
(2003) 12 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 672 of 1996

Atmaram G. Mohite

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 68, 69, 70, 71, 72

Citation : (2004) 1 ALLMR 397 : (2004) 3 BomCR 56 : (2004) 2 MhLj 729

Hon'ble Judges : V.G. Palshikar, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : V.B. Rajure, for the Appellant; M.H. Solkar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—A retired teacher has approached this Court for grant of pension as the Authorities have refused to grant the same despite being aware of his illness and old-age.

2. The petitioner prays that the order dated 12-8-1994 be set aside and this Court should declare that the petitioner is entitled to invalid pension from 1-3-1993. The petitioner prays for further direction to the first respondent to grant this pension to the petitioner from the aforesaid date.

3. The petitioner is a retired teacher from G. K. Gokhale College, Kolhapur affiliated to Shivaji University. It is the case of the petitioner that he was employed as a Teacher/Instructor of Physical training from 20-6-1958 to 28-2-1973 at the said college. He retired from service being physically incapable to continue the same. The details of the service rendered by the petitioner from the year 1948 as instructor at various schools/colleges have been set out at Page 3 Para 3 of the Petition.

4. It is the case of the petitioner that the Government of Maharashtra extended pension cum gratuity scheme to the teaching and non-teaching staff of non agricultural universities and the affiliated non-government colleges vide its G. R.

dated 21-7-1983. The petitioner also refers to the Rule 68 of the Pension Rules stipulating conditions for the grant of invalid pension. The petitioner further states that the Government of Maharashtra vide further notification dated 7-3-1986 issued clarification with regard to condoning the breaks in service. The petitioner points out that he had two breaks in his entire service as physical training instructor of 25 years from 14-9-1948 to 28-2-1973. One break was from 17-4-1953 to 7-6-1953 and another from 10-6-1958 to 19-6-1958. He submits that all these breaks are during the vacation period and by virtue of G.R. dated 7-3-1986 the same can be condoned.

5. The petitioner submits that he was heart patient for few years prior to his retirement, in 1973. He underwent treatment and sometime in February, 1973 he was examined and advised complete rest on permanent basis. It is his case that his job of physical training instructor is also responsible for his ailment. In view of this, he was allowed to retire by the respondent No. 2 college as being medically unfit and was relieved from duties with effect from 28-2-1973 and was granted invalid pension. The petitioner submits that scheme of respondent No. 1 initiated vide G.R. dated 21-7-1983 was made initially applicable only to the teaching and non-teaching staff retired after 1-10-1982. Aggrieved by this, some teachers approached this court urging that the cut off date 1-10-1982 is wholly arbitrary and has no nexus with the object sought to be achieved by the said G. R. The petitioner pointed out that a Division Bench of this Court upheld this contention and held that there was no rational reason for denying benefits to persons who had retired prior to 1-10- 1982 but after 1-1-1973. It was held by this Court that all such persons are similarly situate and therefore, scheme must apply even to such persons who retired on or after 1-1-1973. Consequently it was held that the date fixed by the G.R. for entitlement of retirement benefits was violative of Article 14 of the Constitution of India. The petitioner invites our attention to this decision and also another direction in Writ Petition No. 806 of 1992 contends that the G.R. dated 29-1-1993 extending pensionary benefits, even to those teaching and non-teaching staff retired before 1-1-1973, came to be issued and it was directed by the Government that they would be paid pension with effect from 1-10-1982.

6. The petitioner submits that on 24-2-1992 Principal of respondent No. 2 college addressed letter to the Administrative Officer Higher Education Grants, Kolhapur Division, Kolhapur forwarding pension papers of the petitioner therewith and requesting him to sanction pension to the petitioner. The Administrative Officer was pleased to accept this case and forwarded his recommendations by letter dated 31-3-/14-4-1993 to the Secretary of Higher Education and Pension Department, Government of Maharashtra.

7. It appears that the Administrative Officer of the Government of Maharashtra on enquiry being made by the Director of Education, submitted his report on 6-11-1993 recommending that the petitioner be sanctioned invalid pension.

8. The Director of Education, Higher Education, Pune vide his letter dated

6-12-1993 addressed to the Administrative Officer informed him that the break in service of 62 days of the petitioner being during the period of his employment in secondary school, the same should be got condoned from the concerned officers. The Administrative Officer in pursuance of this communication, wrote to the Director of Education on 9-2-1994 pointing out to him that as per notification of Government dated 7-3-1986 in the case of teacher switching from College to Secondary school or from Secondary School to college in employment period for condoning any break in the service, the Authority is Director of Education (Higher Education), He recommended that "in case of the petitioner, the break being only of 62 days, the same be condoned and invalid pension be sanctioned to him. A reminder was addressed by the Administrative Officer on 8-4-1994 urging Secretary to Government of Maharashtra to consider the case of the petitioner, more so in the light of his contribution in the field of sports. He pointed out that because of ill health on account of cardiac trouble, the petitioner was compelled to leave his job as Physical Training Instructor and therefore, he deserves and should be granted invalid pension.

9. The petitioner received communication from the Desk Officer of Government of Maharashtra on 12-8-1994 stating that for the invalid pension, compliance with provisions of Rule 68 to 80 of the Pension Rules of 1982 is necessary and since it is not possible to comply with the same in the petitioner's case, he is not entitled to invalid pension. The petitioner once again approached the Administrative Officer and the Administrative Officer by his letter dated 30-9-1994 addressed to the Secretary pointed out that the petitioner became invalid prior to introduction of conditions under Rules 68 to 80 of the Pension Rules and therefore, he is not required to comply with conditions stipulated subsequent to his leaving the job. He once again recommended that the petitioner be granted invalid pension.

10. The petitioner points out in the petition, the circumstances due to which he was forced to leave his job. The petitioner has pointed out his achievements as Physical Instructor in schools and colleges at Page 18 Para 23 of the Petition. The petitioner in substance impugns in this petition the order contained in letter dated 12-8-1994.

11. Shri Rajure, learned counsel appearing for the petitioner contended before us that the impugned order rejecting the request of the petitioner for grant of invalid pension is wholly illegal, invalid and violative of mandate of Article 14 of the Constitution of India. Shri Rajure contends that the petitioner was declared by the Director to be unfit to continue as employee in the year 1973 whereas Rules for pension under which certain conditions and stipulations are set out, were brought into force in 1982. Mr. Rajure urges that the conditions stipulated in these rules would therefore, not cover the case of the petitioner who has admittedly suffered invalidity and retired prior to their existence. It is further contended by Mr. Rajure that almost every officer has recommended petitioner's case very strongly for grant of invalid pension but the Government has brushed

aside the recommendations on its own and without applying its mind thereby rejecting the claim of pension made by the petitioner.

12. Mr. Rajure further argues that the petitioner had put in 24 years and 3 months services as physical training instructor and is duly qualified for the grant of pensionary benefits. He points out that due to his incapacitation and illness he was not in a position to work and in view of this, he claims invalid pension. The rejection of such claim, according to learned counsel, not only exhibits ignorance but also discloses indifferent and unsympathetic attitude of the Government. He pointed out that a Welfare State cannot deal with its citizens and more particularly senior citizens in such a callous and insensitive manner.

12A. We find from the record that this petition was admitted on 27-8-1996. However, till date no affidavit in reply is filed. We enquired from Mr. Solkar, the learned A.G.P. appearing for respondent No. 1 about the stand of the Government, but there being no instructions, according to him, no reply affidavit was filed. Mr. Solkar submits that the order contained in the letter dated 12-8-1994, is based upon rules and therefore, this Court should not interfere in exercise of its jurisdiction under Article 226 of the Constitution of India. He prays that the petition be dismissed.

13. At the outset, despite the pronouncement of the Hon'ble Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), so also of this Court in the case of Retired Employees of Non-Government College Association, Nagpur v. State of Maharashtra and Ors., 1987 Mh,L.J. 326 we find that the Government of Maharashtra is not at all serious in implementing its own policy of granting pensionary benefits to teaching and non-teaching staff of non-Government colleges as well as non-agricultural universities. It is not disputed before us nor can it be disputed that the petitioner is covered by the Government resolution dated 21-7-1983. Further the case of the petitioner is also covered by the decision of this Court in 1957 Mh.LJ. 326, In that case, after referring to the decision in Nakara's case, this Court observed as under:

"4. Law on the point is by now well settled. In this context a reference could usefully be made to the observations of the Supreme Court in paras 32, 42 and 43 of the Judgment in Nakara's case, which reads as under: "Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But the approach of Court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular, the State shall strive to minimise the inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this

directive should be understood and interpreted in the light of the judgment of this court in *Randhir Singh Vs. Union of India (UOI) and Others*, . Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under (Para 1):

"Now, thanks to the rising social and political consciousness and the expectations roused as a consequence and the forward looking posture of this court, the under-privileged also are clamoring for their rights and are seeking the intervention of the Court with touching faith and confidence in the Court. The Judges of the Court have a duty to redeem their constitutional oath and do justice no less to the pavement dweller than to the guest of the Five Star hotel. "Proceeding further, this Court observed that "where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength. Article 41 obligates the State within the limits of its economic capacity and development to make effective provision for securing the right to work to education and to provide assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved wants. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities."

Then in paras 42 and 43, the Supreme Court, observed : "42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogenous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be , discriminatory. To illustrate, take two persons, one retired just a day prior and

another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or day later will permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to be subject to ceiling of Rs. 8,100/- p.a. and average emolument to be worked out on 36 month's salary while the other will have a ceiling of Rs. 12,000/- p. a. and average emolument will be computed on the basis of last ten month's average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any has absolutely no nexus to the objects sought to be achieved by liberalizing the pension scheme. In fact his arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules; being statutory in character since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Art. 14.

43. Further, the classification is wholly, arbitrary because we do not find a single acceptable or persuasive reason for this division, This arbitrary action violated the guarantee of Art. 14. The next Question is what is the way out?

If the principle laid down in the said judgment is applied to the present case, in our view, the conclusion is inevitable that the cut out date prescribed by the Government viz. 1-10-1982 is wholly irrational and results in the hostile discrimination between persons who have retired before 1-10-1982 or after that date. It is not disputed that the persons who have retired either prior to 1-10-1982 or thereafter, are similarly circumstanced and belong to the same class. But for the statement made during the course of arguments, there is nothing on record to show as to why the date 1-10-1982 was chosen. If it was chosen because an assurance was given by the then Minister for Education on the floor of the House on that day, then it has no nexus with the object sought to be achieved by the pension-cum-gratuity scheme. In this context, it is worthwhile to note that in view of the recommendations made by the Kothari Commission and the Sen Committee, the pay scales for the said class of teachers came to be prescribed with effect from 1-1-1973. Superannuation age was also prescribed by the said resolution. Pension or gratuity is payable under the scheme in view of the superannuation of the person concerned. If this is so then the said scheme must apply even to the persons who retired on or after 1-1-1973, when for the first time the age of superannuation and pay scale came to be prescribed for them. Therefore, without deciding the larger question as to whether the said scheme should apply even to the pensioners who retired prior to date 1-1-1973, it can safely be held that the members of the petitioner association, the petitioners Nos. 2 and 3 as well as the persons who retired after 1-1-1973 are entitled to this pension-cum-gratuity scheme. Prescription of the

cut out date viz. 1-10-1982 being irrational is wholly violative of Article 14 of the Constitution, hence, rule is made absolute and it is declared that the date fixed by the G. R. dated 21-7-1983 i.e., 1-10-1982 for entitlement of retirement benefits is violation of Article 14 of the Constitution and the petitioners and other employees similarly circumstanced who retired on or after 1-1-1973 will also be entitled to the benefits granted by the said G. R. As a necessary consequence of this, the Government will have to prescribe a reasonable date for exercising necessary option by such employees. The Government to pass necessary orders in that behalf within a period of one month from today."

14. After this Court noted the law on the point of cut off date in the above mentioned G. R. and held that all persons retiring on or after 1-1-1973 become eligible for pensionary benefits under the scheme formulated by the above mentioned G. R. We are informed that persons retiring prior to 1-1-1973 have also been granted pensionary benefits, in view of the further G. R. issued on 29-1-1993. However, the pensionary benefits are to be made applicable with effect from 1-10-1982. In the present case, there is no dispute that the petitioner retired on 28-2-1973. Further authorities themselves have accepted the reason for the petitioner prematurely leaving his employment with respondent No. 2 college. They have accepted the reason for such premature retirement of the petitioner namely cardiac trouble. The authorities have themselves strongly recommended the petitioner's case by endorsing on his application that even the break in service is marginal i.e. 62 days and within the permissible limits and therefore, liable to be condoned. The Educational Authorities are themselves competent to condone such breaks and they have recommended the case strongly for condoning the same. However, brushing aside all these recommendations, impugned order came to be passed which denies the petitioner pensionary benefits on the sole ground of the petitioner not complying with Rules 68 to 80 of the pension rules.

15. There is absolutely no justification for invoking rules in the case of the petitioner who has admittedly retired prior to same coming into force. If the petitioner's case is fully covered by the Government Resolution dated 21-7-1983, then as to how his claim can be rejected for non-compliance with the pension Rules, 1982 is not clear to us. Mr. Rajure rightly invited our attention to the Government Resolution dated 21-7-1983 and more particularly the clause therein pertaining to forwarding of the pension papers of all employees like petitioner in the forms prescribed in Appendix V of the Maharashtra Civil Services (Pension) Rules, 1982. It may be that the Government Resolution vide Clause (h) provides that Chapter X and XI of M.C.S. (Pension) Rules will become applicable in granting retirement benefits to the employees except where otherwise provided. However, whether Rules 68 to 80 can be made applicable to the petitioner when he is claiming pensionary benefits under G.R. dated 21st July, 1983 is not clarified by the Authorities in the impugned order or in the arguments advanced before us.

16. The Government Resolution dated 21-7-1983 extends pension cum gratuity scheme to the employees mentioned in the preamble to the same. It is now settled that this scheme will apply to the employees like petitioner who has retired on or after 1-1-1973. Once pensionary benefits are admissible to the petitioner under this scheme, then there is no question of applying pension rules and more particularly provisions relating to invalid pension therein. Once petitioner's case is covered by the G.R. dated 21-7-1983 and the law laid down by this Court then the pensionary benefits should have straight-away been granted to him. Merely because, the petitioner also prays for invalid pension, his case cannot be said to be not falling under the Government, Resolution referred to above. In this behalf, the petitioner's application can be usefully perused. Petitioner merely forwards his case for pension through employer to the Administrative Officer on 24-9-1992. On this application, the Administrative Officer endorses that the petitioner is entitled to benefits under the G. R. dated 21-7-1983. All that the Administrative Officer says that if the same had been made applicable earlier, petitioner would have got benefits therein. Obviously the Administrative Officer is not aware of the decision of this Court as also Government's Clarification on this subject. Therefore, the Administrative Officer requests his superiors to consider petitioner's case in the light of the G.R. sympathetically. By further communication on the subject, recommendation is made for grant of compassionate pension as a special case to the petitioner. By these recommendations, initially, petitioner was directed to have the breaks in service condoned from the competent authorities. Instead of condoning breaks and processing the case further, the Authorities took a view that the petitioner is only entitled to invalid pension and therefore, compliance with Rules 68 to 80 is necessary.

17. It is really unfortunate that the petitioner has been made to run from pillar to post for grant of pensionary benefits. The clear case of the petitioner for admissibility of pensionary benefits under the Government Resolution dated 21-7-1983 has not been processed and considered in the light of the same and instead the petitioner was held to be entitled only to invalid pension under Maharashtra Civil Services (Pension) Rules, 1982. Even that pension was held inadmissible and not payable. It is not the case of the Authorities that the petitioner is not entitled to pensionary benefits under the G.R. dated 21-7-1983 upon breaks in service being condoned. This being the position, there was absolutely no necessity of scrutinizing the petitioner's claim as being one of invalid pension under the Pension Rules, 1982. By considering the petitioner's pension claim as one for admissibility of invalid pension, the Authorities have defeated the object and purpose of a welfare measure. The object and purpose of helping the employees in their old age set out by the G.R. of 1983 has been overlooked and brushed aside by the Authorities in this matter. The petitioner was entitled to his claim being considered under G.R. dated 21-7-1983 and it was not open to the Authorities to have considered this claim de hors this G.R. by applying Pension Rules, 1982 and more particularly conditions stipulated in

Rules 68 to 80 therein. The claim should have been processed and considered in the light of the G.R. dated 21-7-1983 and the law laid down by this Court. Instead claim of the petitioner under G.R. dated 21-7-1983, is rejected on wholly unsustainable and extraneous grounds. In our opinion, there is much substance in the complaint of the petitioner that pensioners like him have not been treated properly leave alone with dignity and respect by the Authorities. After having rendered excellent service in the field of physical training and sports petitioner was entitled to sympathetic consideration of his claim for pension. The Authorities have adopted hypertechnical approach in the matter to negative the claim of the petitioner. If claims for pension under welfare schemes are going to be entertained and considered in the manner as is done in the instant case, the very purpose of such schemes will be defeated. The Government should bear in mind the observations of the Supreme Court made from time to time in cases relating to pensionary claims.

18. The Maharashtra Civil Services (Pension) Rules, 1982 apply to all members of service and holders of posts whose conditions of service the Government of Maharashtra is competent to prescribe. They shall also apply to persons enlisted in Rule 2(a)(b) and (c) of the Pension Rules. It is clear that the provisions of these rules to the extent made applicable vide G.R. dated 21-7-1983 are only those which are set out in Chapter X and XI. These appear to be procedural rules. The procedure is made applicable to the grant of pensionary benefits under the scheme envisaged by the aforesaid Government Resolution. Chapter VII under the Pension Rules providing for invalid pension can have no application to the case of the petitioner because invalid pension is defined under the rules as pension granted to the Government servant who retires from the Government service, before reaching the age of superannuation, on account of mental or bodily infirmities. The rules under Item 3 (Invalid pension) of this chapter commencing from 68 to 80 can therefore, apply only in the cases of grant of invalid pension to the Government servants. In our view, these rules can have no application while pension is being granted to teaching and non teaching staff of non-Government colleges under the scheme envisaged by the Government Resolution dated 21-7-1983. That resolution does not set out classes of pensions. That apart, admittedly it will have to be established that the petitioner is government Servant for the rules to apply to him. Looked at from any angle, we find that the reason set out in the impugned order are wholly unsustainable and there is no justification of whatsoever nature to deny the petitioner benefits of the pension scheme.

19. As a result of the discussion aforesaid, the claim of the petitioner for pensionary benefits deserves to be granted.

20. We therefore, direct respondent No. 1 to grant pensionary benefits to the petitioner under the G.R. dated 21-7-1983 and 7-3-1986 with effect from 1-10-1982. The appropriate authorities are directed to make necessary computation and pay the pensionary benefits to the petitioner from the aforesaid

date. Needless to state that the Authorities are free to seek compliance by the petitioner of other formalities under these resolutions. The pension papers forwarded to the Authorities be processed in accordance with the aforesaid directions and the Authorities to grant benefits including arrears in favour of the petitioner within four months from the date of receipt of this order.

21. Rule made absolute in above terms with no order as to costs.

All parties to act on authenticated copy of this order.