
(2016) 05 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 1741 of 2016

Abdul Mannan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Constitution of India, 1950 — Article 309, 311
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 27(1)

Citation : (2016) 4 AIRBomR 61 : (2016) 6 ALLMR 621 : (2016) 6 SLR 106

Hon'ble Judges : S.S. Shinde and V.K. Jadhav, JJ.

Bench : Division Bench

Advocate : Mr. Amit A. Mukhedkar, Advocate, for the Appellant; Mr. S.B. Yawalkar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jadhav, J.—By consent of the parties, heard finally at admission stage.

2. By way of this Writ Petition, petitioner is challenging the correctness and legality of the judgment and order dated 27.11.2015 passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No. 75 of 2005, whereby the Original Application filed by the petitioner came to be rejected.

3. Brief facts, giving rise to the present writ petition, are as follows:

(a) The petitioner, way back in the year 1968, joined his services as a Range Forest Officer at Divisional Forest Office, Thane Circle, and came to be appointed at Mandvi Range, Vasai, District Thane. On 09.07.1990, when he was serving at Deulgaon Raja, District Buldhana, he was served with a suspension order passed by respondent No.2 under Rule 4(1) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. On or about 30.12.1990, respondent No.2 had initiated departmental enquiry against the petitioner and in all four charges were levelled against him. After completion of the enquiry, the enquiry officer came to the

conclusion that, petitioner is guilty of charges at serial Nos. 1 and 2, and was exonerated from the charges at serial Nos. 3 and 4. Respondent No.1, by order dated 11.10.2004, has withdrawn/withheld 100% of the petitioner's pension amount for the misconduct committed by him during the tenure of service.

(b) Being aggrieved by the same, petitioner challenged the said order dated 11.10.2004 passed by respondent No.1 by filing Original Application No.75 of 2005 before the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad. The Tribunal, by impugned judgment and order dated 27.11.2015, dismissed the Original Application. Hence this Writ Petition.

4. Learned counsel appearing for the petitioner made the following submissions:

(A) It is mentioned in the order passed by Respondent No.1, that 100% pension of the petitioner is withheld/withdrawn permanently as per Rule 27(5)(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "the Pension Rules"). If the said provision is perused, it reveals that the order dated 11.10.2004 is contrary to the said provision. The Tribunal has not at all considered the points raised by the petitioner. There is apparent and manifest error committed by the respondent while passing the order impugned in the Original Application. Even the enquiry officer suggested for inflicting minor penalty as per Rule 5(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short "Discipline and Appeal Rules") by way of withholding three increments of the petitioner, whereas, respondent No.1, instead of withholding three increments of the petitioner, by order dated 11.10.2004, which is impugned in the Original Application before the Tribunal, has withdrawn/withheld 100% of the pension amount of the petitioner. Though aforesaid point was urged before the Tribunal, the same is not at all discoursed in the entire judgment delivered on 27.11.2015.

(B) By filing rejoinder in the Original Application before the Tribunal, petitioner contended that the order of conviction passed by learned Judicial Magistrate First Class, Deulgaon Raja against the petitioner in Regular Criminal Case No. 861 of 1992 arising out of the same instance, was quashed and set aside by the judgment and order dated 27.06.2005, delivered by the Additional Sessions Judge, Buldhana in Criminal Appeal No. 6 of 2001. Learned counsel submits that the charges levelled against the petitioner in the said criminal case, more particularly, point nos. 4 and 5, are exactly similar to the two minor charges on which the petitioner is held guilty by the enquiry officer in the disciplinary enquiry. However, the Tribunal has not considered the same. The findings in the disciplinary enquiry regarding holding the petitioner guilty of minor charges at serial Nos. 1 and 2, is perverse. The other two charges, in which the petitioner is held to be not guilty, are co-related with the charges wherein he is held guilty. Therefore, the order of holding petitioner guilty ought not to have passed in piece meal, as per wish and whims of the enquiry officer.

(C) The petitioner is now an old aged senior citizen and pension is the only source for survival of himself and his old aged wife. Entire service tenure of the

petitioner is clean and unblemished, save and except the disciplinary enquiry in question.

5. Learned AGP for respondent-State submits that after due enquiry, the petitioner was found guilty of charges No. 1 and 2. Respondent No.1 has correctly withdrawn/withheld pension to the extent of 100% permanently by considering seriousness of the charges proved against the petitioner. Though in the order passed by respondent No.1, which is impugned in the Original Application before the Tribunal, it is mentioned that pension is being withdrawn/ withheld as per Rule 27(5)(1) of the Pension Rules, it is, in fact, being withheld under Rule 27(1) of the said Rules, and sub-rule (5) of Rule 27 of the Pension Rules is applicable only when withholding or withdrawing of pension pertains to recovery of pecuniary loss from pension, and if the pension is withheld or withdrawn for recovery of pecuniary loss, then in that case, such withholding or withdrawal shall not exceed one third of the pension amount admissible on the date of retirement. Pension of the petitioner has been withheld 100% not as a recovery towards pecuniary loss caused to the Government, and the same is withheld permanently after considering the seriousness of charges levelled and proved against the petitioner. Learned AGP submits that there is no substance in the Writ Petition and the Writ Petition is liable to be dismissed.

6. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 reads thus:

"27. Right of Government to withhold or withdraw pension.

(1) Government may, by order in writing, withhold or withdraw a pension or any part of it whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(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 reemployment, 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.

(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,
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.
- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.
- (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.
- (5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.
- (6) For the purpose of this rule,-
- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
 - (b) judicial proceedings shall be deemed to be instituted-
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, or which the Magistrate takes cognizance is made, and
 - (ii) in the case of civil proceedings, on the date of presenting the plaint in the Court."

7. Apparently, the provisions of law contained in sub-rule (1) of Rule 27 of the Pension Rules empowers the Government to pass an order withholding or withdrawing pension or any part of it, whether permanently or for a specific period, if, in any departmental enquiry or judicial proceeding, the pensioner is held guilty of grave misconduct or negligence either during the period of his service or during the period of re-employment. Rule 27(1) is comprised of two parts. First part speaks of the power of the Government to pass an order regarding reduction or withdrawal of pension and the second part deals with the

circumstances in which such an order can be passed. So far as sub-rule (5) of Rule 27 is concerned, the provisions of sub-rule (5) comes into picture if the Government decides not to withhold or withdraw the pension amount but orders recovery of pecuniary loss from the pension, and in that event, recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant. It is, thus, clear that respondent authority has passed the order dated 11.10.2004 under the provisions of Rule 27(1) and not under Rule 27(5) of the Pension Rules, 1982. Merely because in the order dated 11.10.2004, impugned in the Original Application before the Tribunal, instead of mentioning Rule 27(1), Rule 27(5)(1) is mentioned, the petitioner is trying to misinterpret the same and trying to take undue advantage of the same.

8. In clear terms, Rule 27 of the Pension Rules provides that departmental proceedings initiated for disciplinary action can be concluded after the age of superannuation for the purpose of reduction or withdrawal of pension and gratuity and not for the purpose of disciplinary action. Further, Clause (a) of sub-rule (6) thereof provides that "for the purpose of the said Rule, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from the earlier date, on such date."

9. So far as the disciplinary enquiry initiated against an employee for any misconduct on his part and continued till the employee attends the age of superannuation, the departmental proceedings enumerated in Rule 27 of the Pension Rules, 1982 are wholly and solely in relation to the issue pertaining to the payment of pension.

10. Sub-rule (1) of Rule 27 refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re-employment in any departmental proceedings. 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 the misconduct or negligence having been established and nothing beyond that.

11. In the case in hand, after conclusion of the enquiry, a notice dated 11.12.2000 was served on the petitioner as to why he should not be dismissed from the services and the petitioner had also submitted his defence statement to the said notice. However, during pendency of the same, the petitioner came to be retired on superannuation. Respondent authorities proposed an action in relation to withdrawal or reduction of pension payable to the petitioner in respect of the allegations made and proved against him in the disciplinary enquiry. Consequently, by letter dated 20.04.2002, respondent No.1 has given a notice calling upon the petitioner to explain as to why action as provided under Rule 27(1) should not be taken against him. The petitioner has also submitted his explanation to the same. Thus, there is sufficient compliance of the procedural

aspect and it appears from the record that the petitioner has been given an opportunity of being heard before passing the order impugned in the Original Application before the Tribunal.

12. It is well settled that the employee's right to pension being statutory right, the measure of deprivation must be co-relative to or commensurate with the gravity of the grave misconduct or irregularities. In the case in hand, the order impugned before the tribunal discloses that the competent authority withheld, on permanent basis, the payment of 100% pension and also the gratuity to the same extent. In the course of disciplinary enquiry, the enquiry officer came to the conclusion that charge Nos. 1 and 2 are proved against the petitioner, whereas charge Nos. 3 and 4 are not proved against him. So far as charge Nos. 1 and 2 are concerned, charge No.1 speaks about the irregularity in Government work, whereas charge No.2 pertains to misusing powers and thereby cheating the Government. Charge Nos.3 and 4, which are not proved, are about making forgery of the Government documents on the count of own interest of the petitioner and making false entries in the muster-roll, thereby misappropriating Government money, respectively. On careful perusal of order dated 11.10.2004, which is impugned in the Original Application before the Tribunal, it appears that respondent No.1 has observed that the petitioner is found guilty of grave misconduct during the period of his service. It is specifically mentioned in the order that even though charge Nos. 3 and 4 are not proved against the petitioner, the charge Nos. 1 and 2 are also serious in nature and it speak about grave misconduct on the part of the petitioner. The same is elaborated further in the said order that the petitioner has issued passes for transportation of wood which was not in existence. It is also observed that, even though nothing was seized in some particular crimes, false passes came to be issued by the petitioner by mentioning said crime numbers. It is further observed that, even though a bullock cart containing wood came to be seized in some particular crimes, passes have been issued by mentioning said crimes number for one or two truck loads of wood. It is also mentioned that, in some of the passes, it is not mentioned as to in whose favour the passes have been issued, and the same have been issued by mentioning false date and crime number. So far as charge No.2 is concerned, even though there is no order from the superior office, the petitioner had issued passes. It is also observed in the impugned order that, the petitioner has not submitted his explanation about the aforesaid charges by giving reference to the evidence recorded during the course of enquiry or the documents submitted during the course of enquiry on his behalf.

13. In our considered opinion, charge Nos. 1 and 2, as proved against the petitioner, speak about grave mis-conduct on his part during the period of his service. It is also difficult to find out the exact pecuniary loss caused to the Government. Consequently, it appears from the order dated 11.10.2004, that Government was constrained to take action against petitioner by invoking powers under Rule 27(1) of the Pension Rules, 1982.

14. Learned counsel for the petitioner vehemently submitted that, as per recommendations made by the enquiry officer, had the petitioner been in employment at the time of passing the order dated 11.10.2004, petitioner should have been at the most liable for minor punishment as enumerated in Rule 5 of the Discipline and Appeal Rules, 1979. Learned counsel submits that Respondent No.1 ought to have imposed minor penalty considering the fact that it was a case for inflicting minor penalty had the petitioner been in employment. We do not find any substance in said submissions. The petitioner was served with show cause notice dated 11.12.2000 i.e. prior to his retirement on superannuation, issued by the disciplinary authority calling upon him to explain as to why he should not be dismissed from services on the count that charge Nos.1 and 2 have been proved against him in the enquiry.

15. Learned counsel for the petitioner submits that the Ad-hoc Additional Sessions Judge, Buldhana has given clean chit to the petitioner and by judgment and order dated 27.06.2005, acquitted him in criminal appeal No. 6 of 2001, preferred against the order of conviction passed by the Magistrate. Learned counsel submits that the charges levelled against the petitioner in the said criminal case, more particularly point Nos. 4 and 5, are exactly similar to the charges for which the petitioner is held guilty by enquiry officer in the departmental enquiry.

16. It is well settled that the departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. In the facts and circumstances of the present case, it appears that the incident in question gave rise to the criminal trial and also the disciplinary proceedings. In a criminal trial, the accused is presumed to be an innocent unless the charge against him is proved beyond reasonable doubt. The burden of proving guilt of the accused is on the prosecution. The same is not the case in the disciplinary proceedings. The disciplinary proceedings cannot and should not be delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry. It would not be in the interest of the department that the delinquent of a serious misconduct should be continued in office indefinitely awaiting the result of the criminal proceedings. In the case in hand, the petitioner was convicted by the Magistrate and thereafter, the appeal preferred by the petitioner was pending before the Sessions Court. On careful perusal of the charges levelled against the petitioner in that criminal case, we do not think that the said charges are exactly identical to the charge Nos. 1 and 2 in the disciplinary proceedings which are duly proved against the petitioner.

17. In view of the above, we do not find any fault in the judgment and order dated 27.11.2015 passed by the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad in Original Application No. 75 of 2005. There is no substance in the Writ Petition. Hence the following order:

ORDER

I. The Writ petition is hereby dismissed.

II. In the circumstances, there shall be no order as to costs.