
(1987) 04 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 3909 with C.A. No. 3089 of 1984

Keshav Bhikaji Maharao

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1987) MhLj 762

Hon'ble Judges : P.B. Sawant, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : N.H. Gursahani with A.A. Irani and V.B. Rairkar, for the Appellant;
A.N. Keswani "A" Panel Counsel with J.C. Satpute, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Sawant, J.—The present petition is filed under Article 226 of the Constitution for quashing the departmental proceedings initiated against the petitioner by a show cause notice dated March 16, 1985. The petitioner retired as an Executive Engineer, Class-I, from the services of the State Government on January 5, 1980. The first show cause notice for adopting disciplinary proceedings against him was issued on July 9, 1984 under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as "the Discipline and Appeal Rules") read with Rules 26 and 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "the Pension Rules"). This notice was later on withdrawn without prejudice to its right to issue a fresh show cause notice. A fresh show cause notice with the same charges was thereafter issued on March on, 1985 under Rule 189 of the Bombay Civil Services Rules (hereinafter referred to as the Civil Services Rules") read with Rule 165 of the Pension Rules.

2. The only question which falls for our consideration in the present case is whether the petitioner's case would be governed by the Pension Rules or by the Civil Services Rules. If it is the latter, the proceedings are valid since there is no

time limit prescribed for holding the disciplinary proceedings under Rule 189 of the said Rules. If it is the former, the time limit for instituting the disciplinary proceedings being four years from the date of retirement, the proceedings will undoubtedly be invalid since they have been instituted on March 16, 1985.

3. The petitioner had retired-prior to the coming into operation of the two Government Resolutions of March 31, 1980 and December 18, 1980 to which we have made a detailed reference in another Writ Petition No. 3403 of 1984 decided on March 13, 1987. Hence the benefit of the said resolutions would not be available to the petitioner with the result that the provisional pension which was granted to him will not be deemed to have become final. The result, therefore, is that in view of the provisions of Rule 165(2)(c) of the Pension Rules, his case would be governed by Rule 189 of the old rules viz. the Civil Services Rules. Rule 189 does not prescribe any time limit for holding the enquiry unlike Rule 27 of the Pension Rules, as stated earlier.

4. Mr. Gursahani, the learned counsel appearing for the petitioner, did contend before us that Rule 189 was arbitrary in the absence of the prescription of any time limit for holding the departmental enquiry and, therefore, was unreasonable and violative of the petitioner's fundamental right under Article 14 of the Constitution. We have on this point a recent decision of the Supreme Court of India in Civil Appeal No. 481 of 1987 decided on February 25, 1987 which has upheld the validity of a similar provision contained in Article 470(b) of Civil Service Regulations of Uttar Pradesh. It must however be conceded that in the said case, the reasonableness of the said Article on the ground of want of limitation for holding disciplinary proceeding, was not in issue. The question, therefore, that falls for our consideration in the present case is whether the departmental proceedings which have been initiated more than five years after the date of retirement can be said to be valid. In this connection, it is necessary to note that the Pension Rules which are the new Rules on the subject have for the first time prescribed the time limit for holding the enquiry. The limitation of four years from the date of retirement prescribed there cannot be said to be unreasonable. However, the new Rules came into force from August 15, 1982 and would have become applicable to the petitioner in the present case since he had retired on January 5, 1980, but for the provisions of Rule 165(c) which saves the operation of the old Rule 189. Since the new rules prescribing limitation came into force for the first time from August 15, 1982, it is reasonable to hold that the Government must-have a reasonable time to complete investigation and initiate enquiry in the case of those employees to which the old Rule 189 was till that time applicable. The question is what should be this reasonable period. According to us the reasonable period in such cases should not exceed four years from the date of the commencement of the new Rules i.e. the Pension Rules. The Government has also considered four years as a reasonable period in all cases governed by the new Rules, In the circumstances it will be justifiable to hold that where the old Rule 189 applies, no departmental enquiry should be initiated after the expiry of four years from the date of the commencement of the new Rules

i.e. the Pension Rules. Unfortunately in the present case, even after adopting this criteria the enquiry which started on- March 16, 1985 cannot be said to be beyond the period of four years from August 15, 1982.

5. Hence we are of the view that it is not possible to quash the departmental enquiry initiated by the notice dated March 16, 1985 on the ground urged by the petitioner. The result, therefore, is that the petition fails. In the circumstances of the case, the Rule is discharged with no order as to costs. In view of this decision, the Civil Application does not survive.