



Judgment

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1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION No. 6830/2023.

Dr. Ramesh s/o Gulabrao Dhawale,
Aged about 75 years, Occupation –
Retired, resident of 26, Malgi Nagar,
Ring Road, Nagpur.

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PETITIONER.

VERSUS

1.State of Maharashtra,
through its Secretary, Medical
Education and Drugs, Mantralaya,
Mumbai - 32.

2.The Director of Medical Education
and Research, State of Maharashtra,
St.George's Hospital Compound,
Near CST, Fort, Mumbai.

3.Vasantrao Naik Government
Medical College, through its Dean,
Yavatmal, District Yavatmal.

4.The Accountant General-II,
(Accounts and Entitlements), Indian
Audit and Accounts Department,
Pension Wing, Old Building,
Civil Lines, Nagpur.

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RESPONDENTS.

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Mr. M. Sudame, Advocate for the Petitioner.
Mr. N.R. Patil, A.G.P. for Respondents.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

DATE : JULY 19, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of learned Counsel for the parties, the matter is taken up for final disposal.

2. The Maharashtra Administrative Tribunal, Nagpur vide order dated 05.04.2023 passed in Original Application No.922/2027 rejected to grant pensionary benefits to the petitioner as per the recommendations of 6th Pay Commission. Being aggrieved by the said order, the petitioner has invoked writ jurisdiction of this Court.

3. The petitioner came to be appointed as Lecturer in

Rgd.

Medicine on 29.11.1981 by respondent nos. 1 and 2. The petitioner was promoted as Associate Professor of Medicine in the year 1985. On completion of 20 years of service, the petitioner has filed an application/three months notice dated 02.11.2014 seeking voluntary retirement w.e.f. 01.02.2005. The petitioner was due for retirement on attaining age of superannuation on 31.07.2006.

4. It is contended that during the period of 90 days, no decision was taken, therefore, the petitioner has left the charge on 01.02.2005 vide communication dated 05.02.2005. It is the contention of the petitioner that in terms of Rule 68 of the Maharashtra Civil Services (Pension) Rules, 1982 in absence of acceptance of notice, deeming effect comes into play.

5. The State Government has informed that since the petitioner's proposal for voluntary retirement was not received, the petitioner's urge for voluntary retirement has been rejected. Despite the said rejection, the petitioner did not join his duties. Respondent no.2 - Director of Medical Education has issued a public

notice on 24.03.2006 directing several employees, including the petitioner, to join the duties by obtaining necessary permission from the Director or State Government. Though petitioner did not join immediately, however, on 01.07.2006, he requested respondent no.3 Dean of the College, for allowing him to join the duties. It is the contention of the petitioner, that he has joined the duties on 01.07.2006, and worked till 10.07.2006. The petitioner lays hand on the joining report, muster roll and communication dated 11.06.2022, whereby it is informed that during 01.07.2006 to 10.07.2006, the petitioner was on duty as per muster roll.

6. It is the contention of the petitioner that though on 01.01.2006, he was on duty, however, the Tribunal erred in applying the government clarification dated 25.10.2011 for rejecting the claim of petitioner for benefits flowing from recommendations of 6th Pay Commission. Moreover, it is submitted that the petitioner has applied for voluntary retirement, but, the proposal was not forwarded and thus, by deeming effect, he stood retired, but, the State Government has rejected his proposal. According to the petitioner when he came

to know that his voluntary retirement proposal was rejected, he has joined on 01.07.2006, and thus, he being in service on said date, he is entitled for the benefits of recommendations of 6th Pay Commission.

7. The learned A.G.P. appearing on behalf of respondents would submit that vide communication dated 08.02.2005 itself, the petitioner was informed that his voluntary retirement proposal has been rejected and directed him to join the duties, but, he did not. It is submitted that a public notice was issued on 24.03.2006, however, the petitioner has not joined the duties. The learned A.G.P. would submit that only to get the benefit of 6th Pay Commission, at the verge of superannuation, the petitioner has approached on 01.07.2006 for joining, however, it was not approved by the Authority. The learned A.G.P. took us through a communication dated 07.07.2006, wherein it has been reiterated that despite several reminders, from 01.02.2005, the petitioner was continuously absent. It is stated that the petitioner ought to have obtained permission from the Director or the Government for

Rgd.

joining, but, the petitioner has directly approached the college, and therefore, guidance was sought. He has also pointed out that vide communication dated 07.07.2006, it was clarified that the act of petitioner of directly joining without permission was temporarily rejected.

8. There is no dispute that the Government has issued a clarification on 25.10.2011 stating that the employees who were not on duty from 01.01.2006 till their retirement, are not entitled for the benefits of 6th Pay Commission. The contention of petitioner that he has joined the duties on 01.07.2006, cannot be accepted since, though the petitioner has signed on the muster on some dates, his joining was not approved by the Authority. It reveals that despite communication dated 08.02.2005 for next 14 months, the petitioner failed to join his duties and that is why unless he is permitted by the Director or the Government, his so called joining cannot be considered. The Director of Medical Education has forwarded the proposal to discontinue the services of petitioner, however, the State Government has taken a decision vide impugned communication

Rgd.

7

dated 09.05.2007 to consider the petitioner's continuous absence from 01.02.2005 till the date of his superannuation i.e. 31.07.2007 as extra ordinary leave and allowed the retirement by superannuating him.

9. Since the petitioner was not on duty, the State Government in terms of its clarification, has refused to grant retiral benefits as per 6th Pay Commission. The Tribunal has considered that from 02.02.2005 till the date of superannuation the petitioner was not on duty, which dis-entitles him to get the benefits in terms of clarification dated 25.10.2011. Apparently, the order of rejection of voluntary retirement was communicated to the petitioner in the month of May, 2005 itself, but, the petitioner failed to join the duties. The communication dated 11.06.2012 indicates that without seeking leave from the appropriate authority, he has joined his duties and signed muster roll for few days. Moreover, the Authority has temporarily rejected the joining of the petitioner, and thus, in our view it cannot be treated that the petitioner was on duty on 01.01.2006. In that view of the matter, as per the clarification

Rgd.

petitioner is not entitled for benefits flowing from the 6th Pay Commission. Already the petitioner was made to retire on the date of superannuation, and his pension was fixed as per 5th Pay Commission. In the circumstances, we do not see any merits in the contention of petitioner to hold that he was on duty on 01.01.2006, making him entitle for availing benefits of the recommendations of 6th Pay Commission. In view of above, the impugned order does not suffer from illegality. Writ Petition is therefore, dismissed. Rule discharged.

JUDGE

JUDGE