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**(1998) 11 BOM CK 0124**

**In the Bombay High Court**

**Case No :** Writ Petition No. 4821 of 1989

Tukaram Damodar Paithankar

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

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**Date of Decision :** 03-11-1998

**Acts Referred:**

**Citation :** (1998) 11 BOM CK 0124

**Hon'ble Judges :** S.H. Kapadia, J;A.P. Shah, J

**Bench :** Division Bench

**Advocate :** Sanjeev Rairkar, for the Appellant; V.V. Pai, A.G.P., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.H. Kapadia, J.—Petitioner was appointed on 25-7-1953 as an Overseer in the Pune District Local Board. He worked till 30-4-1962. Upon dissolution of the Pune District Local Board, Pune, the petitioner was absorbed in Pune Zilla Parishad, Pune from 1-5-1962 to 14-4-1975 in the capacity of an Overseer. Petitioner was then promoted to the post of Deputy Engineer with effect from 23-4-1975 and he was posted at Nasik. During the period 23-4-1975 to 21-6-1975, the petitioner worked as a Personal Assistant to Executive Engineer, petitioner was also transferred thereafter to various places as enumerated in paragraph 2 of the Writ Petition. Petitioner was required to work at Ahmednagar as Deputy Engineer during the period 26-2-1981 to 10-4-1982 at Road Project Division, Ahmednagar. During this period, petitioner proceeded on earned Leave for 33 days from 8-3-1982 to 9-4-1982. He was to resume duty on 12-4-1982. However, due to ill health, the petitioner applied for Medical Leave for 30 days with effect from 10-4-1982. Petitioner applied for extension of Medical Leave by 30 days which came to be granted by the Superintending Engineer. By letter dated 9-3-1983 addressed by the petitioner to the Superintending Engineer, Ahmednagar, the petitioner applied for Voluntary Retirement with effect from 10-4-1982. The Superintending Engineer requested the petitioner to take decision in the matter

and further stated that if the petitioner decides to opt for Voluntary Retirement then he should fill up the declaration within 7 days which the petitioner forwarded. Petitioner accordingly opted for Voluntary Retirement since he attained the age of 56 years on 10-4-1982. By Resolution dated 19-12-1983, petitioner was allowed to retire with effect from 10-4-1982 in accordance with Rule 10 of the Maharashtra Civil Service (Pension) Rules, 1982. Respondent No. 3 by his letter dated 5-3-1984 also forwarded to the Executive Engineer the requisite Certificates. Respondent No. 1 also informed respondent No. 2 that the petitioner be sanctioned 100% Provisional pension on the ground of pendency of two cases against the Petitioner. By Orders passed from time to time, the Provisional pension came to be sanctioned. Respondent No. 1 vide letter dated 20-2-1985 addressed to the Superintending Engineer informed the Superintending Engineer that no proceedings with regard to Pension were pending against the petitioner. However, respondent No. 3 vide letter dated 21-3-1989 addressed to respondent No. 1 stated to have sent a Chargesheet against the petitioner vide his letter dated 16-4-1987. By the said letter Respondent No. 3, however, further stated that he was awaiting further directions in connection with the Departmental Enquiry allegedly being conducted at the Government level. In view of the said letter, the petitioner was not paid gratuity payable to him on his retirement nor his pension and in the circumstances the present Writ Petition came to be filed.

2. By this Petition, petitioner has submitted that the act of the respondents in withholding the petitioner's gratuity coupled with non finalisation of pension has caused the petitioner untold misery. By the said Petition, the petitioner has further averred that no Chargesheet has been furnished to the petitioner by the 3rd Respondent. That no Disciplinary Proceedings came to be initiated and in view of the Maharashtra Civil Service (Pension) Rules, 1982 no Departmental Proceedings could be initiated against him in view of the express bar contemplated by Rule 27(2)(b)(ii) of the said Pension Rules. The said Rule contemplates initiation of Departmental Enquiry within the stipulated period which, in the present case, admittedly, has not been done. The learned counsel for the petitioner has also submitted that, till today petitioner has not been served with any Chargesheet indicating initiation of Disciplinary Enquiry under the Pension Rules. He has further pointed out that no show cause notice has been furnished to the petitioner and in the above circumstances the respondents were not entitled to withhold the gratuity. In the above circumstances, the respondents were not entitled to withhold the sanctioning of Provisional pension and under the above circumstances, petition has been filed.

3. Although the Petition has been pending since 1989 and although the matter has been shown on the Board, none appears for respondents Nos. 3 and 4 though served. The facts enumerated hereinabove clearly show that, in the present matter, the Enquiry contemplated by Rule 27 of the Pension Rules has not been initiated till today. It has not been initiated within the stipulated period under the Rules. In the circumstances, the Judgment of the Division Bench of

this Court in the case of P. M. Nadgauda vs. State of Maharashtra and another reported in 1987 Mh.L.J. 353 clearly applies to the facts of the present case.

4. For the foregoing reasons, Rule is made absolute in terms of prayer clauses (a) excluding the bracketed portion to (c) with no order as to costs. We are not inclined to grant interest as claimed.

The above Order must be complied with by the Respondents within a period of three months from today.

Issuance of Certified Copy is expedited.