

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13285 OF 2024

Digitally
signed by
BASAVRAJ
GURAPPA
PATIL
Date:
2026.03.26
14:43:41
+0530

Union of India & Ors.

.. Petitioners

Vs.

Shri Rajendra Kesav Arekar

.. Respondent

...

Mr. Abhijeet Joshi a/w. Ms. Varsha Sawant and Mr. Sachin Patil, Advocates for the Petitioners

Mr. Laxman S. Deshmukh i/b. Mr. C. S. Patil, Advocates for the Respondent

**CORAM : SHREE CHANDRASHEKHAR, CJ &
SUMAN SHYAM, J.**

DATE : 25th MARCH 2026

P.C. :

The Union of India is aggrieved by the order pronounced on 2nd January 2023 in Original Application No.178 of 2022. By this order, the Central Administrative Tribunal, Mumbai Bench, Mumbai (in short, the Tribunal) held that the clarification issued to Rules 38 and 49 of the Central Civil Services (Pension) Rules, 1972 (in short, the Rules, 1972) through Office Memorandum dated 12th February 2019 is clarificatory and it shall have retrospective effect. To arrive at such a conclusion, the Tribunal referred to a decision of Madras High Court in Writ Petition No.26318 of 2009 whereunder the Madras High Court has held as under:-

".....22 From the ratio it can without doubt, be held that the amendment to Rules 38 and 49 of CCS (Pension) Rules, 1972, and the Office Memorandum dated 12.02.2019 are only clarificatory and will take effect retrospectively. In such circumstances, we have no hesitation to hold that the respondents are bound to grant invalid pension as directed by this Court in its previous order dated 30.06.2009 without insisting on qualifying service. As such, grant of Rs.920/- in lieu of invalid pension is arbitrary, illegal and contrary to statutory Rules adopted and followed by the

respondents in respect of pension. In fine, the impugned order passed in Quoting:00585 dated 26.10.2009 is hereby set aside and the writ petition stands allowed.”

2. The Tribunal also referred to the decision in “V.Ramakrishnan”.¹ and held as under:-

“10. To my mind, the argument of the respondents that the amendment in the rules referred to above, governing the field, shall be applicable to only those who are retired on medical grounds after 04.01.2019 is not correct. Applicant had been retired on medical grounds and he was eligible to receive invalid pension is a fact which is discernible from the retirement order itself. He did not receive the same as he had not completed qualifying service is also an admitted fact. Here, it is to be noticed that this is a settled rule that the pension is not a bounty, it is the right of the employee and denial of the same gives a monthly cause of action to the applicant. It is an admitted fact that the applicant is medically invalidated and hence retired from his service and has claimed the said pension from the date of retirement. Now that the government has also said that a Government servant, who retired from service on account of any bodily or mental infirmity which permanently incapacitates him for the service before completing qualifying service of ten years, may also be granted invalid pension in accordance with sub-rule(2) of rule 49, it is the duty of the respondents to release the said dues to the applicant at least from 04.01.2019, when the said rules were amended. Hence, I deem it appropriate, in view of the Gazette Notification dated 04.01.2019 and further clarification vide OM dated 12.02.2019, to partly allow the present OA.”

3. This is an admitted fact that the respondent was suffering from mental depression and he was hospitalized as indoor patient from 6th December 2004 to 24th December 2004. He was invalidated for further service and retired on invalidity pension on medical ground on 24th December 2004. About 15 years thereafter taking a clue from the clarification to the amendment in Rules 38 and 49 of the Rules, 1972, he approached the Tribunal in Original Application No.178 of 2022.

4. Without adverting to the legal effect of the clarification issued by the Ministry of Personnel, Public Grievances of Pension, we would indicate that an employee who was not in service as on the date of amendment to Rules 38 and 49 of the Rules, 1972 shall not be

¹ “State Bank of India v. V. Ramakrishnan & Anr. : (2018) 17 SCC 394”

entitled for the benefits thereunder. If we were to affirm the direction issued by the Tribunal, this Court shall be doing violence to the service jurisprudence which envisages severance of employer and employee relationship on superannuation, dismissal or discharge of a government employee.

3. For the aforesaid reasons, we interfere with the order dated 2nd January 2023 passed in the Original Application No.178 of 2022 and the same is set aside. Writ Petition No.13285 of 2024 is allowed and disposed of.

[SUMAN SHYAM, J.]

[CHIEF JUSTICE]