
(2008) 04 BOM CK 0157
In the Bombay High Court
Case No : Writ Petition No. 961 of 2006

Dr. Rajaram Dhondiba Shingte

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 23, 4, 46, 46(1)

Citation : (2008) 4 ALLMR 544 : (2008) 5 BomCR 422 : (2008) 5 MhLj 211

Hon'ble Judges : Ranjana Desai, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Anurag Jain, for the Appellant; P.P. Kakade, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—In this writ petition filed under Article 226 of the Constitution of India the petitioner is seeking pension and other pensionary benefits from the respondents.

2. The petitioner is a highly qualified person. The petitioner has served Government aided institutions for almost 32 years. He has served in Rajaram College, Kolhapur as a Lecturer from 29/11/45 to 20/6/60. He has worked as Principal of Science College, Karad from 21/6/60 to 30/6/65. He has served as a Professor and Head of Department at the Shivaji University, Kolhapur from 1/7/65 to 10/11/68. He has served as Principal, Warna College, Warnanagar from 1/6/70 to 14/6/79. According to the petitioner all these institutions are hundred per cent aided by Government for the salaries and allowances paid to the Principals, Professors and other staff members.

3. The petitioner has two sons. One son is mentally challenged since birth. The petitioner's case is that on account of the critical health condition of his mentally challenged son on 10/11/68 he was forced to resign from service after completing 23 years of continuous service. Admittedly at that time there was no

provision for voluntary retirement in Bombay Civil Services Rules ("BCS Rules" for short). The petitioner contends that actually he wanted to take voluntary retirement but due to non-existence of any such rules providing for voluntary retirement at the relevant time he was left with no alternative but to resign. The rules regarding voluntary retirement came in force in the year 1980. The petitioner, thereafter applied to the authorities for pension. He sent his application in the year 1980. However, his representation was rejected by the competent authority on the ground that the pension scheme was not applicable to the persons who had resigned from service.

4. Being aggrieved by the said decision the petitioner preferred Writ Petition No. 5234 of 2003 in this court. On 22/9/03 this court directed the State Government to consider the petitioner's case under Rule 23 of the Maharashtra Civil Services (Pension) Rules, 1982 ("MCS Rules" for short). The State Government was directed to pass appropriate order in accordance with law within a period of three months from the date of the order.

5. According to the petitioner, thereafter he sent various representations to the respondents requesting them to comply with this court's order dated 22/9/03. However, the respondents did not pay any heed to the request of the petitioner.

6. Respondent 1 vide its communication dated 24/3/04 informed the petitioner that since the petitioner had resigned from service his case cannot be considered under Rule 23 of the MCS Rules. It was stated in the communication that, if as a special case he is granted pension that would be contrary to Rule 46(1) of the MCS Rules.

7. According to the petitioner thereafter he sent a notice dated 29/11/04 to the respondents seeking compliance of order dated 22/9/03. However, the respondents did not reply to the said notice.

8. The petitioner, therefore, filed Contempt Petition No. 245 of 2005 in this court. Learned Single Judge of this court dismissed the said contempt petition on 26/8/05 observing that the respondents have considered the petitioner's case and have found that it is not possible to grant pension to the petitioner under Rule 23. It was observed that, therefore, no contempt was made out.

9. According to the petitioner the Vice Chancellor of the Shivaji University, Kolhapur has recommended the petitioner's case for grant of pension and pensionary benefits. Considering the fact that he has rendered unblemished qualifying service of more than 20 years and that he has to look after a mentally challenged son, who is 50 years old, the petitioner's case should be considered for grant of pension.

10. We have heard learned Counsel for the petitioner at some length. He has reiterated the averments made in the petition which we have quoted hereinabove. He submitted that the petitioner has completed 38 years of service with only a break of one and half years approximately. He submitted that this is

indeed a special case which falls within the ambit of Rule 23 of MCS Rules. In support of his submissions, learned Counsel relied on judgment of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), and judgments of this court in Gajanan Dattatraya Nampurkar v. State of Maharashtra in Writ Petition No. 1312 of 2002 decided on 29/8/02, State of Maharashtra and Ors. v. Sashikant S. Patil in Writ Petition No. 8484 of 2003, decided on 17/8/04, Nirmala Gole v. State of Maharashtra in Writ Petition No. 3274 of 2001, decided on 20/1/02, Atmaram G. Mohite v. State of Maharashtra and Ors. 2004(3) B.C.R. 56 and Trimbak Sangramappa Kadge v. State of Maharashtra and Ors. 2002 104(4) B.L.R. 304.

11. Learned AGP has on the other hand submitted that at the relevant time when the petitioner submitted his resignation he was covered by BCS Rules. There was no provision for pensionary benefits in those rules. He submitted that all the judgments on which reliance is placed by the petitioner pertain to cases involving MCS Rules. Therefore, those judgments have no application to the facts of the present case. Learned AGP also relied on judgment of this court in Iliyas Yusuf Naikwadi v. State of Maharashtra and Ors. 2006 (6) MLJ 450. He submitted that the petitioner has tendered resignation. Resignation brings about complete cessation of master and servant relationship and, therefore, the petitioner cannot claim any pensionary benefits. Learned AGP took us to the affidavit of Dr. Babasaheb Bhimrao Kadam, Joint Director of Higher Education, Kolhapur Region in support of his submissions.

12. There is no doubt that the petitioner's case deserves sympathy. He has rendered long meritorious service to the State. He has a mentally challenged son who is 50 years of age. The petitioner is 80 years of age. Ordinarily his prayer for pension would deserve consideration. But the courts have to act within the confines of law. The court cannot direct the State to pay money to a person when in law he is not entitled to that amount. That will set a bad precedent.

13. The petitioner has placed reliance on the judgment of the Supreme Court in Nakara's case (supra). That judgment in our opinion will have no application to the present case. In Nakara's case on 25/5/79 Government of India had issued office memorandum whereby the formula of computation of pension was liberalised. It was made applicable to the Government Servants who were in service on 31/3/79 and who retired from service on or after that date. It introduced the slab system for computation of pension. The Supreme Court was considering whether pensioners who are entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules 1972 form a class as a whole. The Supreme Court was considering whether the date of retirement is a relevant consideration for eligibility. Another question which was posed before the Supreme Court was whether differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension is violative of Article 14 of the Constitution. The Supreme Court inter alia held that pensioners form a class and their computation cannot be by different formula

affording unequal treatment solely on the ground that some retired earlier and some retired later. This judgment in our opinion is not applicable to the present case because we are not concerned with any cut off date. The petitioner has resigned from service, therefore, master and employee relationship got severed. It is the case of the petitioner that he wanted to take voluntary retirement but such a provision was not available at that time and on account of ill-health of his mentally challenged son, he had to resign. Though we may have sympathy for the petitioner's situation, we cannot gloss over the fact that he had resigned. We cannot order that his resignation be treated as retirement.

14. In this connection reference may be made to Iliyas Yusuf Naikwadi's case (supra) where this court was considering claim for pensionary benefits made by a person who had resigned from service. This court referred to the judgment of the Supreme Court in UCO Bank and Others Vs. Sanwar Mal, , where the Supreme Court has observed that the words resignation and retirement carry different meaning in common parlance. An employee can resign at any point of time even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The Supreme Court observed that resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Relying on this judgment learned Single Judge held that the petitioner therein who had resigned was not entitled to claim retiral benefits. We are in respectful agreement with the view taken by the learned Single Judge. The petitioner having resigned he cannot claim any pensionary benefits from the State.

15. We may also refer to the copy of the letter dated 1/8/08 addressed by Principal of Yashwantrao Chavan Warna University Warnanagar to the Deputy Director, Higher Education, Kolhapur Division, which is tendered in the court by learned AGP. It is stated in the letter that the petitioner had tendered resignation in Rajaram College after working from 29/11/45 to 20/6/60. He joined Science College Karad on 21/6/60 and resigned on 30//6/65. He worked as Professor in Shivaji University from 1/7/65 and resigned on 10/11/68. He then joined Yashwantrao Chavan Warna University on 1/6/70 and resigned on 14/6/79. It is further stated in this letter that there is a break in the service of the petitioner from 11/11/68 to 31/5/70. Learned Counsel for the petitioner, however, denied that the petitioner had resigned from service. He stated that the petitioner joined other institutions on promotions. It is difficult to accept this submission. In our opinion, a person who resigns from service cannot be granted benefit of pension.

16. The petitioner has placed reliance on the judgments of this court in which this court has considered MCS Rules. Rule 23 thereof permits grant of pension in special circumstances. In Namapurkar's case (supra) the petitioner therein had voluntarily retired on medical grounds. This court interpreted Rule 23 of the MCS Rules and held that this Rule is widely worded and it gives powers to the

Government to grant pension on compassionate grounds in any case for which the pension is not admitted under specific provisions of the rules. Since in this case MCS Rules are not applicable Rule 23 is not attracted at all. In *Nirmala Gole's* case (supra) this court was concerned with a situation where the petitioner therein was forced to resign on account of ill-health of her husband who died a year later. This court considered Rule 4 of the MCS Rules which gives a power of relaxation to the Government in cases of great undue hardship. Rule 46 of MCS Rules provides that resignation from service or a post entails forfeiture of past service. In the circumstances of the case, this court held that Rule 46 was causing undue hardship to the petitioner and she deserves to be exempted from the said provision.

17. In *Trimbak Kadgi's* case (supra) on which reliance is placed, the petitioner had submitted his application for voluntary retirement on 1/4/89 after completing 25 years of service. He had requested that his case for voluntary retirement and pensionary benefits be accepted under Rule 66 of the Pension Rules. This court held that the Government's contention that the voluntary retirement benefits came to be extended to such employees only from 7/3/89 cannot be accepted on the face of the language employed in Resolution dated 21/7/83. It was observed that issuance of Government Circular dated 20/6/84 and Resolution dated 7/3/90 would not vary the term of the Resolution dated 21/7/83. It was held that the petitioner was entitled to pension under Rule 66 of the Pension Rules.

18. In our opinion, the judgment in *Trimbak Kadgi's* case does not help the petitioner. In *Iliyas Naikwadi's* case (supra), while rejecting the claim to pensionary benefits of the petitioner who had resigned and to whom BCS Rules were applicable, this court observed that the judgment in *Trimbak Kadgi's* case is in relation to MCS Rules and that too in case of voluntary retirement and in a case pertaining to resignation and hence reliance placed on it was misplaced. We are in respectful agreement with this view.

19. Learned Counsel for the petitioner submitted that in all the above cases, the petitioners were governed by BCS Rules, yet relying on MCS Rules pension was granted. We are not impressed by this argument. In our opinion all the cases on which reliance is placed by the petitioner must be confined to their own facts. In the facts of this case and in the light of *Iliyas Naikwadi's* case (supra), we are unable to direct the State Government to grant pension to the petitioner.

20. In the view that we have taken the petition will have to be dismissed. That however, does not prevent the petitioner from making yet another representation to the State Government and persuade the State Government to grant him some relief so that at the fag end of his life he is in a position to take care of his 50 years old mentally challenged son. Legally, we are unable to help him.

21. If there is any scope for consideration of the petitioner's case on humanitarian ground the State may do so. The petition is dismissed.