(2023) 02 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 3343 Of 2021

Hukumchand APPELLANT

Vs

State Of Maharashtra And Others RESPONDENT

Date of Decision : 16-02-2023

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 27(1), 129(B)

Citation : (2023) 02 BOM CK 0063

Hon'ble Judges : Sunil B. Shukre, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : G.N.Khanzode, S.S.Jachak, V.K.Kulsange

Final Decision : Allowed

Judgement

Sunil B. Shukre, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. It is not in dispute that by the order dated 03.04.2019, regular pension payable to the petitioner has been fixed and it has been fixed to the extent of one third of the regular pension payable to the petitioner as per the Rules. The effect of such an order is nothing but reduction of the pension, otherwise payable to the petitioner and therefore, as rightly submitted by Shri G.N.Khanzode, learned counsel for the petitioner that the procedure prescribed in Rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, the Rules of 1982) would come into picture. This rule reads as under:

"27(1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it whether permanently or for a specified period, and also order of recovery, from such pension, the whole or part of any pecuniary loss caused to 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."

3. It is clear that Competent Authority can withhold or withdraw pension or any part of it whether permanently or for a specified period and can also order recovery, from such pension, unless the pensioner has been found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, in some Departmental Enquiry proceedings or judicial proceedings. The fixation of the pension payable to the petitioner to the extent of one third pension payable to him amounts to permanent withholding of the pension otherwise payable to the petitioner and therefore, as per Rule 27(1) of the Rules of 1982, this can be done only if the pensioner i.e. the petitioner has been found guilty of grave misconduct or negligence during the period of his service, in a Departmental Enquiry held against him or any judicial proceeding. Admittedly, there is no Departmental Enquiry held against the petitioner. There is also no judicial proceeding filed against him. There is thus no finding of the petitioner being guilty of grave misconduct or negligence during period of his service. It would then follow that the fixation of pension payable to the petitioner only to the extent of one third of the total pension payable to him is bad in law and as such, the impugned order dated 03.04.2019 would have to be quashed and set aside.

4. Shri V.K.Kulsange, the learned counsel for respondent no.2 however submits that there was an undertaking given by the petitioner whereby the petitioner had undertaken to allow the Competent Authority to recover whatever dues were recoverable from him by the Department and since it was found that dues of Rs. 43,86,737/- were payable by the petitioner to the Department, the impugned order was passed by respondent no.2, which was in consonance with the undertaking given by the petitioner.

5. While it is true that the petitioner had given undertaking to permit the employer to recover from him or from retiral dues payable to him whatever amount found to be due and recoverable from him, the undertaking does not dispense with the requirement of law, for the reason that there is no waiver against the law. When Rule 27(1) of the Rules of 1982 mandatorily prescribes that no pension or part of it can be withdrawn or withheld either temporarily or permanently without the pensioner having been found guilty of grave misconduct or negligence in a Departmental Enquiry proceeding or any other judicial proceeding. It requires respondent no.2 in the present case to hold Departmental Enquiry against the petitioner and fix the accountability of the petitioner as regards his liability to pay the dues of Rs.43,86,737/- to the Department. Unless the sum recoverable is determined and unless the accountability for its recovery is fixed against an employee, no employee can be subjected to any truncated pension as has been done in the present case. Besides, the undertaking in the present case does not indicate any particular amount which the petitioner has voluntarily agreed to be allowed to be recovered from his retiral benefits The undertaking only says that whatever amount is found as due and recoverable from the petitioner can be recovered by the employer from him. Such being the nature of the undertaking, as rightly submitted by the learned counsel for the

petitioner, that it was necessary for the employer i.e. respondent no.2 to hold a Departmental Enquiry at least for the purpose of determination of the exact amount found to be due and recoverable from the petitioner. If it had been done, it would have complied with the requirement of Rule 27(1) of the Rules of 1982 and also requirement of principles of natural justice. Therefore, we respectfully express our disagreement with the argument of the learned counsel for respondent no.2 and reject it.

6. In the result, we find that the writ petition deserves to be allowed and it is allowed accordingly.

We direct respondent no.2 to fix the pension payable to the petitioner to its fullest extent in accordance with the Maharashtra Civil Services (Pension) Rules, 1982 and start paying the same within a period of four weeks from the date of this order. We further direct respondent no.2 to pay the arrears of pension so fixed together with interest at the applicable rate from the date on which the pension ought to have been paid to the petitioner till the arrears of pension are fully paid to the petitioner in terms of Rule 129 (B) of the Maharashtra Civil Services (Pension) Rules, 1982 within a period of four weeks from the date of the order. We further direct respondent no.2 to pay the remaining retiral dues including Provident Fund, Gratuity, Leave Encashment and others, if any, with interest at the applicable rate as per the Rules of 1982, within a period of four weeks from the date of the order.

Rule is absolute in aforesaid terms with no order as to costs.

