IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14157 OF 2024

Shayamal Ashok Hardikar ***....Petitioner***

: Versus :

The State of Maharashtra and others ***....Respondents***

WITH
WRIT PETITION NO. 14160 OF 2024

Madhavi Mohan Shinde (since deceased. Through LRs)
1A. Mohan Keshavrao Shinde
1B.Mrs. Meghana Parag Indulkar
1C. Mr. Siddhesh Mohan Shinde ***....Petitioners***

: Versus :

The State of Maharashtra and others ***....Respondents***

Mr. Sagar Ashok Mane, *for the Petitioners.*

Mr. Rajaram V. Bansode *with Ms. Sheetal M. Ubale and Mr. Mohan Chavan, for the Respondent Nos. 2 and 3.*

Mr. Y. D. Patil, *AGP for the Respondent No.1-State in Writ Petition No. 14157/2024.*

Mr. A. R. Deolekar with Mr. S. D. Rayrikar, *AGP for the Respondent No.1-State in Writ Petition No. 14160/2024.*

CORAM : SANDEEP V. MARNE, J.

Dated : 7 May 2025.

P.C. :

1) These petitions highlight the plight of two ex-employees of Maharashtra State Homeopathy Council, who came to be dismissed from service after crossing the age of retirement in respect of stale charges levelled against them. One of the employees, Smt. Madhavi Mohan Shinde, who has unfortunately passed away, was served with Memorandum of Chargesheet on the day of her retirement alleging charges pertaining to the year 2002. Similar charges were levelled against other employee, Shayamal Ashok Hardikar by serving her Memorandum of Chargesheet few days prior to her retirement. The common thread that binds both the employees is that they have been dismissed from service after they retired from the services of the Respondent-Council. The issue for consideration is therefore whether continuation of disciplinary proceedings, initiated against the two employees while they were in service, after their retirement is permissible in law? The Appellate Authority has directed release of Provident Fund in favour of the two employees. However, they are denied gratuity and leave encashment on account of penalty of dismissal from service imposed on them. Aggrieved by the punishment order dated 5 February 2013 and order of the Appellate Authority dated 22 May 2024, one of the employees and legal heirs of the other employee have instituted the present petitions.

2) I have heard Mr. Mane, the learned counsel appearing for the Petitioners, Mr. Bansode, the learned counsel appearing for Respondent Nos.2 and 3 and Mr. Patil and Mr. Deolekar, learned AGPs appearing for Respondent-State.

3) As observed above, the main and the only issue that arises for consideration in the present petition is whether the disciplinary proceedings can be continued against the two employees after their retirement and whether the punishment of dismissal from service can be inflicted upon them after their retirement. Petitioner-Shayamal Ashok Hardikar has retired from service on 31 March 2011 and by order dated 5 February 2013 she has been dismissed from service. Similarly, Smt. Madhavi Mohan Shinde had retired from service on 31 May 2010 and has been imposed the penalty of dismissal from service on 5 February 2013. No doubt, disciplinary proceedings were initiated against the duo while both of them were in service. Disciplinary proceedings were initiated against Shayamal Ashok Hardikar on 8 June 2010. Similarly disciplinary enquiry were initiated against Madhavi Mohan Shinde on 29 May 2010.

4) It appears that the Respondent-Council has adopted provisions of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 for the purpose of conduct of disciplinary enquiry against its employees. However, admittedly provisions of Maharashtra Civil Services (Pension) Rules, 1982 have not been adopted by the Respondent-Council. Therefore, neither pension nor gratuity is payable under the provisions of Maharashtra Civil Services (Pension) Rules, 1982 to the employees of Respondent-Council. Under the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, disciplinary proceedings initiated under the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules are deemed to have been continued under the provisions of Pension Rules. Thus, on account of Rule 27 in the Maharashtra Civil Services (Pension) Rules, it is permissible to continue disciplinary proceedings even in respect of retired Government Servants, against whom disciplinary proceedings were initiated under the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules. There is thus enabling provision in respect of State Government employees for continuation of disciplinary proceedings under the provisions of Maharashtra Civil Services (Pension) Rules even after their retirement. In the present case, however since Maharashtra Civil Services (Pension) Rules are not adopted by the Respondent-Council, there appears to be no enabling provision under which disciplinary proceedings could be continued against the two employees after their retirement. Once an employee retires from service, penalty as specified under the provisions of Maharashtra Civil Services (Conduct) Rules can no longer be imposed. A retired employee cannot be subjected to punishment of stoppage of increments, reduction of pay, reduction of rank etc. Similarly, a retired employee cannot be compulsorily retired, removed or dismissed from service. The only penalty that can be imposed in respect of a retired Government Servant under the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules is to stop pension and gratuity payable to him/her. Thus, it is only in the organisations where pension is payable under the provisions of Rules that disciplinary proceedings can be conducted after retirement of an employee for the purpose of imposing the penalty of permanent/temporary stoppage of pension and/or gratuity either wholly or in part. Since pension scheme is not applicable to the Respondent-Council, there is no question of imposition of penalty of stoppage of pension or gratuity. There is no enabling provision for continuation of disciplinary proceedings against retired employees of the Respondent-Council.

5) The issue as to whether disciplinary proceedings can be continued against a retired employee in absence of enabling provision is no longer *res-integra.* It would be apposite to refer to few decisions on the subject :

(I) In ***Bhagirathi Jena Versus. Board of Directors, O.S.F.C. and others***[1], it is held in paras-6 and 7 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

1 **(1999) 3 SCC 666**

> enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.
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> 7. In view of the absence of such a 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 30-6-1995, 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.

(II) In ***Girijan Cooperative Corporation Limited, Andra Pradesh Versus. K. Satyanarayan Rao***[2] it has been held in paras-13 to 16 as under :

> 13. So far as the second contention raised by Mr Gupta is concerned, we are of the opinion that the manner in which the word "adopt" has been used in the Circular Letter dated 29-8-1998, does not lead to the conclusion that the same has been used in the sense of following the rules as the word "adopt" has been preceded by the words "shall have power to".
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> 14. There cannot be any doubt or dispute that an employer can initiate a departmental proceedings and/or continue the same only in terms of the rules framed by it. It is also a well-settled law that the disciplinary proceedings are initiated only when a charge-sheet is issued. [See Union of India v K. V. Jankiraman (sic)]
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> 15. This Court in UCO Bank v. Rajinder Lal Capoor[3], has held as under: (SCC pp. 702-03, para 21)
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> > "21. The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder i.e. continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceedings, it is trite law, is not

2 (2010) 15 SCC 322

> initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued (see Union of India v. K.V. Jankiraman[2]). This aspect of the matter has also been considered by this Court recently in Coal India Ltd. v. Saroj Kumar Mishra wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge-sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations."
> (See also Ramesh Chandra Sharma v. Punjab National Banks and Punjab National Bank v. M.L. Kalra.)

16. In absence of any rules, therefore, a disciplinary proceeding against a retired employee should not have been continued. The judgment of the High Court, in our opinion, cannot be said to be faulty. We, however, keeping in view the subsequent documents brought before us by the appellant, would observe that, in future, in any other case or before any other authority, the Corporation would be at liberty to place all the relevant documents and to that effect the question of law raised by the appellant herein shall remain open.

(III) In ***Dev Prakash Tewari Versus. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others***[3] the Apex Court has held in paras-8 and 9 as under :

> 8. Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding 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 get full retiral benefits.
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> 9. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and up to the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.

(IV) The Division Bench of this Court in ***Prabhakar Versus. State of Maharashtra through Secretary Agriculture and others***[4] has

3 (2014) 7 SCC 260

4 2016 SCC OnLine Bom 5204

formulated the following question for determination in para-15 of the judgment which reads as under :

> 15. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent - State and the learned counsel appearing for respondent nos. 2 and 3. With their able assistance, perused the pleadings in the petition, annexures thereto, rejoinder filed by the petitioner, affidavit-in-reply, additional affidavit-in-reply and sur-rejoinder filed by the respondents. (i) Legal question which is raised by the petitioner in the present Petition is that whether the respondent Corporation is entitled to continue with the departmental enquiry/proceedings in the absence of any provision either in MAIDC Service Rules or in the MCS (D & A) Rules, 1979? (ii) Whether the ratio laid down in the unreported judgment of the Divisional Bench of the Bombay High Court Bench at Aurangabad in the case of Mr. Dhairyasheel A. Jadhav (supra) can be made applicable in the facts of the present case to accept the contention of the petitioner that there is no provision under the MAIDC Service Rules or in the MCS (D & A) Rules of 1979 regarding continuation/conducting of departmental enquiry after retirement of Officers working in respondent no. 2 Corporation?

The Division Bench thereafter referred to its past decision in ***Mr. Dhairyasheel A. Jadhav Versus. Maharashtra Agro Industrial Development Corporation Ltd.***[5] and held in paras 18 and 19 as under:

> **18.** The Division Bench proceeded to decide the controversy raised in the said Writ Petition considering the provisions of Rule 27(2)(a) of the Maharashtra Civil Services (Pension) Rules, 1982 and also the judgment in the case of Bhagirathi Jena (supra) and concluded that the enquiry against the petitioner therein after his superannuation in the absence of the provision to continue enquiry, was without authority of law and allowed the Writ Petition, thereby holding that the respondent Corporation was not entitled to continue with the enquiry, and accordingly the Corporation should withdraw the said enquiry. Para 9 to 12 of the Judgment in the case of Mr. Dhairyasheela A. Jadhav (supra), are reproduced herein below:
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> 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) …..

5 WRIT PETITION NO. 1930/2005 DECIDED ON 5 FEBRUARY 2010.

(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 were 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. Let us now examine the authorities cited at Bar to consider the contentions urged on behalf of the petitioner herein.

In Bhagirathi Jena (supra), we may gainfully refer to paragraph Nos. 6 & 7 which read 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 the departmental enquiry after superannuation.

7. In view of the absence of such a 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 30-6-1995, 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."

Thus, it is clear that only in the event that there is a provision for continuing the enquiry, the enquiry can be continued. The Supreme Court noted the judgment in the case of Takhatray Shivadattray Mankad v. State of Gujarat reported in, 1989 Supp (2) SCC 110, but distinguished it on the ground that there was specific provision in the form of Rule 241-A which enabled imposition of a reduction in the pension or gratuity of a person after retirement.

11. The question is whether the judgment in the case of Kamal Swaroop Tondon (supra) has taken a view which is different than the view taken in Bhagirathi Jena (supra). Both the judgments are of co-ordinate Benches. The judgment in Bhagirathi Jena (supra) has not been considered in Kamal Swaroop Tondon's case (supra). On the facts there, it will be clear that the respondent had superannuated and show cause notice was issued after retirement i.e. after office hours at 6 : 45 p.m. on January 31, 2000.

The contention urged on behalf the Corporation before the Supreme Court was firstly that if relationship of employer and employee continues and the proceedings can be continued and consequently under the U.P. State Sugar Corporation Ltd. General Service Rules, 1988 such proceedings could have been initiated even after an employee has retired since they related to the recovery of losses caused to the Corporation by the respondent - employee. The learned Supreme Court observed that retiral benefits are earned by an employee for long and meritorious services rendered by him/her. They are not paid to the employee gratuitously or merely as a matter of bounty. It is paid to an employee for dedicated and devoted work. The Court then referred to the principles of gratuity.

On behalf of the respondent herein it is contended that the ratio of the judgment in Kamal Swaroop Tondon's case (supra) is that there can be no rigid, inflexible or invariable test as to when the enquiry should be continued and when they should be allowed to be dropped. The Court then observed the effect of delay in conducting the enquiry and observed that there cannot be laid down a universal proposition that if there be delay in initiation of proceedings for a particular period they must necessarily be quashed. The Court went on to observe from the case law considered that it is clear that the proceedings could have been continued since they were initiated for recovery of loss sustained by the Corporation due to negligence on the part of the respondent employee.

It may be noted that it was not in dispute that the proceedings could have been initiated even after the employee had retired since relating to recovery of loss caused to the Corporation as there were rules for that purpose.

12. In our opinion, it is no doubt true, that the gratuity is a terminal benefit and is subject to the terms and conditions. Withholding of the gratuity can therefore be only if there be the provisions for withholding it in the Act or if there being any service condition which so provide. A person cannot be charged for a misconduct if it does not constitute a misconduct within the definition of misconduct either in terms of the standing order or the service regulations. Similarly no enquiry can be conducted for misconduct if there being no statutory provisions. In the absence of any statutory provisions for continuing the enquiry, in our opinion, the ratio of Bhagirathi Jena's case (supra) which has directly dealt with the issue would be applicable. In the case of Bhagirathi Jena (supra) the Court itself noted the effect of absence of a provision. In our opinion,

therefore, the ratio of Bhagirathi Jena's case (supra) would squarely apply. The enquiry therefore against the petitioner after his superannuation in the absence of a provision to continue enquiry is without authority of law.

19. In the present case also, the petitioner stood retired from the service when the enquiry was pending. On comparison of the legal issues raised in the present case and in the case of Mr. Dhairyasheela A. Jadhav (supra) it is clear that the enquiry cannot be proceeded/continued after attaining the age of superannuation in the absence of any provision to that effect. It is evident from the facts of the case of Mr. Dhairyasheela A. Jadhav (supra), memorandum of charge-sheet was served upon the petitioner on the last day of retirement and the enquiry was continued after he stood retired. The facts of the present case are quite identical to that of the said case.

6) Thus, the law appears to be well settled that in absence of an enabling provision in the Rules, it is impermissible to continue disciplinary proceedings against a retired employee. In the present case, there is no enabling provision under which disciplinary proceedings initiated under the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 can be continued after retirement of the two employees.

7) Mr. Bansode has invited my attention to the Provident Fund Regulations sanctioned by the State Government for the Respondent-Council vide Government Resolution dated 30 April 1971. The said Regulations deal with the issue of payment of Provident Fund to the employees of the Respondent-Council. Regulation 8-A deals with gratuity and provides thus :

8-A Gratuity:-

The Maharashtra Board or the Court as 'the case may be shall also contribute to the Subscriber's Provident Fund, an amount specified in column 2 below on the Subscriber completing the years of service specifies opposite to in Column 1 below:

Years of service.	Amount
An employee who retires after	An amount equal to 3/8th

completing five years service but not completing fifteen years service.	month's pay for each completed year of service.
An employee who retires after completing fifteen years service or after attainment of the age 55 years.	An amount equal 1/2th months pay for each completed year of service the maximum amount so payable being not more than 15 months pay or Rs.5,000 whichever is less.

Provided that an employee who retires on medical grounds before completing fifteen years service shall be paid half months pay for each completed year of service.

Explanation:- For purpose of this role of the employee shall be the average pay drawn by during the three years immediately proceeding the date of his retirement from service, any periods of leave on reduced pay or leave without pay being ignored.

8) Mr. Bansode would rely upon Regulation 11(c) of the Regulations, which provide thus :

11. Circumstances in which accumulations are payable :-

The total sum at the credit of a subscriber shall be payable to him on the termination of his service, subject to the right of the Board or Court of Examiners to deduct there from any sum due to themselves provided that the total sum deducted shall not exceed the total of their contributions to his account and provided that -

(a) ….

(b) ….

(c) If a subscriber is dismissed or removed from service on grounds of gross Misconduct or fraud, he shall not be entitled to any contribution by the Board of the Court of Examiners. Such a subscriber will receive his own subscriptions and his share in the complete accrued interest of the Fund provided that if the order of dismissal is subsequently cancelled, the amount of the Board's on.

9) However, what Regulation 11(c) provides for is denial of employer's contribution to the Provident Fund in respect of a dismissed or removed employee. In the present case, the Appellate Authority has already directed payment of full amount of Provident Fund and therefore there is no dispute about entitlement of the two employees about the accumulations in the Provident Fund Accounts. There appears to be no enabling provision under the Regulations for withholding the gratuity of a dismissed or removed employee of a Council. In any case, if there was any provision for denial of gratuity under the Regulations to a dismissed employee of the Council, the issue in the present case is entirely different. The issue is whether disciplinary proceedings could have been continued after retirement of the two employees and whether punishment of dismissal from service could be imposed upon them. The answer to both the issues would be emphatically in the negative. Since the two employees could not have been dismissed from service after their retirement, they cannot be treated as dismissed employees. This is yet another reason why gratuity cannot be withheld in respect of the Petitioner-employees.

10) Mr. Bansode would question maintainability of Writ Petition No.14160/2023 filed by the legal heirs of the employee-Madhavi Mohan Shinde. As observed above, Smt. Madhavi Mohan Shinde who was working as Deputy Registrar with the Respondent-Council unfortunately passed away on 1 July 2024 due to prolong illness. She has not survived determination of her entitlement to leave encashment and gratuity. In that view of the matter, the benefits payable in respect of late Smt. Madhavi Mohan Shinde would obviously be paid to her legal heirs. The legal heirs are accordingly entitled to file the present petition on her behalf. The objection to the maintainability of Writ Petition No. 14160/2024 is accordingly repelled.

11) The petitions accordingly succeed and I proceed to pass the following order :

(i) The order dated 5 February 2013 imposing the punishment of dismissal from service on employees- Shayamal Ashok Hardikar and Smt. Madhavi Mohan Shinde are set aside. The orders passed by the Appellate Authority on 22 May 2024, to the extent of denial of leave encashment and gratuity are also set aside.

(ii) The Respondent-Council is directed to release all retirement benefits of both the employees within a period of 4 months.

(iii) The retirement benefits in respect of Smt. Madhavi Mohan Shinde shall be released in the name of Petitioner No.1(a)-Mohan K. Shinde (*Husband)* on behalf of all the legal heirs.

12) With the above directions, the Writ Petitions are **allowed and disposed of**. There shall be no order as to costs.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]