(2002) 10 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 676 of 1992

Dattatraya Ramchandra Phadnis APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 18-10-2002

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 129A, 30

Citation : (2003) 3 MhLj 691

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : D.A. Gursahani, for the Appellant; A.V. Gondhalekar, Assistant Government Pleader For respondent Nos. 1, 2 and 4 and S.S. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—The grievance raised in this petition is twofold namely (1) counting of pensionary service from 31-7-1957 instead of 1-6-1959 and (2) non-payment of gratuity amount though sanctioned.

2. The petitioner came to be appointed as village level worker by order dated 28-7-1957 and was posted for the first time at Kalamnuri in Parbhani district. He was a government servant under the Divisional Commissioner, Aurangabad and on the formation of the Zilla Parishads with effect from 1-5-1962 he was allocated to the Zilla Parishad service and subsequently absorbed in the said service. On reaching the age of superannuation i.e. 58 years he retired on 30-9-1988 while he was holding the post of Block Development Officer (Class II).

3. Initially the petitioner was absorbed in the Aurangabad Zilla Parishad service and on formation of Jalna as a separate district he was transferred to the Jalna Zilla Parishad and he held the post of Block Development Officer for about 5 years before he retired on superannuation. His pension papers were submitted by the Chief Executive Officer, Zilla Parishad, Jalna, with the covering letter dated

29-9-1988 to the Respondent No. 4 Accountant General-II, Maharashtra State at Nagpur. In the said pension papers, the petitioner''s service information was also furnished in Form No. VI as per Rules 120 and 122(1) and (3) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, hereinafter referred to as the "Pension Rules"). The Zilla Parishad had shown his date of Joining as 31-7-1957 and the date of retirement as 30-9-1988 in the pension papers submitted to the office of respondent No. 4. However, on receiving the pension papers, Accountant General''s office addressed a letter to the Chief Executive Officer, Zilla Parishad, Jalna, on 16-11-1988 informing that the case of the petitioner was finalised for pensionary benefits as per Government Resolution dated 18th August, 1987 and his service for the same was counted from 1-6-1959 and not from 31-7-1957 as the post of village level worker became pensionable only from 1-6-1959. The endorsement in the said letter reads thus:--

"The case has been finalised as per Government Resolution dated 18-8-1987. The service rendered as village level worker from 31-7-1957 to 31-5-1959 has not been treated towards pensionary service with effect from 1-6-1959 has not been taken for pensionary benefits. If the pension service is required to be taken, necessary government resolution may please be furnished for reference under which service is to be counted."

4. The Section Officer from the office of Accountant General has filed reply and reiterated the same reasons for treating the petitioner''s service from 1-6-1959 for pension instead of 31-7-1957 while deciding the pensionary service and thus, the qualifying service came to 29 years and 4 months and the pension has been worked on that basis.

5. On behalf of the Zilla Parishad, the incharge Chief Executive Officer has filed return and submitted that so far as the initial date of appointment of the petitioner i.e. 31-7-957 is concerned it is required to be counted for pension. However, the Zilla Parishad takes a plea that the communication dated 16-12-1988 received from the office of Accountant General was made known to the petitioner and he was expected to make clarification to the said office. It was not for the Zilla Parishad to furnish such clarification. So far as the amount of gratuity is concerned it is admitted that a cheque for Rs. 34,993/- was received in the name of the Chief Executive Officer, Zilla Parishad, Jalna, towards gratuity payment to be disbursed to the petitioner. However, it was encashed and the amount drawn against the said cheque was credited in the account of Zilla Parishad pension fund on 1-1-1990. The amount was to be paid to the petitioner but for the recovery of Rs. 53,710/- to be made from him on account of the loss caused by him to the Zilla Parishad owing to his lapses/negligent actions. The Zilla Parishad contends that it is entitled to recover the total amount from the petitioner and the amount of gratuity of Rs. 34,993/- was only towards partial recovery out of Rs. 53,710/-. In this regard, it has relied on the observations made in paragraphs 30 and 31 of the Audit Report for the year 1975-76 and the communication dated 26-9-1989 i.e. after the petitioner retired.

6. There is no dispute that the petitioner joined the government service on 31-7-1957 and he was subsequently allotted to the service of Zilla Parishad on formation of Zilla Parishads in the State of Maharashtra in the years 1962. There is nothing on record in support of the contentions of the Accountant General that the petitioner''s service for pension could be counted only from 1-6-1959 and not from the date of his initial appointment i.e. 31-7-1957. Our attention has been invited to Rule 30 of the Pension Rules which states that the qualifying service of a government servant shall commence from the date he takes charge of the post either substantively or in an officiating or temporary capacity, provided that at the time of retirement he shall hold substantively a permanent post in government service or holds lien or certificate of permanency. An exception to this rule is also made and the petitioner is not in the same category. Government Resolution dated 18th August, 1987, which is purportedly relied on by the Accountant General''s office is also not placed before us and therefore, we will have to go by the provisions of Rule 30 of the Pension Rules and held that the petitioner having been appointed as a government servant right from 31-7-1957 was eligible for pensionary benefits from the said date and not from 1-6-1959 as has been done by the Accountant General.

7. Coming to the issue of gratuity amount, the Zilla Parishad accepts that an amount of Rs. 34,993/- was received for payment by way of gratuity to the petitioner and same amount was not paid to him on account of recovery to be made on the basis of audit report of 1975-76. The Zilla Parishad had issued a show-cause notice on 8-2-1980 to the petitioner proposing to recover the amount of loss/damages purportedly caused by the petitioner and his reply was called for. The petitioner submitted his written explanation of 21-2-1980 and denied any lapses or negligence on his part or any action which caused loss to the Zilla Parishad. In spite of this reply, there is no order which was finally passed by the Zilla Parishad till the petitioner retired on 30-9-1988. The communication dated 5-9-1989 from the Panchayat Samiti, Ambad to the Chief Executive Officer, Zilla Parishad, Jalna, states that an amount of Rs.53,710/- was to be recovered from the petitioner pursuant to the Zilla Parishad''s letter dated 13-7-1989 and the Zilla Parishad, in turn, by communication dated 26-9-1989 informed the Block Development Officer, Panchayat Samiti, Bhokardan, to communicate to the petitioner for the same recovery. In the absence of a specific order passed by the Chief Executive Officer, Zilla Parishad, Jalna, pursuant to the show-cause notice dated 8-2-1980, it cannot be held that the petitioner''s liability to make good the loss suffered by the Zilla Parishad was finally adjudicated upon or decided by the Chief Executive Officer. It is well recognised that the pensionary benefits cannot be treated as a bounty by the State and if the recoveries have to be made from such benefits they ought to be made as per the procedure set-out in the service rules and not otherwise. It was necessary for the Zilla Parishad to hold an inquiry so as to fix specific liability of the petitioner on the basis of such a report and then pass a final order for recovery. This has not been done and for the reasons best known to the Zilla Parishad even till the

petitioner retired on 31-9-1988 or even during the pendency of this petition. Under these circumstances, the petitioner succeeds on the second count as well.

8. Shri D.A. Gursahani, learned Counsel for the petitioner, referred to the provisions of Rule 129A of the Pension Rules and submitted that the petitioner is entitled for interest on the delayed payment of gratuity as well as balance of pension amount. He contended that if the petitioner''s service from 31-7-1957 is taken into consideration for calculation of his pension, certainly the monthly pension would go up and therefore, the petitioner would be entitled for interest on the enhanced amount and the total arrears payable during the last 14 years or so. He also submitted that the gratuity amount was illegally detained and therefore, the petitioner would be entitled to interest as per the provisions of Rule 129A as well as penal interest. In support of these contentions, he relied on the following decisions of the Apex Court.

(1) AIR 1985 Kerala 356, State of Kerala v. M. Padmanabhan Nair

(2) Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others,

9. In the case of State of Kerala (supra) there was delay of more than two years and three months in releasing the pension and gratuity amount after retirement. The District Court had directed interest to be paid on this amount at the rate of 6% and it was confirmed by the High Court. However, the rate of interest was enhanced by the Apex Court to 12% per annum on the basis of market rates of interest. The relevant observations of the Apex Court in this regard are required to be quoted as below :

"The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

10. In the case of Gorakhpur University (supra) the High Court had granted penal interest at the rate of 18% and same was upheld by the Apex Court. Shri D. A. Gursahani, therefore, submitted that the petitioner would be entitled for penal interest at the rate of 18% notwithstanding the rate of 10% as set-out in Rule 129A of the Pension Rules.

11. It is well known that the current market rate of interest either on fixed deposits in nationalised banks or on lending upto Rs. 5,00,000/- does not exceed 10% in case of the nationalised banks. It would, therefore, be appropriate to follow the provisions of Rule 129A of the Pension Rules.

12. We are, however, not inclined to consider the petitioner''s prayer for interest on the enhanced amount of pension.

13. In the result, we allow the petition and direct that the petitioner''s service for payment of his pension shall be counted from 31-7-1957 and his pension shall be

accordingly re-fixed. The arrears of pension shall be paid to the petitioner within a period of three months from today. The Chief Executive Officer, Zilla Parishad, Jalna, is directed to pay to the petitioner an amount of Rs. 34,993/- within a period of four weeks from today. Undoubtedly, the petitioner would be entitled for interest on the amount of arrears of pension as well as the gratuity amount as per the provisions of Rule 129A of the Pension Rules and the interest amount shall be paid along with the respective amounts by the concerned authorities.

14. Rule is made absolute in terms of the above directions. No order as to costs.

