
(1996) 07 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 880 of 1995

Govekar K.S.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 62(3)

Citation : (1998) 3 LLJ 906

Hon'ble Judges : M.B. Shah, C.J.; P.S. Patankar, J

Bench : Division Bench

Advocate : Gauri Jadhav, for the Appellant; Geeta Shastri, for the Respondent

Judgement

P.S. Patankar, J.—The question involved in this Petition is whether the Petitioner is entitled to get invalid pension under the Maharashtra Civil Services (Pension) Rules, 1982.

2. The Petitioner was working as Hamal in the Victoria Jubilee Institute, Matunga, Bombay during the period from November 17, 1955 to January 6, 1981 i.e. for about 25 years and two months. It is a Technical Institute. He was the permanent Class IV employee. The said Institute is aided by the Government of Maharashtra and the Pension Rules of the State are adopted by it.

3. It is the case of the Petitioner that he submitted application for voluntary retirement as he was physically disabled. He has crossed the age of 55 and was permitted to retire from January 17, 1981 on compassionate grounds. At that time, the Petitioner could not claim pension. He got only gratuity. It is his further case that pension and Death-cum retirement Gratuity Scheme is made applicable to the employees of non Government aided Engineering Technical and/or Technological Colleges, etc. by the Government of Maharashtra Resolution dated August 29, 1989 (Education & Employment Department) in case of those employees who retired from January 1, 1973 to September 30, 1982. It is the contention of the Petitioner that the Petitioner is entitled to get the benefit of the

said Resolution and hence to receive the pension. It has been pointed out that Respondent No. 3 - Principal of the Victoria Jubilee Institute, has written a letter to the Petitioner dated September 20, 1989 (Exhibit "B") pointing out that if the Petitioner wants to take benefit of the Pension and Death- cum-Retirement Gratuity Scheme, then he should fill the prescribed form as mentioned therein. The Petitioner opted for the Pension Scheme but he was not granted pension. Hence, this petition under Article 226 of the Constitution of India.

4. It is the contention of the learned A.G.P. that the Petitioner has not filled in the prescribed form under Rule 62 of the Maharashtra Civil Services (Pension) Rules, 1982 at the time when he retired which could have indicated that he became invalid and he was permitted to retire, It is submitted that the petitioner has retired voluntarily and hence he is not entitled to get pension. The learned Counsel relied upon the Government Resolutions dated March 28, 1987 and dated May 24, 1989 to support her submission.

5. Reliance is placed by the learned Counsel for the Respondents in particular on Question No.3 contained in Government Resolution dated March 26, 1987. The question was as follows :

"3. Whether different type of retirement mentioned in the Chapter 7 of Maharashtra Civil Services (Pension) Rules, 1982 are applicable?"

The answer is except in case of voluntary retirement after completion of qualifying service of 20 years, pension would be available. By Government Resolution dated May 24. 1989, it has been made clear that the benefits of pension on voluntary retirement are not applicable in case of employees of institutions such as Respondent No. 3, It is submitted that as the Petitioner has retired voluntarily on compassionate ground, he is not entitled to set the benefit of Government Resolution dated September 20, 1989."

6. First, it is to be noted that the Maharashtra Civil Services (Pension) Rules, 1982 came into force on August 15, 1982 while the Petitioner retired on January 16, 1981 and hence there was no question of his filling the form as required under those Rules for getting invalid pension. The Resolution passed by the Respondent No. 3 permitting the Petitioner to retire voluntarily on health ground shows that he was allowed to retire on compassionate grounds. Further, the learned AGP has very fairly produced the letter dated July 26, 1996 issued by Respondent No.3 which shows that the Petitioner was permitted to retire as per his request on health ground. Rule 62 (3) provides for invalid pension and it is as follows:

"62(3) Invalid pension, which .is a pension granted to a Government servant who retires from Government service, before reaching the age of superannuation, on account of mental or bodily infirmity."

It is clear that due to bodily infirmity, the request of the Petitioner was accepted and he was allowed to retire. The retirement was clearly due to invalidity and so

the Petitioner is entitled to get invalid pension.

7. Hence, we pass the following order:

(i) The Respondents are directed to grant invalid pension to the Petitioner from January 17, 1981.

(ii) The Respondents to pay arrears of pension to the Petitioner before October 31, 1996.

8. Rule made absolute accordingly. No order as to costs.

9. Certified copy expedited.