

(1999) 07 BOM CK 0123

In the Bombay High Court

Case No : Writ Petition No. 3907 of 1998

Madhukar Pralhadrao Pathak

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37, 37A
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1999) 4 ALLMR 279 : (2000) 4 BomCR 130 : (2000) 84 FLR 215

Hon'ble Judges : S.D. Gundewar, J; P.S. Patanakar, J

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; Dhote, A.G.P., for the Respondent

Judgement

P.S. Patankar, J.—Rule returnable forthwith. Heard both sides for disposal. No reply is filed in spite of the order dated 14-12-98. By this petition, the petitioner is praying for restoration of one-third pension after 15 years of his absorption in Maharashtra Industrial Development Corporation in view of the Maharashtra Civil Services (Pension) Rules, 1982.

2. The petitioner entered the service on 7-7-47 in the Revenue Department of the State Government. He worked in the Department upto 24-6-67. At that stage the State Government took the decision to establish Maharashtra Industrial Development Corporation and some of the officers working under the State Government were to be deputed. The petitioner was accordingly deputed on 24-6-67. He came to be absorbed permanently in Maharashtra Industrial Development Corporation Service on 19-5-72 as per the Government Resolution of the even date. The said Government Resolution provided that retirement benefits admissible under the concerned Government Resolution should be sanctioned to the petitioner. Accordingly orders of payment of commuted value of pension under letter dated 5-3-81 was issued. The petitioner was accordingly paid i.e. gratuity and lumpsum in lieu of pension as per the table obtained on the date of superannuation as per his option. After 15 years of his absorption, the

petitioner first made a representation on 29-5-97 for restoration of commuted pension. Such representations were made from time to time. However, on one pretext or the other, the same was not granted to the petitioner. The decision was postponed by the State Government. This decision was postponed by the State Government on one ground or the other. There is no dispute regarding the facts.

3. The learned Counsel for the petitioner has pointed out Rule 67 of the Maharashtra Civil Services (Pension) Rules, 1982. The relevant part thereof reads as under :

"67

(e) Every Government Servant will exercise an option, within six months of his absorption for either of the alternatives indicated below:---

(i) receiving the monthly pension and retirement gratuity already worked out under (a) above.

(ii) receiving the retirement gratuity and a lumpsum amount in lieu of pension worked out with reference to commutation table obtain- ing on the date from which the pro rata pension, gratuity etc. would be disbursable.

Where no option is exercised within the prescribed period, the Government servant will automatically be governed by alternative (ii) above. Option once exercised shall be final. The option shall be exercised in writing and communicated by the Government Servant concerned to the concerned Undertaking, Department and Audit.

(f) Where a Government Servant elects alternative (e) (ii), he shall, in addition to the retirement gratuity be granted -

(i) On an application made in this behalf, a lumpsum amount not exceeding the commuted value of one third of his pension as may be admissible to him in accordance with the provisions of Chapter III of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984; and

(ii) Terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension referred to in Clause (i) in accordance with provisions of Chapter IV of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 subject to the condition that the Government Servant surrenders his right of drawing two-third of his pension.

He has also relied upon the judgment of the Supreme Court reported in Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another, . The Honourable Supreme Court was considering the provisions of Central Civil Services (Pension) Rules, 1972. The rules for consideration were Rules 37 and 37-A. Rule 37 and 37-A are pan materia with the above quoted Rule 67 of the Maharashtra Civil Services (Pension) Rules, 1982. The Supreme Court, while considering the provisions

observed as under:

"9. From the above extracts, it will be seen that a clear-cut distinction is made in Rule 37-A itself between one-third portion of pension to be commuted without any condition attached and two-third portion of pension to be received as terminal benefits with condition attached with it. It follows that so far as commutation of one-third of the pension is concerned, the petitioners herein as well as petitioners in "Common Cause" case stand on similar footing with no difference. So far as the balance of two-third pension is concerned, the petitioners herein have received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension. This was not the case with the petitioners in "Common Cause" case. That being the position, the denial of benefit given to "Common Cause" petitioners to the present petitioners violates Articles 14 and 16 of the Constitution. The reasoning for restoring one-third commuted pension in the case of "Common Cause" petitioners equally applies to the restoration of one-third commuted pension in the case of these petitioners as well."

4, In view of the above position, in our opinion, the petitioner is entitled for restoration of his one-third pension from May 1987, i.e. 15 years after the date of his absorption in Maharashtra Industrial Development Corporation. The respondents are directed to compute his pension on that basis as per law and grant the same to the petitioner within a period of three months from today. Rule made absolute in above terms.

5. Petition allowed.