

Bombay High Court Ratnakar Bhagwanrao Mahajan vs The District & Sessions
Judge on 24 September, 2008 Bench: F.I. Rebello, K.U. Chandiwal - 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2555 OF 2008

Ratnakar Bhagwanrao Mahajan
Age: 51 Yrs., occu: Retired,
Near Swami Samarth Mandir,

Narimannagar, Old Jalna.
Near Railway Station, Jalna.

.. PETITIONER

VERSUS

- 1) The District & Sessions Judge
Jalna.
- 2) The Hon'ble Registrar,
High Court of Judicature at Bombay,
Bombay.

..RESPONDENTS

.....

Shri S.D.Dhongade, Advocate for Petitioner;
Shri U.K.Patil, AGP for Respondent Nos. 1 & 2.

.....
CORAM: F.I.REBELLO &

K.U.CHANDIWAL, JJ.

Date : 24th September, 2008

P.C.

1) Rule. Heard forthwith.

2) The petitioner had joined as Bailiff in the District Court at Jalna. He was subsequently promoted to

the post of Clerk and has rendered 25 years of service.

The petitioner was transferred to the Jafrabad Court at Jalna district on 7.6.2004. The petitioner applied for

voluntary retirement and was allowed to retire w.e.f.

6.9.2004 by order dated 30.8.2004. The petitioner on

27.9.2004 thereafter submitted an application for

- 2 -

withdrawal of the notice of voluntary retirement.

was rejected on 29.9.2004.

2) After his retirement, show cause notice, as to why

disciplinary proceedings should not be initiated,

served on the petitioner on 5.10.2004. That was based on a report of the JMFC, Jafrabad dated 1.9.2004 which was received in the office of District Judge on 3.9.2004. A consideration of the charge sheet which has been filed prima facie indicates that the charges are in respect of absentism and failure to take charge of muddemal and record section in his new posting at Jafrabad Court. From the record one finds that before acceptance of the application made by the petitioner for voluntary retirement, the petitioner was granted leave. For the period w.e.f. 24.7.2004 to 5.9.2004, post facto sanction was granted by order dated 30th August, 2004. Subsequent to the show cause notice, an enquiry was conducted, pursuant to which an order was passed, withholding 10% of his total admissible pension till 5.9.2011. An administrative appeal had been preferred and that appeal was disposed of on 1.12.2007. It is these orders which are the subject matter of challenge in this writ petition. - 3 - 3) The case of the petitioner is that the entire proceedings are vitiated as no permission of the Government was taken to initiate the proceedings subsequent to the retirement. Learned Counsel placed reliance on Rule 27(2)(b)(i) of the Maharashtra Civil Services (Pension) Rules, 1982, which hereinafter shall be referred to as Pension Rules. Considering that contention, we had asked the respondents by our order dated 26.8.2008 to reply to the said contention. 4) A reply has been filed on behalf of Respondent nos. 1 and 2.

In so far as contention as regards not

permission, it is sought to be explained in para 7

though the petitioner was allowed to retire from 6.9.2004, a report dated 1.9.2004 had been received on 3.9.2004 that is before the date of retirement and in these circumstances, the permission from the Government not taken. We do not propose to go into the merits of the matter, except, as already pointed out, leave

in respect of the periods in respect of which most of the charges have been framed had been sanctioned from time to time by the Sanctioning Authority.

5) The real controversy in issue is whether the departmental proceedings could have been sanctioned without sanction of the State Government ? Rule - 4 - 27(2)(b)(i) of the Pension Rules reads as under : “27(2)(b)- The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment - (i) shall not be instituted save with the sanction of the Government.” . The petitioner, admittedly, was allowed to retire from service w.e.f. 6.9.2004 by the communication of 30th August, 2004. The show cause notice was issued only on 5.10.2004. Merely because the attention of the Disciplinary Authority was invited to certain acts, may be amounting to misconduct, will not result in initiation of disciplinary proceedings without previous approval. It is only in the event disciplinary proceedings were initiated before an employee retires, would the provisions of Rule 27 (2)(b)(i) of the Pension Rules be inapplicable. As to when departmental proceedings can be said to be initiated, we may gainfully refer to the judgment of the Supreme Court in U.P.State Sugar Corporation Ltd. and Ors. Vs. Kamal Swaroop Tondon - 2008 AIR SCW 1241. In that case, a show cause notice was served to the Govt. employee on January 13, 2000 when he was in service. The employee - 5 - submitted his explanation and thereafter regular show cause notice was issued by the Corporation on 31st January, 2000 and was served upon the employee on the same day. The issue before the Supreme Court was whether issuance of the show cause notice could be said to be initiation of departmental proceedings. The learned Court observed as under : “A regular show cause notice as to departmental inquiry was also served upon the respondent-employee on the last day of his service which was January 31, 2000. In our opinion, therefore, it could not be said that the proceedings had been initiated against the respondent-employee after he retired from service” 6) From these observations, it would be clear that initiation of the departmental proceedings would commence from the date of issuance of regular show cause notice by the Disciplinary Authority. In the instant case, the show cause notice was issued on 5.10.2004, much after the retirement of the employee on 6.9.2004. Rule 27 of the Pension Rules confers the powers on the Government to withhold or withdraw the pension. The said Rule provides the procedure when such an order can be passed. In the case of an employee, who retires proceedings can still be - 6 - initiated as set out in Rule 27(2)(b) if those predicates are satisfied. One of the predicates, as pointed out earlier, is that departmental proceedings cannot be initiated without the sanction of the Government. The expression “save with the sanction of the Government” must be read to mean a mandatory requirement for a Disciplinary Authority to initiate the proceedings. Withough that sanction the proceedings would be without jurisdiction considering that the employee is no longer in service. 7) The power to initiate disciplinary proceedings is not a part of judicial functions of the District Judge who in the instant case was the Disciplinary Authority. The power to initiate disciplinary proceedings flows from the administrative power conferred on him by the rules. Rules require that after an employee has retired the disciplinary proceedings

can be initiated after the sanction by the State Government. In other words, the ordinary power conferred in the case of retired employee is subject to previous sanction of the State Government. Admittedly, in the instant case, as seen from the reply filed by the respondents, no sanction was obtained by the Disciplinary Authority. In the light of that, the impugned order dated 7.2.2007 passed by the Disciplinary Authority as also the order dated 1.12.2007 passed in administrative appeal are quashed and set aside. The respondents are directed to release the pension which had - 7 - been withheld by the impugned order and to continue to pay the petitioner his full pension according to law forthwith. (K.U.CHANDIWAL, J.) (F.I.REBELLO,J.) bdv/uniplex/wp2555.08