
(2002) 07 BOM CK 0134
In the Bombay High Court
Case No : Writ Petition No. 351 of 2002

Gunwant Laxman Ingale

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 26

Citation : (2003) 1 ALLMR 641 : (2003) 1 BomCR 160 : (2002) 4 MhLj 931

Hon'ble Judges : R.G. Deshpande, J;P.S. Brahme, J

Bench : Division Bench

Advocate : S.P. Palshikar, for the Appellant; D.B. Patel, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—This petition raises an interesting and important question as regards the jurisdiction of the learned members of the Maharashtra Administrative Tribunal (hereinafter referred to as "the MAT" for the purpose of brevity) to rehear the matter after the same once having been referred to the third member, for his decision because of the difference of opinion between the two members of the MAT, in accordance with Section 26 of the Maharashtra Administrative Tribunals Act, 1985.

2. Facts giving rise to the present litigation are :--

The present petitioner before this Court i.e. Gunwant Ingle, who was working as a Executive Engineer in Public Works Department, stood prematurely retired, by order dated 4th September 1987 in accordance with the Rule No. 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "the Rules" for the sake of brevity). Pertinent it is to note that before his premature retirement, the petitioner was served with a show-cause notice dated 25th July, 1982 and certain charges were levelled against him. We are, for the purposes of the present decision, not concerned with the nature of the charges levelled

against the delinquent/petitioner. Necessary Departmental Enquiry was conducted and the Enquiry Officer submitted his report on March 4th, 1985, wherein majority of the charges levelled against the petitioner are held to have been proved against him. After having received the Enquiry Officer's report, the petitioner was served with the same along with show cause notice dated 30th July, 1985 calling upon him to give his explanation as to why the proposed action be not taken against him. The said show cause notice was aptly replied by the petitioner by his reply dated 28th August, 1985. However, it is clear from the record that no final decision in the matter of Departmental Enquiry was taken by Disciplinary Authority.

3. In the intervening period, there appeared to be some assessment of the working of the petitioner which was made by the Review Committee. The Review Committee had come to the conclusion that it was in public interest and also in the interest of administration to prematurely retire the petitioner in accordance with the provisions of Rule 10 of the Rules, Fact remains on the record that before any action could be taken on the basis of the Departmental Enquiry against the petitioner, he stood prematurely retired. The abovesaid order of premature retirement happened to be a subject matter of writ petition before the High Court at the instance of the petitioner. However, the petition was dismissed and the SLP against that also came to be dismissed, thus confirming the decision of the Govt. as regards retiring the petitioner prematurely.

4. The dispute between the parties really started when the petitioner was served with a show cause notice dated March 27th, 1989, whereby the petitioner was called upon to explain as to why his full pension should not be withheld on account of the misconduct proved against the petitioner in the Departmental Enquiry referred to above. Necessary it is, at this stage, to mention that the petitioner earlier pursuant to the show cause notice dated March 27th, 1989 was served with a notice dated 13th July, 1985 by which he was called upon to show cause as to why he should not be dismissed from service, however, that notice stood withdrawn, as is clear from the record. The show-cause notice was duly replied by the petitioner whereafter the authority concerned passed an order on 5th June, 1993, withholding the full pension of the petitioner.

5. This order of withholding the pension of the petitioner which is dated 5th June, 1993, was the subject matter of challenge before the High Court in Writ Petition No. 22277 1990, however, the High Court transferred the said petition to the Maharashtra Administrative Tribunal for being dealt with in accordance with law, which is thereafter numbered as Transfer Application No. 1344/92. Needless to mention that the order dated 27th March, 1989 was challenged before the High Court in the abovesaid writ petition, which was after transfer, numbered as T.A. No. 1344/2002. The petitioner also simultaneously challenged the order dated 5th June, 1993 whereby the petitioner's pension was permanently withdrawn or withheld, in Original Application No. 307/94.

6. In Writ Petition No. 2227/1990, the petitioner had sought for the relief to

quash and set aside the order dated 27th March, 1999, with a further direction to the respondent government to release all the amounts due to the petitioner with interest @ 18% p.a., on that entire amount, with other ancillary reliefs. In original Application No. 307/94, he sought for quashing and setting aside the order dated 5th June, 1993, whereby the full pension was withheld.

7. From the facts stated above, it is clear beyond doubt that action taken against the petitioner under Rule 10 of the Rules, could, by no stretch of imagination be said to be a action in pursuance of the Departmental Enquiry conducted against the petitioner. This action under Rule 10 of the Rules, also could not be treated to be an action by way of punishment to the petitioner on the basis of the Departmental Enquiry and on the basis of the alleged charges having been proved against him. Action under Rule 10 is absolutely an independent action, which was taken strictly on the basis of the assessment of the working of the petitioner. From the facts of the present case, we can conveniently assume that the petitioner herein, stood retired in accordance with Clause (a) of Sub-rule (4) of Rule 10 of the Rules of 1982. It is pertinent to note that this Rule has no reference whatsoever to any of the Departmental Enquiry either conducted against the delinquent nor does it refer to any contemplated Departmental Enquiry. We have to make specific observation of this particular fact for the reason that in the instant matter, there appeared to be certain intermingling of the facts because of the simultaneously conducted Departmental Enquiry against the present petitioner.

8. Once it is held that the retirement is premature retirement in accordance with Rule 10(4)(a) of the Rules, the question of imposing any penalty in that respect or retirement on the basis of any punitive action or Departmental action did not arise.

9. Once it is held that the retirement is under the abovesaid Rule 10(4)(a), in these circumstances, it is absolutely clear that the same cannot be treated to be a premature retirement by way of punishment, much less, a major punishment in accordance with Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Rule 27 of the Pension Rules, empowers the employer or the Government to withhold or withdraw pension. In accordance with Sub-rule (1) of Rule 27, it is well within the competence of the Government to withhold or withdraw the pension or any part thereof, by issuing an order in writing, that too, either permanently or for a specified period, as also the Government has power to recover from such pension the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the petitioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. There are 2 provisos, to this Rule 27. Proviso (1) pertains to due consultation with the Maharashtra Public Service Commission, if the matter relates to the State Government employee, before passing any final order in that respect and by 2nd proviso, if any part of the pension is to be withheld or is to be withdrawn, the

remaining amount of the pension has to be seen not to have been reduced below the minimum fixed by the Government.

10. However, for the purposes of the present petition, suffice it is to say that the learned members of the Tribunal, who dealt with the matter, i.e. W. P. No. 2227/1990, which was transferred as Transfer Application No. 1344/1992 and Original Application No. 307/94, and passed a common judgment in both these matters. However, unfortunately, the Member Judicial and the Member, Administrative who were forming the Division Bench of the Administrative Tribunal, did not agree with each other and delivered judgment on the point as regards the competency of the respondent Government with respect to the withdrawal or withholding of pension of the petitioner. As per the administrative member, it was competent for the Government to have withheld the pensionary benefits of the petitioner for recovery and because he was found guilty in the Departmental proceedings. However, the learned Judicial Member differed on this point so far as regards the recovery was concerned. According to the learned Judicial Member, since the premature retirement of the petitioner has nothing to do with the Departmental Enquiry or the charges levelled against him and proved against him and since the premature retirement of the petitioner was not by way of punishment, it was not competent for the Govt. to have withheld or withdrawn the pension of the petitioner.

11. Because of the difference in opinion between the judicial and administrative member, the matter was referred to the third member, in accordance with the provisions of Section 26 of the Act.

12. The learned Chairman of the Tribunal, heard the matter as a third member on reference, and after giving due reasonings agreed with the conclusion drawn by the learned Judicial member, that in the instant matter since the premature retirement was not by way of punishment, it was incompetent for the employer State to withhold full pension of the petitioner. However, the learned Chairman, simultaneously observed that whatsoever recovery in the Departmental Enquiry is shown against the petitioner, the same was liable to be recovered from the petitioner, from his retirement benefits. The learned Chairman, therefore, sent back the matter to the Division Bench of the Tribunal, for giving a final judgment in accordance with the majority view.

13. The matter, after having come back for final hearing, surprisingly, the respondent State moved an application before the learned members of the Tribunal for re-hearing of the original application along with the Transfer Application No. 1344/1992. Through this application, the present respondent - State contended before the Tribunal that since the findings of the Departmental Enquiry were not there before the Tribunal at the time of earlier decision and further since the point as regards nature of the misconduct was also not for decision before the learned members of the Tribunal, to which a reference is made by the Chairman in his order, the matter needed fresh hearing do-novo. This application was, no doubt, vehemently opposed by the present petitioner by

his reply. However, copy of the reply filed with this petition, does not indicate any date thereon.

14. The learned members of the Tribunal heard this application at length and allowed the application granting virtually re-hearing of the whole matter, which, in fact, was concluded by the members concerned by passing two independent judgments, and as they differed with each other, by the third Member on reference. It is this order dated 5th October, 2001, which is the subject matter of challenge in this petition.

15. Shri Palshikar, the learned Advocate scathingly assailed this order dated 5th October, 2001 contending that it was not open for the members of the MAT to re-hear the matter on merits, particularly, in view of the judgment and order passed by the third member i.e. the Chairman of the Tribunal.

16. The very purpose of Section 26 is that if there is a difference between the two members so far regards result is concerned, then the matter has to be referred to the third Judge or Member, so as to have judgment by majority, which in common parlance is called as "Best of the three". In such a case, the learned members already having come to the conclusion by their earlier orders, in our opinion, do not have any further scope to deal with the matter afresh and that too on merits, once having opined conclusively as regards decision in that matter. Further, worth it is to note that the application of rehearing was not a review application also.

17. In our view, the learned Members of the Tribunal had clearly transgressed their jurisdiction in allowing re-hearing of the matter and that too solely on the ground that the point which was not argued before the MAT i.e. before the Division Bench, appeared to have been passingly referred by the third member i.e. the Chairman of the Tribunal.

18. We are of the clear opinion that the matter once having referred and the third member having given his judgment withholding the view taken by the Judicial Member, there was no scope to interfere with the same any further but the Division Bench was just expected to pronounce the judgment in pursuance of the majority view. We, therefore, find no difficulty whatsoever, in setting aside the order passed by the learned Members of the MAT which is passed on application filed by the respondent as regards re-hearing.

19. The learned Members should have kept in mind that the judicial discipline as is required in the Civil Courts and Criminal Courts, the same type of judicial discipline is required even in the proceedings before the MAT as the proceedings are in no way different than judicial proceedings.

20. If, the learned Members tried to take such a view of re-hearing the matter even after there being a decision by the third member, that would create chaos and further it may unnecessarily create doubts in the minds of the litigants and the whole sanctity of the proceedings and the judicial decisions would be lost.

21. It is also pertinent to note that it is also necessary to keep in mind that when the third Judge to whom the matter was referred, and in the instant matter, who happened to be the Chairman of the MAT, has specifically directed the Division Bench to pronounce the judgment in pursuance of the opinion given by him. There was hardly any scope for the learned Members of the Tribunal either to entertain the present application for re-hearing and further fixing the same for re-hearing.

22. In our opinion, this way of conducting the matter by the learned Members of the Division Bench of MAT is against all norms of judicial system, judicial discipline and principles.

23. Before parting with this judgment, we have to observe that while going through the petition, we have seen that the two different judgments delivered by the two Members of the tribunal i.e. Administrative and Judicial, none of these judgments bear date either in the beginning of the judgment or even at the end. The date is not even written by the learned Members while signing the said judgments. To find out the correct dates of the judgments, we again minutely went through the judgments passed by the learned Chairman of the MAT, however, surprisingly, in that judgment also we could not trace out the date or the dates of the two different judgments of the Members of the Division Bench. We feel that necessary care has to be taken while delivering the judgments that it is not only signed but the date of judgment has to be there so as to make it convenient for the parties as well as for the higher Courts, if the said judgment is challenged before those Courts, to know the exact date of judgment. We feel that this may be due to sheer inadvertence. However, we emphasize that due care in this respect is definitely required to be taken. To verify the exact position, we have even called the original record from MAT and after seeing the originals, we have made the above observations.

24. In the result, the petition is allowed. The order impugned, passed by the MAT dated 5th October, 2001, is quashed and set aside. The learned Members of the Division Bench of MAT shall pronounce the judgment in view of the majority decision, within three weeks from the date of communication of this judgment with due notice to the concerned parties.

Rule is made absolute in the aforesaid terms, with cost to be borne by the respondents, which is quantified at Rs. 3,000/-