

(2015) 03 BOM CK 0321
In the Bombay High Court
Case No : Writ Petition No. 12135 of 2013

Sudhanwa C. Bodas

APPELLANT

Vs

SNDT Women"s University and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 03 BOM CK 0321

Hon'ble Judges : V.A. Naik, J;C.V. Bhadang, J

Bench : Division Bench

Advocate : Vishal Kanade i/b Sanjay Gawade, for the Appellant; Rui Rodrigues and Pranali Dixit, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.A. Naik, J—Leave is granted to join the Joint Director, Higher Education Mumbai region, as a party respondent. The necessary amendment should be carried out forthwith. Mrs. Bhende, the learned Assistant Government Pleader, waives notice on behalf of the newly added respondent No. 3.

2. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. By this petition, the petitioner seeks a declaration that the petitioner is entitled to the benefits of the voluntary retirement scheme as the petitioner stood voluntarily retired from the services on the completion of 90 days from 17/09/2012.

4. The petitioner was appointed on a post of "Laboratory Assistant" on 28/09/1990 and he joined his duties on 03/11/1990. The services of the petitioner were regularised with effect from 07/08/1992 and after completion of 22 years of service, the petitioner applied on 17/09/2012, for voluntary retirement under the provisions of voluntary retirement scheme. The petitioner believed that the petitioner stood voluntarily retired on the completion of 90 days from the date of the application on 17/09/2012 as the respondents had not

rejected the application of the petitioner before the completion of the said period.

5. On 15/10/2012, the petitioner received a memo from the respondent No. 2 alleging therein that the petitioner had attended the school irregularly. The petitioner made a representation to the memo and nothing happened in the matter thereafter. Though the petitioner was entitled to the retiral benefits after completion of 90 days from the making of the application for voluntary retirement, the petitioner was shocked to receive a communication from the respondent No. 2, on 05/03/2013 rejecting the application filed by the petitioner.

6. Mr. Kanade, the learned counsel for the petitioner submitted that under the voluntary retirement scheme dated 07/03/1990, the petitioner was entitled to apply for voluntary retirement after completion of 20 years of service. It is stated that the petitioner had applied in pursuance of the scheme for voluntary retirement on 17/09/2012 and since the application made by petitioner was not rejected within the period of 90 days, the petitioner was deemed to have voluntarily retired from services after the completion of the period of 90 days. It is submitted that in terms of clause 3 of the scheme, the petitioner was deemed to have retired voluntarily on the completion of 90 days and the respondent No. 2 was empowered to withhold the retiral dues only if a departmental enquiry on charges which could have resulted in termination of the services of the petitioner was pending. It is stated that no such inquiry was pending against the petitioner when the petitioner applied for voluntary retirement, on 17/09/2012 and even thereafter. It is stated that the respondent No. 2 has not initiated any departmental proceedings against the petitioner, much less any departmental proceedings which could have resulted in the termination of the services of the petitioner, in case the charges were proved. It is stated that in the absence of departmental enquiry and in view of clause 3 of the scheme which provides for deemed acceptance of the application for voluntary retirement, the petitioner is entitled to the retiral benefits. It is stated that though the petitioner stood voluntarily retired from services in the year 2012, the respondents have not taken any action to pay the retiral benefits to the petitioner.

7. Mr. Rodrigues, the learned counsel for the University supported the order of the respondent No. 2 and submitted that the petitioner was irregular in attending his duties. It is however fairly stated that before or after the making of the application for voluntary retirement, no departmental enquiry was initiated against the petitioner.

8. On hearing the learned counsel for the parties, it appears that the respondent No. 2 was not justified in not taking steps in ensuring the payment of the retiral benefits to the petitioner. Admittedly, no departmental enquiry was pending against the petitioner when the petitioner applied for voluntary retirement on 17/09/2012. The respondent No. 2 had not initiated an enquiry against the petitioner even after the submission of the application on 17/09/2012. The application of the petitioner was not rejected by the respondent No. 2 before the expiry of the period of 90 days as provided in the scheme. The petitioner was

deemed to have retired after the completion of 90 days from 17/09/2012. In view of clause 3 of the scheme, the retiral benefits of the petitioner could not have been withheld by the respondent No. 2, when no departmental enquiry was pending against the petitioner. The respondent No. 2 was duty bound to send the pension papers and the other relevant papers for releasing the retiral benefits of the petitioner to the State Government and the Joint Director of Higher Education of Mumbai region immediately, after the completion of the period of 90 days from the date of receipt of the application for voluntary retirement.

9. For the reasons aforesaid, the Writ petition is allowed. The impugned order is quashed and set aside. We direct the respondent No. 2 University to immediately send the pension papers and the other relevant documents for releasing the retiral benefits of the petitioner, to the Joint Director of Higher Education, Mumbai region within a period of three weeks. If any formalities are required to be completed by the petitioner, the petitioner may do the needful. The Joint Director of Higher Education should release the retiral benefits and the arrears of retiral benefits to the petitioner within a period of four weeks from the receipt of the papers from the respondent No. 2 University.

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