the aforesaid provision one may gather an impression that a departmental proceeding if instituted while the Government servant was in service shall be deemed to be proceedings under Rule 27 even after retirement of the Government servant and shall be continued and concluded by the authority in the same manner as if the Government servant had continued in service.

37. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 came up for consideration before a Single Judge of this Court in [Chairman/Secretary of Institute of Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur vs. B.B. Patil](#), 2003 (3) Mh.L.J. 602. After an indepth analysis of the aforesaid provision, learned Single Judge held that this rule nowhere empowers the Government to initiate or continue disciplinary proceedings after the employee attains the age of superannuation. The rule is meant for and confined to the power of the Government to reduce or withdraw the pension of a pensioner on account of proven grave misconduct or negligence of such pensioner while he was in service. Such proceedings would be deemed to have been continued post superannuation only for the purpose of action relating to pension and not for disciplinary purpose. Provisions of Rule 27 disclose that departmental proceedings spoken thereof are wholly and solely in relation to the issue

pertaining to payment of pension. Those proceedings do not relate to disciplinary enquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Even here also the fact that proceedings are continued post superannuation only to deal with the issue of withdrawal of pension is necessarily required to be made known to the employee. It has specifically been held that proceedings under Rule 27 after attaining the age of superannuation can be only for the purpose of deciding the issue of pension and cannot have any link with the disciplinary proceedings.

38. The above decision of the learned Single Judge of this Court was approved by a Division Bench of this Court in *Manohar B. Patil vs. State of Maharashtra*, 2013 (6) Mh.L.J. 311. In [the said decision](#) Division Bench held that on a conjoint reading of sub-rules (1) and (2) of Rule 27 it is obvious that in departmental proceedings initiated after retirement no penalty can be imposed on a Government servant in accordance with the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The departmental enquiry can be initiated after superannuation only for the purpose of withholding the whole or part of the pension. Reference was also made to another Division Bench judgment of this Court in [Dhairyasheel A. Jadhav vs. Maharashtra Agro Industrial Development Corporation Ltd.](#), 2010 (2) Mh.L.J. 618 wherein it was held that if a Government servant is not in service then none of the penalties provided for in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 can be imposed. Adverting to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 the Division Bench held that the said rule permits institution of departmental proceedings after superannuation of an employee only for the purposes of taking action contemplated under sub-rule (1) of Rule 27 in relation to pension and in the said proceedings no penalty can be imposed in accordance with the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Relevant portion of paragraph 15 of [the said judgment in Manohar B. Patil](#) (supra) is extracted hereunder :-

"15. * * * * Thus we hold that Rule 27 permits institution of departmental proceedings after superannuation of an employee only for the purposes of taking action contemplated by Sub-Rule (1) of Rule

27 in relation to pension and in the said proceedings, no penalty can be imposed in accordance with the Discipline and Appeal Rules. To that extent, we approve the view taken by the learned Single Judge in the case of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, 2003 (3) Mh.L.J. 602 = 2003 (5) Bom. C.R. 197."

12. In **Navinkumar Sinha**, the Hon'ble Apex Court has held as under:

"31. As has been held by this Court on more than one occasion, a substituting disciplinary proceeding i.e. one initiated before superannuation of the delinquent officer may be continued post superannuation by creating a legal fiction of continuance of service of the delinquent officer for the purpose of conclusion of the disciplinary proceeding (in this case as per Rule 19(3) of the Service Rules). But no disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on attaining the age of superannuation or after the extended period of service."

13. It is therefore apparent, that since the Maharashtra Civil Service (Discipline and Appeal) Rules 1979 do not contain any provision for continuation of an enquiry post the retirement of an employee and for imposition of punishment as provided in Rule 5 thereof, the provisions of Section 27(2) (a) of the Maharashtra Civil Services (Pension) Rules, cannot be invoked by the employer for the purpose of imposing a penalty as contemplated by Rule 5 of the Maharashtra Civil Service (Discipline and Appeal) Rules 1979. All that can be done by invocation of Rule 27(2)(a) of the Maharashtra Civil Services (Pension) Rules, is what is contemplated by Rule 27(1), which would indicate withholding or withdrawing of

pension or any part of it, permanently for a specified period and also order recovery from such pension whole or part of any pecuniary loss caused to the Government and not otherwise. The imposition of penalties, as contemplated by Rule 5 of the Maharashtra Civil Service (Discipline and Appeal) Rules 1979, is not something, which is contemplated as a penalty which can be imposed by invocation of Rule 27(1) of the Maharashtra Civil Services (Pension) Rules. This is the consistent view, which has been taken in ***Dhairyashil ; Manohar Patil and Nagesh*** (supra) and nothing has been brought to our notice, to enable us to digress from such a view.

14. In light of the abovesaid discussion, the impugned order dated 27.4.2022, would clearly be without any authority of law, as the Maharashtra Civil Service (Discipline and Appeal) Rules 1979, do not provide for continuation of the enquiry commenced during the employment, post the superannuation, so as to enable the authority to impose and enforce a punishment under Rule 5 thereof. The impugned order therefore, will have to be quashed and set aside and we accordingly do so. The petition is therefore allowed in the above terms. No costs. Needless to say that the consequent entitlements of the petitioner would follow.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)