

(2022) 09 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition No.1414 Of 2020

A. N. Radha

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-09-2022

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 129B

Citation : (2022) 09 BOM CK 0156

Hon'ble Judges : Sunil B. Shukre, J;G. A. Sanap, J

Bench : Division Bench

Advocate : Dr. R. S. Sundaram, N. S. Rao

Judgement

Sunil B. Shukre, J

1] Heard. RULE. Rule made returnable forthwith. Heard finally by consent.

2] The petitioner is granted permission to amend the prayer clause. The prayer clause be amended as per Government Resolution dated 20.02.1985.

3] Nobody is present for respondent No. 3 before this Court.

But, respondent No. 3 has already given its no objection by letter dated 17.11.2016 for granting pension and other retiral benefits to the petitioner.

4] This petition is seeking pensionary benefits and gratuity in accordance with the pension scheme formulated under the Government Resolution dated 20.02.1985. However, the Pension Scheme and Death-cum-Retirement gratuity Scheme has not been made applicable to the petitioner on the ground that she had given an option for being governed by Contributory Provident Fund Scheme.

5] According to the learned counsel for the petitioner, the reasons stated in the impugned order are contrary to the provisions of the Scheme itself. In the opinion of learned AGP, the impugned order is correct, although the respondent Nos. 1 and 2 would not explain as to how the impugned order will be reconciled

with the provisions made in the Government Resolution dated 20.02.1985, whereby the above Scheme was brought into force.

6] In the opinion of respondent Nos. 1 and 2, as stated earlier, the Pension Scheme could not be made applicable to the petitioner because she had given an option to be governed by Contributory Provident Fund Scheme. But, it is an admitted fact that the petitioner was appointed as a Principal with effect from 01.09.1985 and approval for which was issued by the Government on 21.08.1985. Under Clause 8-C, no option regarding applicability of earlier Contributory Provident Fund Scheme or Pension Scheme as per Government Resolution dated 20.02.1985 is available to those employees who have been recruited on or after 01.10.1982. For the sake of convenience this clause is reproduced as below:

“(c) Those employees who have been recruited on or after 1st October 1982 shall not have any option, but they shall be governed by the Pension and Death-cum-retirement-gratuity scheme sanctioned under this resolution, provided they are otherwise eligible.”

7] The provision made under Clause 8-C of the Government Resolution dated 20.02.1985 was again reiterated by the Government in its Government Resolution dated 10.08.1994, where it is said that the employees of Non Agricultural Universities and affiliated non Government Colleges, appointed after 01.10.1982 and in service on the date of issuance of the Government Resolution would have no option whatsoever to be governed by either of the Schemes and would be perforced governed by the pension and gratuity scheme alone. The relevant portion of the Government Resolution dated 10.08.1994 for the sake of convenience is reproduced as under:

“Considering all the above relevant matter Govt. has now decided that, henceforth in Non-agricultural Universities and affiliated non-Govt. Colleges, those teaching and non-teaching employees who had been appointed after 1.10.1982 and those who are presently in service and those who would be appointed in service thereafter. All such employees only Pension and Gratuity Scheme alone should be made applicable. Those employees who have not yet exercised option for Pension and Gratuity Scheme in order to avail benefit of CPF such employees should also be governed only by pension scheme alone. All concerned should take note of the same.”

8] So, it is clear that even if the petitioner had given some option as regards applicability of Contributory Provident Fund Scheme, the option so given carried no meaning from the view point of applying the Pension Scheme to the employees appointed on or after 01.10.1982. The petitioner having been appointed after 01.10.1982, did not have benefit of exercising any option and is compulsorily governed by the Pension-cum-Gratuity Scheme as promulgated in Government Resolution dated 20.02.1985 and reiterated in subsequent Government Resolution dated 10.08.1994. The reasons stated in the impugned

order for denial of benefit of Pension-cum-Gratuity Scheme to the petitioner are contrary to the executive instructions contained in the Government Resolutions dated 20.02.1985 and 10.08.1994. The impugned order, therefore, deserves to be quashed and set aside. The petition is, thus, allowed in terms of prayer clauses (a), (a-1), (b) and (b-1), which read as under:

“(a) Issue a Writ of Certiorari and/or Writ, order or direction thereby direct the respondent no.1 State of Maharashtra, through Secretary, Higher Technical Education, Mumbai and the respondent no.2 Director of Technical Education, Maharashtra State, Pune to grant pensionary benefits and gratuity to the petitioner as per Government Resolution dated 20.02.1985 which is at Annexure F, without insisting for an option as per Clause 8(c) of the resolution, within a stipulated time period, in the interest of justice.

(a-1) Order and direct the respondents No.1 and 2 respectively to extend the same concession granted to other graduate Lecturers and Professors as per Government Resolution dated 23/06/2015 to the petitioner since petitioner is identically placed;

(b) Order and direct the respondent nos. 1 and 2 to pay the arrears of pension and gratuity along with interest @ 12% per annum, within a stipulated time period;

(b-1) Issue writ, writ order or direction quashing and setting aside the communication dated 20/02/2017 (Annexure -O) there by rejecting the claim of the petitioner for pension cum gratuity scheme being illegal and improper.”

9] Pension alongwith all arrears and other benefits and applicable interest for delayed payment, under Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982, be paid to the petitioner in terms of this final order within a period of three months from the date of the receipt of the order.

10] Rule is made absolute in the above terms. No costs.