[Corrected Copy : Corrections have been carried out in view of the speaking to the minutes of the order dated 12.03.2025]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6567 OF 2020

ANIL DNYANOBA MOHEKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for the Petitioner : Mr. Avinash S. Deshmukh
AGP for Respondent No.1 : Mr. S. B. Pulkundwar
Advocate for Respondent No.2 : Mr. P. P. More
...

CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.

DATE : 28-02-2025

PER COURT:-

1. Heard both sides finally at the admission stage.

2. The petitioners who retired from the Maharashtra Pollution Control Board (MPCB)/ respondent No.2 have already received the benefit of pension scheme existing at that time. However, the issue of applying Maharashtra Civil Services (Pension) Rules, 1982 (for short, “Pension Rules”) was under consideration.

3. The petitioners have a case that various meetings were held for applying Pension Rules . The Board had difficulty to implement the pension scheme as there was no Government approval. The Government, by communication dated 28.11.2024 granted

approval to the proposal of the Board to apply the Pension Schemes to its employees. The document placed on record reveals that Finance Department long back expressed its no objection as the Government would not be burdened.

4. The respondents have sufficient fund to pay the pension as per the Pension Rules. However, after the approval was granted by the State Government, the contesting respondent/Board is not agreeable for the applying the Pension Rules to the employees who have already retired and received the benefits as per the then pension scheme. The contesting respondent has an apprehension that the amount which the petitioners have received was the fullest payment towards the pension and probably applying Pension Rules may be a double pensionary benefit.

5. The learned counsel for respondents has placed on record the order of the Rajasthan Government, dated 20.04.2023, which was on identical facts. However, in that case, the persons who had already received the pension, were to return Contributory Pension Fund/Contributory Provident Fund (EPF/CPF) amount interest @ 12% per annum.

6. The learned counsel for the respondent/Board has vehemently opposed the contention of the learned counsel for the petitioners that Item No.6 in the meeting dated 12.02.2024, the Government Resolution of Finance Department dated 02.02.2024

was referred to and Pension Rules were applied to all employees. The said Rules were not applied to the employees who were retired during the period from 12.02.2024 to 28.11.2024 had received benefit of CPF scheme. In the nut-shell, the contesting respondent has accepted to apply MCS (Pension) Rules. The only controversy raised is about its applicability to employees who have already been retired and received the benefit of the pension as then was in force.

7. We have perused the record with able assistance of the respective counsel.

8. Government Resolution dated 08.11.2005 is significant to decide the dispute. By this Resolution, the Government has directed that new DCPS has been made applicable to the State Government employees appointed on 01.11.2005 or thereafter, instead of existing old pension scheme. Pursuant thereto, the Government has taken decision that the old pension scheme is not applicable to the employees presently working in aided Institutions, Boards, Corporation, etc. Here-after, present existing pension scheme i.e. old pension scheme would not be applied to such institutions. The proposals of employees of aided Institutions / Boards / Corporations, etc. should not be submitted for approval of the Government for application of existing pension scheme i.e. [MCS (Pension) Rules 1982]. However, it has also been clarified

that no such proposal be placed before this Government for applying the old scheme. Item No.6 of the meeting dated 21.02.2024 reveals that the Board/contesting respondent was consistently pursuing for applying the old scheme to the employees. Finally, the Finance Department did raise no objection to apply old Pension, because financial burden for arrangement of pension amount would not be on Government. Again the Government, by communication dated 18.12.2024 informed the contesting respondent/Board to apply the pension scheme without financial burden on the Government.

9. After going through the record placed before the Court, the Board had already made the financial arrangement to pay the pension to its employee.

10. A question arises, can such relief be denied to the employees, who were awaiting for same relief since before their retirement for want of Government approval and they have received the benefits of the Scheme the then applied ?

11. The record reveals that since last many years the subject was taken up to the Government and the Government did not raise any objection. It was only the board to take decision and apply the Pension Rules. There should not be discrimination in the peculiar circumstances of the case, between the employees who are in service and who have already been retired. In such a situation, at

the most an apprehension of the Board of double payment of pension to the petitioners have received towards EPF/CPF, may be resolved by directing to refund or deposit the amount with the Board to adjust the amount. If this would have been done, we are of the view, since the Government has no objection and gave conscious approval for applying the old Pension Scheme from the funds of the Board, the petitioners though retired would not be denied the application of the old pension scheme. However, directing the petitioners to pay the interest over CPF/EPF contribution would be unjust because they had also the contribution. At the cost of repetition, we hold that after having gone through the provisions, the Government has already sanctioned approval or permission to apply scheme to the employees of the Board of contesting respondent. If the amount of the petitioners as received towards EPF/CPF contribution is directed to be deposited with employer if required, it would not burden on the contesting respondent/Board to apply the scheme to the petitioners.

12. The learned counsel for the petitioners would submit that the petitioners were also asking to extend benefits of Medical Group Insurance Scheme pursuant to the Government Resolution dated 09.07.2014. Therefore, direction may be issued to the contesting respondent/Board to apply the scheme.

13. In view of the above discussion, we are of the view that the direction should be issued to the contesting respondent/Board to consider the extension of Medical Board Insurance Scheme vide Government Resolution dated 09.07.2014.

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

ORDER

i) The writ petition is allowed.

ii) The Maharashtra Civil Services (Pension) Rules, 1982 should also be applied to the petitioners. The respondents are directed to consider the extension of Medical Group Insurance Scheme vide Government Resolution dated 09.07.2014.

iii) The contesting respondent No.2 is directed to apply the Maharashtra Civil Services (Pension) Rules, 1982 to the petitioners from the dates of their respective dates of retirement.

iv) So far as the dispute of the CPF/EPF is concerned, whether the petitioners have to refund the amount or the employer/board has to pay certain amount, it would be ascertained after determining the pension of each petitioner on the date of retirement. After making calculations, if it is found that excess payment has been made to the petitioners, they would deposit it with the Board and if it is found that the respondent/Board has paid less amount, the Board would pay it to the petitioners within six months without any interest.

v) No order as to costs.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

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