



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3132 OF 2008

1. Shri Ramesh S/o Gangadhar Patil
Age : 65 Years, Occu. : Pensioner
R/o 184, Nandanwan Colony,
Cantonment, Aurangabad ... PETITIONER

VERSUS

1. The Ex-Officio Chairman
“Maharashtra Jeevan Pradhikaran”
Express Tower Nariman Point, 4th Floor,
Mumbai 21 i.e. The Minister
for Water Supply & Sanitation
State of Maharashtra, Mantralaya, Mumbai
2. The Member Secretary
Maharashtra Jeevan Pradhikaran
Express Tower, Nariman Point,
4th Floor, Mumbai 21
i.e. the Chief Secretary, State of Mah.,
Mantralaya, Mumbai ... RESPONDENTS

WITH

CIVIL APPLICATION NO. 3756 OF 2016
IN WP NO. 3132 OF 2008

Shri V. D. Sapkal, Senior Counsel i/b Shri D. R. Bhadekar, Advocate
a/w Shri Amit Gaddekar, Advocate for the Petitioner
Shri Rajendrraa Deshmukh, Senior Advocate a/w Shri Shriram
V. Deshmukh, Advocate i/b Shri Vinod Patil, Advocate for Respondent
Nos. 1 and 2

CORUM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.

RESERVED ON : 3rd FEBRUARY, 2025

PRONOUNCED ON : 20th FEBRUARY, 2025

JUDGMENT [Per Shailesh P. Brahme, J.] :

1. With the consent of parties heard both sides.
2. Petitioner is superannuated employee of the respondent, who is aggrieved by order dated 30.10.2006 passed by the Respondent No. 2 as well as order dated 20.02.2008 passed by the Respondent No.1/Appellate Authority dismissing his appeal. Due to the impugned orders petitioner is deprived of pensionary benefits, as he was found guilty in the departmental enquiry.
3. Petitioner was working as Superintending Engineer at Latur Circle since 05.10.1999 and was entrusted with rehabilitation work of Earthquake Affected Persons from Osmanabad. He was found to have indulged in misconduct involving financial irregularities. During his tenure, he was issued with charge-sheet vide communication dated 06.11.2000, levelling three charges against him. Reply to the charge-sheet was tendered by him, denying the charges. When the disciplinary action was pending, he attained age of superannuation on 30.11.2001. He was relieved vide order dated 21.11.2001 subject to the decision of departmental enquiry pending against him. First Information

Report was also lodged against him and the prosecution was pending till filing of the petition.

4. Inquiring Authority submitted report. Before inflicting punishment, show cause notice was issued to the petitioner on 29.05.2006. The explanation was tendered by him on 07.07.2006. By the first impugned order 30.10.2006, punishment was imposed invoking Rule 6, 9 and 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 as well as Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982, (for short “**Pension Rules**”) withdrawing superannuation pension permanently. Being aggrieved, appeal was preferred before Respondent No.1. It was dismissed by last impugned order dated 20.02.2008. Under these facts, petitioner is knocking on the doors of this Court.

5. Learned senior counsel Mr. V. D. Sapkal, for the petitioner submits that petitioner is innocent. He did not indulge in any misappropriation. Following submissions are also made.

(a) Charges leveled against him are false and he is entitled to exoneration.

(b) There is no material to indicate that petitioner was involved in grave misconduct, negligence causing huge financial loss to public exchequer.

- (c) The punishment imposed is totally disproportionate. There were other delinquents also to share the liability. Co-delinquent was issued with penalty of 50% of withdrawal of pension.
 - (d) There is no sanctity of law to impose penalty of withdrawal of pension, after the superannuation of the petitioner. Independent inquiry should have been conducted as per Rule 27(1).
 - (e) Without resorting to the procedure under Rule 27 penalty was imposed for the charges which were framed when he was in service. There is violation of principles of natural justice.
6. Reliance is placed on judgments of :
- (A) Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Anr. Vs. Bhughonda B. Patil reported in Bom.C.R. 197
 - (B) State of Uttar Pradesh Vs. Brahm Datt Sharma and Another in Civil Appeal No. 481 of 1987 decided on 25.02.1987.
7. Learned senior counsel Mr. R. S. Deshmukh, repeals the submission on the basis of affidavit-in-reply in following manner :

- (i) The punishment imposed by the authorities, which is under challenge is within purview of Rule 27(1) and with Rule 27(2)(a) of Pension Rules.
- (ii) The disciplinary action commenced before the superannuation. After superannuation, show cause notice was given to the petitioner. After extending opportunity to him, punishment was imposed.
- (iii) Petitioner is found guilty for serious charges causing loss to the tune of Rs. 2.62 Crores, which is public money. There is material to support misconduct of the petitioner.
- (iv) Criminal case is still pending against him. The amount of gratuity and leave encashment are withheld.

8. Having heard both sides, we propose to address three questions: (I) Whether due procedure of law is followed in inflicting punishment of withdrawal of pension? (II) Whether finding of the disciplinary authority holding the petitioner guilty is liable to be interfered with? (III) Whether impugned punishment is reasonable and proportionate?

9. When the disciplinary action started, petitioner was in service. He was issued with charge-sheet containing three charges vide communication dated 06.11.2000. He tendered reply to the

charges. He was superannuated on 30.11.2001. He was discharged by order dated 21.11.2001 w.e.f. 30.11.2001 subject to outcome of disciplinary inquiry. He was facing serious charges of misconduct, involving financial irregularities. The disciplinary action commenced to enquire into the charges for the major punishment provided by Rule 5 of M.C.S.R. (Disc. and Appeal) Rules.

10. **Whether due procedure is followed in inflicting the punishment of withdrawal of pension?**

The disciplinary action was initiated against the petitioner levelling charges of misconduct involving negligence and financial irregularities. Due to superannuation, it was not permissible to impose punishment prescribed under rule 5 of (Discipline and Appeal) Rules of 1979. As per rule 27(1) of Pension Rules it was permissible to impose penalty to withhold or withdraw a pension or any part thereof and also to order recovery from the pension due to loss caused to the government. It is not the purport of Rule 27 that the disciplinary action which commenced when delinquent was in service is to be aborted or terminated. Neither is it contemplated that by abandoning already commenced inquiry a *de novo* inquiry is resorted to for the punishment prescribed in Rule 27 (1).

11. The departmental proceeding though commenced for imposing the penalty under Rule 5 of (Discipline and Appeal) Rules, due to superannuation can be continued or concluded for the punishment under Rule 27(1) of Pension Rules. What is imperative is to extend opportunity to delinquent to meet the proposed penalty. We are unable to accept the submissions of learned senior counsel Mr. Sapkal that after superannuation a *de novo* inquiry is contemplated for inflicting penalties prescribed in Rule 27(1) of Pension Rules.

12. Another facet of the matter is that inquiry for the grave misconduct or negligence commenced when delinquent is in service must conclude with some finding on charges. The finding of the guilt is necessary for imposing punishment prescribed in Rule 27(1) of Pension Rules either for curtailing pension or to make good the loss caused to the Government. Therefore, at any rate, the already commenced inquiry cannot be terminated without recording finding over the charges in either way. It is impossible to open *de novo* inquiry after superannuation for the misconduct alleged to have occurred beyond the time prescribed under Rule 27(2)(b).

13. Where the gross misconduct is found to have been committed by government servant while in service, allowing such a person to earn full pension for rest of his life after retirement is inequitable as the pension is given for not only long service but for sincere and faithful discharge of duties. We may refer to observations of Division Bench of Delhi High Court in the matter of *Union of India and Another Vs. S. K. Mathur and Another* in *Writ Petition (Civil) No. 17221-22 of 2004* of which paragraph No. 31 is as follows:

“31. A government employee gets pension on his retirement and continues to get the same for the remainder of his life. So much so, that the family of a government servant is entitled to family pension after the death of government servant. This benefit is given for rendering long and faithful service by the government servant. However, if it is found that during his employment he had committed some act of indiscipline or misconduct, it should naturally have some bearing on these terminal dues like gratuity of pension. For this reason, when the irregularities committed by a government servant while in service are noticed and the disciplinary proceedings are initiated, the Government has the right to continue the same after retirement as well. In cases where the gross misconduct is found to have been committed by a government servant while in service, allowing such a person to earn full pension for rest of his life after retirement may not be proper as the pension is given for not only long service but for sincere and faithful discharge of duties. It is for this reason that even when no inquiry was instituted when the Government servant was in service, provision is made to proceed against him departmentally even after his retirement. However, at the the same time, balance is struck by

providing that the alleged irregularity should not be of a period more than four years old from the date of institution of departmental proceedings. This provision obviates the possibility of harassing retired Government servants by digging up old issues.”

14. In the present case department proceedings culminated in inquiry report dated 13.10.2003. The petitioner was superannuated and thereafter, recourse was taken to Rule 27. He was found guilty for the charges levelled against him. A show cause notice dated 29.05.2006 was served upon him calling upon the explanation as the charges were proved why punishment under Rule 27(1) should not be imposed. He replied the notice on 07.07.2006. Thereafter, considering the inquiry report and the explanation of the petitioner for the proposed punishment, detailed order was passed on 30.10.2006 by the appointing authority holding him liable of withdrawing pension permanently.

15. Petitioner was given opportunity and his explanation was considered before imposing the penalty in question. In our view, this is sufficient compliance to Rule 27. We have already recorded that in the given facts and circumstances, it is not necessary to terminate the departmental proceedings, which had commenced, when the petitioner was in service and to start with

de novo procedure for the purpose of imposing penalty under Rule 27(1).

16. Learned Senior counsel Mr. V. D. Sapkal relied on the judgment of learned single judge in the matter of ***Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Anr.*** (supra). In that case respondent employee was suspended in the year 1992. He was served with charge-sheet in 1994. The findings of the inquiry committee were challenged in High Court and they were quashed. The petitioner/Management was directed to complete preliminary inquiry before proceeding with regular inquiry. Respondent was superannuated in 1996. Thereafter, disciplinary action proceeded. He was found guilty and thereafter he was dismissed from the services in 1999. Being aggrieved, appeal was preferred and it was allowed by the tribunal. Under the said factual matrix, the observations were recorded in paragraph Nos. 10 to 15. The Management's petition was dismissed. It is observed in paragraph No. 13 that

“13.However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that.”

17. We do not concur with the observations, because we have already recorded that findings on the misconduct or the negligence is with a specific object and it is decisive for further course of action to be taken against delinquent. We have also referred to observations of Delhi High Court.

18. In the matter before learned single judge, it was not made known to the respondent delinquent after superannuation that proceedings would be continued with reference to the issue of payment of pension. In the case at hand, there was specific show cause notice issued by the respondent and granting him opportunity. We are not persuaded by this judgment of the single judge.

19. Reliance is placed on the matter of *State of Uttar Pradesh* (supra). In that case, the respondent employee was terminated from the services after conducting departmental enquiry and after the charges were being proved. His dismissal was challenged before tribunal unsuccessfully. Thereafter, he preferred writ petition. Single Judge allowed his petition as he was by then superannuated. A liberty was given to the State to draw fresh proceeding as permissible in law. The State issued show cause

notice calling upon him as to why orders of forfeiture of his pension and gratuity be not passed. By filing separate application show cause notice was challenged. It was quashed by single judge. Being aggrieved State was before apex Court.

20. In the above context, the observations were made by the apex Court in paragraph Nos. 5 and 7. It was held that if the delinquent retires from service on attaining age of superannuation before completion of the proceeding, it would be open to the State to direct deduction in pension on the proof of allegation made against him. If the charges are not established during the disciplinary proceeding or if the disciplinary proceedings are quashed, it is not permissible for the State to direct deduction in pension. It is further held that if the charges of serious allegations are established which may have bearing on the question of rendering efficiency and satisfactory service it would be open to the Government to take proceeding against the delinquent in accordance with the Rules for the reduction of pension and gratuity. Therefore, ultimately, it was held that the show cause notice issued by the State was valid and the appeal was allowed.

21. It is useful to refer to observation of paragraph No. 6.

“6. Grant of pension to employees of the State Government is regulated by the Civil Service Regulations which have statutory character. Article 348-A provides that pension shall be granted subject to the conditions contained in the Regulations. Article 351-A empowers the Governor to withhold or withdraw pension or any part of it, whether permanently or for a specified period and also to order recovery from pension of the whole or part of the pension for any pecuniary loss caused to the Government if the pensioner is found guilty in departmental or in judicial proceedings for any misconduct or negligence during his service. Article 353 lays down that no pension shall be granted to an officer dismissed or removed from service for misconduct, insolvency or inefficiency, but compassionate allowance may be granted on special consideration. The claim of pension is determined by length of service, as provided by Article 474 to 485. Full pension is admissible under the rules not as a matter of course but only if the service rendered by the Government employee is approved. The Regulations empower the authority sanctioning the pension to make such reduction in the amount of pension as it may think proper. These provisions indicate that a Government servant is entitled to pension but the claim of pension is determined in accordance with the statutory rules. No doubt pension is no more a bounty; instead it is a right earned by the Government servant on the basis of length of service, nonetheless grant of full pension depends on the approval of service rendered by the employee. In other words if the service rendered by the Government servant has not been satisfactory he would not be entitled to full pension and it would always be open to the Govt. to withhold or reduce the amount of pension in accordance with the statutory rules. If the Government incurs pecuniary loss on account of misconduct or negligence of a Govt. servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Govt. to initiate departmental proceedings, and if in those proceedings he is found guilty of misconduct, negligence or any other such act

or omission as a result of which Govt. is put to pecuniary loss, the State Govt. is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. These provisions ordain the Govt. servant to perform his duties faithfully and honestly. Honest and devoted service rendered by a Govt. servant ensures efficiency in public administration. The statutory rules therefore contain provisions for the forfeiture and deduction in the pension of Govt. servant who have not rendered satisfactory service or who have been found guilty of misconduct or negligence resulting in pecuniary loss to the Govt. Merely because a Govt. servant retires from service on attaining the age of superannuation he cannot escape the liability of misconduct and negligence or financial irregularities. ”

22. In the case at hand also show cause notice was issued to the petitioner. His explanation was solicited and thereafter, the impugned penalty was imposed. The respondents are justified in imposing penalty after finding the petitioner guilty of the charges.

23. Senior counsel Mr. Deshmukh, relied on the judgment in the matter of **Manohar B. Patil Vs. State of Maharashtra and Others** reported in **2013(6) Mh.L.J.** In that case, petitioner was superannuated. Thereafter, the disciplinary proceedings started against him then show cause notice was issued for the purpose of withholding or reducing the retiral benefits. Then a charge-sheet was served on him. It is not a case that the departmental proceedings commenced before superannuation as is done in the

present matter. It is not a case covered by Rule 27(2)(a). We find that ratio is not applicable to the present case.

24. For the reasons assigned above, we hold that the penalty imposed on the petitioner is in accordance with law. There is no violation of statutory procedure or principles of natural justice.

25. Whether finding of the disciplinary authority holding the petitioner guilty is liable to be interfered with?

It is a matter of record that three charges were levelled against petitioner which were denied by him. Those are serious in nature pertaining to the financial loss caused to the department. Inquiry report was prepared on 13.10.2003 albeit the same is not on record. By impugned order reasons are recorded by the respondents holding the petitioner guilty. Those reasons were assailed by him before the appellate authority. The appellate authority by reasoned order dated 20.02.2008 confirmed the findings. The concurrent findings of fact are recorded against him. The appreciation of material is not permissible while exercising jurisdiction under Article 226 or 227 of the Constitution of India. We find that there was material against the petitioner to hold him guilty. Though learned senior counsel for the petitioner adverted

our attention to reply to the charge-sheet, statement of Mr. Rajendra Madhavrao Sagne, approval letter dated 14.12.1999 and the further record to make out a case of exoneration from the charges, those are findings of facts. We cannot embark an inquiry into that aspect of the matter. We do not find that there is any perversity or patent illegality in holding the petitioner guilty.

26. Whether impugned punishment is reasonable and proportionate?

It is informed that the disciplinary action was taken against three persons. The prosecution against the petitioner is still pending. Considering the charges and explanation of the petitioner, it transpires that he is not the only person responsible for causing loss to the department. It would be unreasonable to hold that he was solely responsible for loss of Rs. 2.62 Crores as has been projected by the respondents.

27. Our attention is invited to the judgment and order dated 28.11.2018 passed in case of *Digambar Ramrao Kulkarni Vs. The State of Maharashtra* in *Writ Petition No. 9224 of 2015*. He was also co-delinquent. He was removed from the services. Both the Courts below in that case held that he was not workman, as he

was Assistant Engineer. His petition was entertained by the Division Bench. The following order was passed.

“10. (i) The punishment imposed upon the petitioner of removal from service is quashed and set aside.

(ii) The respondent shall proceed with the inquiry in the disciplinary proceedings from the stage of evidence afresh. The respondent shall conclude the disciplinary proceedings within four months from the date of appearance of the petitioner.

(iii) The petitioner shall appear in the disciplinary proceedings on 18.12.2018. The respondent may direct its Presenting Officer to remain present in the inquiry proceedings on that date.

(iv) The petitioner shall be under suspension, till he attained the age of superannuation. As stay was granted by the Labour Court and the petitioner was in service till 24.03.2008, the subsistence allowance may be paid from 24.03.2008 till the date the petitioner attained the age of superannuation, within one month.

(v) The amount, if any, already paid from 24.03.2008, shall be adjusted accordingly.

(vi) The superannuation of the petitioner and all retiral benefits would be subject to the decision that may be taken by the disciplinary authority in the disciplinary proceedings.”

28. It is brought on record that vide order dated 10.03.2021. Co-delinquent was inflicted the penalty of withdrawal of 50% of the pension permanently. The impugned order in the case at hand do not spell out any reasons for imposing harsher

penalty. It is overlooked that the petitioner was not only delinquent for causing loss to respondents. Penalty is aimed at making good the loss. Then it is unreasonable to saddle entire liability on petitioner.

29. We are of the considered view, that punishment imposed on the petitioner in the present matter is disproportionate. Ends of the justice would be subserved if the punishment is reduced to withdrawal of 50% of pension permanently. We hold that this question needs to be answered in favour of the petitioner partly. For the reasons assigned above we pass following order.

ORDER

- (i) The petition is partly allowed.
- (ii) The order dated 30.10.2006 passed by the respondent No. 2 and order dated 20.02.2008 passed by the appellate authority are modified by imposing the penalty of withdrawal of 50% of the retiral benefits with permanent effect.
- (iii) Petitioner shall be disbursed 50% of the pension.
- (iv) The respondents shall disburse the balance amount to the petitioner for the period from 30.11.2001, which is withheld.
- (v) Rule is made absolute in above terms.

(SHAILESH P. BRAHME, J.)

Komal Kamble/

(S. G. MEHARE, J.)