Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 10/09/2026

(1999) 01 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 884 of 1995

Dr. Vasant Vinayak Jogawar — APPELLANT

Vs

University of Poona and others — RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 330(A), 8
Constitution of India, 1950 — Article 14, 16, 226
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 10, 153, 154, 157, 157(1)
Revised Pension Rules, 1950 — Rule 8

Citation : (1999) 4 BomCR 95 : (1999) 2 BOMLR 630 : (1999) 2 MhLj 962

Hon'ble Judges : S.S. Parkar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : R.M. Bhagalia, for the Appellant; Ms. Sangita Patankar, Mrs. V.R. Bhonsale and C.R. Sonawane, A.G.P., for the Respondent

Judgement

B.N. Srikrishna, J.—This is another pathetic case of a pensioner, to boot a teacher in the University, who is made to run around in circles because the State authorities are unable to take a decision on his entitlement to pensionary benefits. That a teacher, a Government servant, at the fag end of his career was treated in this fashion, is saddening.

FACTS:

2. The petitioner joined a Government College known as Rajaram College, Kolhapur, as a Lecturer in Psychology. The petitioner''s service was regularised after selection by the M.P.S.C. and he was appointed permanently as a Lecturer in Psychology with effect from 14th November 1962. On 3-3-1981 the petitioner applied to the Poona University for being absorbed as a Lecturer in the college. Since absorption by the Poona University would necessarily mean giving up his job under the Government, the petitioner decided to take voluntary retirement from Government service and then join the Poona University. At the material time the Government of Maharashtra was encouraging voluntary retirement of

Government servants as a matter of policy. The Government had issued a resolution dated 4th March, 1978 giving certain concessions to government servants who had put in not less than 20 years qualifying service and retired from service voluntarily. By Clause 2(b) of the said G.R. dated 4th March, 1978 it was made clear that the benefit of "retiring pension" would be admissible to a Government servant retiring under the said voluntary retirement scheme. By Clause 2(n) it was declared that the Government servants retiring voluntarily under the said scheme would be granted permission for post retirement commercial employment more liberally than in the case of Government servants retiring under Rule 161 of the Bombay Civil Services Rules and Rule 8 of the Revised Pension Rules, 1950 (Corresponding to Rule 10 of the Maharashtra Civil Services) (Pension) Rules, 1982, which shall hereinafter be referred to as 1982 Pension Rules.

3. The Director of Higher Education addressed a letter dated 13th September, 1982 to the Secretary, Education and Employment Department, forwarding the application dated 3-8-1982 sent by the petitioner and recommending that the petitioner was eligible to retire from the Government service under the Government Resolution dated 4th March, 1978 after completion of 20 years. The Director of Higher Education also stated that he had no objection to allowing the petitioner to retire voluntarily from Government services as requested, and recommended that the Government may grant the request of the petitioner for voluntary retirement. A copy of the said letter was also forwarded to the Principal, Rajaram College, Kolhapur, and to the petitioner. There is note No. 3 appended to the said letter which says, "As regards the assumption made by Shri Jogawar in his application in this connection he may be informed that he may approach Accountant General authority in connection with local service w.e.f. 25-9-58 to 13-11-62 as qualifying service rendered in Government Colleges prior to his regular appointment as Lecturer".

4. The petitioner, apparently, was meticulous and wanted to make sure that he would not fall between two stools. He, therefore, addressed a letter dated 23-7-1982 to the Registrar, University of Poona, in which he pointed out he was a permanent Class II Gazetted Government servant who had put in 24 years of qualifying service and could, therefore, voluntarily retire under the Government Resolution dated 4th March, 1978. He also drew attention to another Government Resolution dated 24th August, 1970, under which he stated that he was entitled to full protection of his pay in case of re-employment. He also indicated that he desired to avail of both the said facilities and expressed a hope that the University of Poona would have no objection in the matter. With regard to what was stated in the letter, the petitioner sought clarification so that he could give a three months'' notice to the Government for voluntary retirement.

5. The petitioner also addressed a letter to the Secretary of Education and Social Welfare Department on 3-8-1982. In this letter he again drew the attention of the Government to the Government Resolution dated 4th March 1978 which

enabled a Government servant to retire voluntarily on completion of 20 years with proportionate pension. He also drew pointed attention to the Government Resolution dated 24th August, 1970 under which he was entitled for protection of his pay in case of re-employment in any University. He claimed that, on a conjoint reading of the two Government Resolutions, he would be simultaneously entitled for voluntary retirement with benefits of proportionate pension and pay protection in case of re-employment by the University. By the said letter he gave three months'' notice for voluntary retirement "under the assumption" that, (a) his local service from 25th September, 1958 to 13th November, 1962 was considered as qualifying service and (b) that the Government had no objection to his simultaneous entitlement to the benefits of proportionate pension and pay protection upon his re-employment in the University of Poona as Lecturer in Psychology. The letter of the petitioner was through "proper channels" and was, therefore, routed through the Directorate of Education, Maharashtra.

6. It may be mentioned here that, as a result of the correspondence with the Poona University, the University addressed a letter dated 5th August 1982 to the petitioner in which he was informed. "In regard to protection of your present pay on your re-employment to the above post in this University, I am directed to state that your present pay will be protected as per rules. The question of enjoying simultaneously the benefit of proportionate pension on relinquishment of your present service and the protection of pay may be finalised in consultation with the Government . The University will have no objection to this if the Government permits so."

7. On 2nd November 1982 the petitioner addressed a letter to the Accountant General (I) Maharashtra, Bombay raising two queries: (a) whether his continuous local service in Class II from 25th September, 1958 to 13th November 1962 would be considered as qualifying service for the purpose of voluntary retirement, and (b) whether the total length of qualifying service after giving weightage that will be considered for the purpose of calculating proportionate pension, in case he accepted voluntary retirement on 13-11-1982.

8. By a reply dated 3rd November, 1982 given by the office of the Accountant General -I, Maharashtra the petitioner was advised that he may approach the Director of Education for appropriate clarification since the Accountant General''s office had nothing to do regarding the same. The letter addressed to the Accountant General was returned to the petitioner and re-presented to the Directorate of Education and the Section Officer (perhaps of the Accountant General''s office) made an endorsement thereupon to the following effect:

"Returned in original to Dr. V.V. Jogawar. He is informed that the question of counting his previous service will be considered while scrutinising his pension papers."

The date of this endorsement appears to be 8-11-1982.

9. After all this, on 8-2-1983 the Government issued a Government Resolution

allowing the petitioner to retire voluntarily from Government Service with effect from 30th November 1982 A.N. "under the scheme of premature voluntary retirement sanctioned vide Government Resolution dated 4th March 1978". The petitioner joined the University with effect from 1st December 1982 and continued to work there.

10. On 19/22nd June 1990 the University of Poona issued a letter to the Directorate of Education, Higher Education, in connection with the petitioner''s employment in its service. In the said letter the University pointed out that the petitioner had drawn pension pursuant to his retirement from the Government service as a Lecturer in Rajaram College, Kolhapur, with effect from 30th November 1982. It was also pointed out that since the petitioner had joined as a Lecturer in the University from the next date i.e. 1-12-1982, his last drawn basic pay of Rs. 1550/- per month and the date of his annual increment were protected in accordance with the Government Resolution dated 24th August 1970. The University also pointed out that the petitioner was entitled to higher selection grade pay of Rs. 3700-5700 since his total service, both under the Government and the University, was in excess of 24 years as on 1-1-1986. The University pointed out that the Directorate of Education had still not given its approval to the fixing of pay of the petitioner, though the petitioner had addressed a letter dated 3rd August 1982 to the State Government even prior to his retirement claiming that he was entitled to the twin benefits of protection of his last drawn pay in the Government service and the voluntary retirement pension. Finally, the University sought a clarification as to in what manner the pay of the petitioner was to be fixed as on 1-1-1986. Despite this letter the Director of Education seems to have done nothing in the matter for almost four years.

11. On October 23, 1991 the petitioner addressed a letter to the Registrar, University of Poona protesting against the decision of the Government to deduct pension from his basic pay for the purpose of pay fixation in University service.

12. On 6-10-1994 the petitioner was addressed a letter by the Finance Officer of the Poona University calling upon him to give particulars of monthly pension received by him for the period 1-12-1982 to 31st May 1994.

13. On 18th October 1994 the petitioner was informed by the Poona University that his pay fixation in the revised pay scales had not been approved by the Government. It was also conveyed that since the petitioner had retired voluntarily, under the applicable Government Rules his pay had to be fixed at his last drawn pay minus pension. Since this had not been done, the Government was of the view that petitioner had been overpaid and the Government was desirous of recovering excess payment for which purpose information was called for.

14. There was an attempt made to deduct from the provident fund amount payable to the petitioner the so called overpayments, but the Joint Director of

Higher Education by his letter dated 21-11-94 pointed out that since no deductions could be made from the provident fund, an amount of Rs. 1,49,730/- was immediately payable to the petitioner towards provident fund.

15. On 31st May 1994 the petitioner retired from his service under the Poona University.

16. Though, when the petitioner originally joined the Poona University, all Lecturers were treated as eligible only to contributory provident fund, it is not in dispute that subsequently a letter was addressed by the University dated 4-4-1998 to its own Finance Officer pointing out that by virtue of the Government Resolution dated 21st July 1983 all employees of the University appointed on or after 1982 would be entitled to pension.

17. After retirement from the University''s service the petitioner demanded that he be paid the pension by the University by reckoning the service rendered in the University together with the service in Government as continuous. Not only was this request denied but an attempt was also made to hold back the contributory provident fund of the petitioner. In fact, by an interim order made by this Court on 20th March 1995 a direction was given to the University forthwith to pay a sum of Rs. 1,49,730/- due to the petitioner as provident fund. We are informed at the bar that this amount was actually paid within a week of this Court''s order, though the cheque itself had been drawn upon 24-11-1994. Barring two affidavits filed in reply to the writ petition, neither the Government nor the Poona University ever informed the petitioner that he was not entitled to pension on the basis of clubbing his service under the Government and the University, despite the petitioner''s service being pensionable under the University and the petitioner having completed the requisite number of years of service. Hence this writ petition in which the petitioner claims for a direction to the University for releasing the amount of provident fund, gratuity and pension and withheld arrears of revised pay scales with interest thereupon at such rate as found fit by this Court. By the civil application the petitioner has prayed that the same reliefs be granted against the respondent Nos. 2, 3 and 4 i.e. the State Government authorities.

18. We may straightway point out that the first respondent Poona University has filed no affidavit in reply. In fact Smt. Sangeeta Patankar, learned Advocate who appeared for the 1st respondent, made it clear that the stand of the Poona University has always been that all arrears of pay and other terminal benefits would be made available to the petitioner if the State authorities sanction the same. As far as the State authorities are concerned, the reliefs are opposed on the basis of the contentions raised in two affidavits filed on behalf of the Directorate of Education.

19. In the affidavit dated 8th March 1095 one V.S. Jadhav, Administrative Officer in the office of the Joint Director of Education, contends that by virtue of Rule 157(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (corresponding to

Rule 330(A) of Bombay Civil Services Rules, 1959) a person who is in receipt of a superannuation or Retiring Pension, shall not be re-employed or continue to be employed in service paid from Consolidated Fund of India or of State or from a Local Fund, except on public grounds and in a purely temporary capacity. It is, therefore, contended that the petitioner could not have been re-employed or continued to be employed in service since the service under the University is paid from a local fund within the meaning of Rule 157(1) of the Maharashtra Civil Services Pension Rules, 1982 and the corresponding Rule under the Bombay Civil Services Rules. His next contention is that the Government Resolution dated 24-8-1970 is applicable only to superannuated Government servants and not to the petitioner who had voluntarily retired from the Government service and finally, that there were no Government orders protecting the petitioner''s pay on re-employment. In a subsequent affidavit filed by the same officer on 10th November 1997 it is contended that the petitioner''s claim is barred by virtue of Rule 159 read with Rule 39 of the Maharashtra Civil Services (Pension) Rules, 1982. It is contended that under the said Rule the last pay of the petitioner should have been fixed on that footing that the sum of the monthly pension received by him and the monthly pay received in the service of the University did not exceed the last drawn pay in the Government service. Since, admittedly, a larger amount was paid to the petitioner, it is contended that the petitioner has to refund overpayments made to him. Finally, it is contended that under Rule 159 read with Rule 39 the petitioner can be given an option that if he refunds the pension amount and the gratuity and other benefits drawn by him, then continuity of service can be granted to him.

20. On these contentions, Mr. Sonawane, learned A.G.P. appearing for the respondent Nos. 2 to 4 opposed the petition and urged that the petition be dismissed.

21. At this juncture, it is necessary to refer to the Government Resolution dated 24th August 1970. Since this is of crucial importance we reproduce paragraphs 1 and 2 in their entirety:-

"1. The question as to how the pay of Government employees re-employed in Universities/Non-Government Colleges after their retirement from Government service should be fixed in the revised scales of pay as sanctioned under Govt. Resolution, Education and Social Welfare Department No U.S.G.-1167-U, dated 6-11-1967, was under the consideration of Government, Government is pleased to clarify in this behalf that re-employment in non-Government colleges will not attract that provisions of B.C.S.R. 330 and as such the pay in such case should be allowed to be fixed under the normal rules as in the case of allowed to be fixed under the normal rules as in the case of other teachers. In the case of retired Government employees re-employed as teachers in the Universities the University being a Local Fund within meaning of Clause (a) of B.C.S.R. 9(33) provision of B.C.S.R. 330 are attracted.

2. After taking into consideration the hardship involved in fixation of pay in the

revised scales of pay allowed to University teachers with effect from 1-4-1966 in the case of Government employees re-employed as teachers in the Universities in the application of the provision of B.C.S.R. 330 Govt. has agreed to relax the provisions of B.C.S.R. 330 in such cases as a special case."

A reading of the Government Resolution suggests that the Government was seized of the issue as to how to pay all Government employees re-employed in Universities/Non-Government Colleges, after retirement from Government service, was to be fixed in the revised scales of pay sanctioned under the applicable Government Resolution. This issue was resolved by the Government clarifying it with regard to re-employment in non-Government colleges as well as re-employment of retired Government employees as teachers in Universities. We are not concerned with the former. With regard to retired Government employees re-employed as teachers in Universities (a local fund within the meaning of the applicable Civil Service Regulation), the provisions of B.C.S.R. 330 were attracted. This was causing considerable hardship to the teachers and, therefore, the Government consciously took a decision which was declared in the said Government Resolution that, in the case of the Government employees re-employed as teachers in the Universities, the application of B.C.S.R. 330 would be relaxed in such cases as a special case. The Bombay Civil Services Regulation 330 is identical with the present Rule 157 of Maharashtra Civil Services (Pension) Rules, 1982. Rule 157 requires that upon re-employment the pay of the re-employed pensioner should be fixed in the manner indicated in Clauses (a) to (d) of sub-Rule (2). The essence of the rule is that the pay fixed upon re-employment together with monthly pension shall not exceed the last drawn substantive pay. But for the exemption given by the Government vide Government Resolution dated 24th August 1970, B.C.S.R. 330, (corresponding to the provisions of Rule 157 of the Maharashtra Civil Services (Pension) Rules. 1982, would have squarely applied to the petitioner''s case. By virtue of the exemption granted from the operation of this principle by the Government Resolution dated 24th August 1970, this principle does not apply in the case of the special category of retired Government servants seeking re-employment to whom the Government Resolution applies. The petitioner is one such person.

22. The petitioner in this writ petition has averred that in the case of another similarly placed Lecturer, Prof. Sonar, who also retired from Govt. B.Ed. College, Kolhapur, and joined the Shivaji University, Kolhapur, he was given the simultaneous benefit of pension and pay protection. In neither affidavit filed by the Government is this fact denied, nor are we shown any facts which distinguish the case of the petitioner from the case of said Prof. Sonar.

23. Apart from the arbitrary and hostile discrimination made as against the petitioner, which would of course be hit by Article 14, even independently, we are of the view that the petitioner must succeed in his contentions. Under the Government Resolution dated 4th March 1978 voluntary retirement is treated as retirement and as such, a Government servant who retired voluntarily is entitled

to the benefit of "retiring pension" as defined in Rule 62(2) of the M.C.S. Rules. In fact, the said Rule 62 distinguishes retiring pension from superannuation pension which is granted to a Government servant who retires at an age at which he is by rule entitled or required to retire. We, therefore, reject the contention of the Government that the petitioner''s case was not covered by the Government Resolution dated 24th August 1970 since the petitioner was not a superannuated Government servant. In our view the wording of the Government Resolution dated 24th August 1970 does not lend itself to any such interpretation. In fact, in the said Resolution (material part of which we have already reproduced), the word used is "retirement" and not "superannuation". It is obvious that there is no such restriction in the said Government Resolution that the benefit of relaxation from the rigour of B.C.S.R. 330 would not be available to a Government servant who voluntarily retired under the Scheme floated by the Government Resolution dated 4th March 1970. We have, therefore, no hesitation in rejecting the first contention urged by the learned A.G.P.

24. The learned A.G.P. raised a second contention that the case of the petitioner would be covered either under Rule 159 read with Rule 39 or with 157(1) of the Maharashtra Civil Services (Pension) Rules. 1982. In our view this contention is equally without merit and liable to be rejected. Rule 159 of Maharashtra Civil Services (Pension) Rules merely provides that Rule 39 would be applicable only when the Government service previous to re-employment has been under the Government of Maharashtra. Rule 39 postulates its attraction to cases of Government servants who having retired on Compensation Pension or Invalid Pension or compensation gratuity or invalid gratuity, are re-employed and appointed substantively to a service or post to which these rules apply. We can straightway rule out the application of Rule 39 as the petitioner''s case does not fall within one of the contingencies contemplated under Rule 39.

25. Mr. Sonawane, learned A.G.P., then contended that the petitioner''s case would be covered either under Rule 153 or finally under Rule 157. We rule out the application of Rule 157 of the Maharashtra Civil Services (Pension) Rules, on account of the specific exemption granted under the Government Resolution dated 24th August 1970. Hence, we hold that the petitioner''s case could not have been governed by the principle enunciated under Rule 157 of the Maharashtra Civil Services (Pension) Rules, 1982. Turning our attention to Rule 153 then, it appears to us that this Rule also does not apply to the petitioner as the petitioner was not re-employed in Government service, which is the only contingency contemplated therein. Thus, we are unable to accept the contention of the learned A.G.P. that the petitioner''s claim must be denied because of application of Rule 159 or Rule 153 or Rule 39. We are, therefore, of the opinion that the petitioner''s case is not covered by Rules 153, 157, 39 or 159 of the Maharashtra Civil Services (Pension) Rules, 1982.

26. Perhaps, as a last desperate argument, the learned A.G.P. contended that the petitioner is not entitled to any relief because he had not made any declaration

as contemplated under Rule 154. Rule 154 of the Maharashtra Civil Services (Pension) Rules, 1982 provides as under :

"Re-employment ordinarily not to qualify for second pension

Unless in any case it be otherwise distinctly provided in this Chapter, a Government servant who has received a pension on retirement shall not, if re-employed in Government service, be permitted to count his new service as qualifying for second pension. If the new service is pensionable, it must be combined for the purpose of calculating pension with the service previously rendered and the whole treated as one service."

It is at once clear that this declaration is necessary in order to fix the pay of a re-employment in Government Services as provided under Rule 157. If for some reason the principle in Rule 157 is not to be applied to such a re-employed retired Government servant, then a declaration under Rule 154 is wholly inconsequential. Since we have already held that Rule 157 was not attracted to the case of the petitioner, we fail to appreciate the contention. Assuming that there was failure to make a declaration as contemplated by Rule 154, the petitioner''s arrears and pensionary benefits could not have been held up.

27. We may examine the petitioner''s case from another angle. The petitioner, being meticulous as he was, raised several queries to which neither the State authorities, nor the Accountant General, nor the University gave a categorical reply. The queries raised by the petitioner pertain to the protection of his last drawn pay as well as an accretion of his service under the State Government for the purpose of determining qualifying service upon retirement and pension being paid by the University. If the petitioner had been clearly told that the service rendered by him in Rajaram College as Government''s employee would not be reckoned for the purpose of continuity and deciding eligibility for pensionary benefits when he retired from the University''s service, it is conceivable that the petitioner might not have retired voluntarily from the Government service in which case he would have been eligible to pension and proportionate terminal benefits also. It is the attitude of the concerned authorities in not being clear about the situation themselves and not giving clear cut answer to the petitioner that persuaded the petitioner to retire voluntarily from Government service and opt for the University''s service on the two assumptions indicated by him in his letter dated 3-8-1982. In these circumstances, we are of the view that, in any event, the respondents must be stopped from denying the benefits that are available to the petitioner.

28. Considered from all aspect, in our judgment, the petitioner is entitled to the pensionary benefits consequent upon his retirement from services of the University with effect from 31st May 1994 which should be calculated on the footing that his service was continuous from 1-12-1982 to 31st May 1994. Of course, as to the question of adjustment of pension already drawn by him during the period from the date of his voluntary retirement from Government service on

30-11-1982, the petitioner would not be entitled to double benefit of pension. After re-working all the pensionary benefits payable to the petitioner, the amount of pension already paid to him must necessarily be set off against the amount that is payable now.

29. In order to make an effective operative order in the matter, we called upon the respondents to furnish the following information:-

(1) Total amount paid to the petitioner for the period 1-12-1982 to 31st December 1998 as pension for the service rendered to the Government of Maharashtra;

(2) The total amount of arrears that would become payable to the petitioner if the petitioner''s pay is treated as protected on re-employment by the University and the petitioner is granted the benefit of the revised pay-scales from 1-1-1986;

(3) Actual monthly pension that would be payable to the petitioner on the basis that the petitioner''s service was continuous from 1-12-1982 to 31st May 1994.

30. After taking adjournments on several occasions, Mr. Sonawane, A.G.P., appearing for respondent Nos. 2 to 4, informed the Court that:

(1) Total amount paid to the petitioner for the period 1st December 1982 to 31st December 1998, as pension for the service rendered to the Government of Maharashtra is Rs. 3,69,335.75;

(2) The total amount of arrears that would become payable to the petitioner if the petitioner''s pay is treated as protected on re-employment by the University and the petitioner is granted the benefit of the revised pay-scales from 1st January 1986 is Rs. 4,02,627/-; and

(3) Actual monthly pension that would be payable to the petitioner on the basis that the petitioner''s service was continuous from 1st December 1982 to 31st May 1984 is Rs. 2,382/- (approximately). Presently, the petitioner is being paid a basic sum of Rs. 1,729/- per month.

31. Mr. Sonawane states that these are approximate calculations as the actual calculations are to be carried out by the office of the Accountant General, Maharashtra.

32. Mr. Sonawane has placed on record a form dated 26th September 1989, indicating the manner of fixation of the basic pay of the petitioner by implementing the revised pay scales. The respondents shall ensure that all calculations are made by taking revised pay into account.

33. Hence, the following order:

(a) The petitioner''s basic monthly pension shall be fixed on the basis that his service was continuous from 1st December 1982 to 31st May 1994, and the petitioner is entitled to get continuations for total service of 35 years, 8 months and 6 days.

(b) The respondents shall pay the additional amount of Rs. 33,291/-payable to the petitioner under this judgment within a period of four weeks from today.

(c) The amount of Rs. 1,49,720/- was paid as Provident Fund to the petitioner in March 1995, though it was due and payable on 31st May 1994. The University shall pay interest on the delayed payment at the rate of simple interest of 12% per annum for a period in excess of 60 days from the due date.

(d) The commutation of pension in accordance with the applicable Rules shall be done by the authorities as soon as the petitioner produces Medical Fitness Certificate from the Civil Surgeon.

(e) The Respondent State to pay a sum of Rs. 2000/- (Rupees Two thousand only) as costs to the petitioner.

34. Issuance of certified copy expedited.

35. Petition allowed.

