
(1992) 08 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 1352 of 1992

V.S. Malshetty

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-08-1992

Acts Referred:

Bombay Judicial Services Recruitment Rules, 1956 — Rule 4(4)
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 53, 53(1)

Citation : (1992) 3 BomCR 724

Hon'ble Judges : Sujata Manohar, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.R. Boralkar, for the Appellant; N.T. Saraf, for the Respondent

Final Decision : Dismissed

Judgement

Sujata Manohar, J.—The petitioner retired as a Judge of the City Civil Court, Bombay on 30th of September 1989.

2. The petitioner was appointed as Police Prosecutor in April 1967. On 21st April, 1970 he was appointed as Civil Judge, Junior Division. On the date of his appointment, the age of the petitioner was 38 years and 6 months. On his retirement, his services which have been taken into account for the purposes of pension and other retirement benefits is for the entire period from the date when he was appointed Police Prosecutor until the date of his retirement. It is the contention of the petitioner that under Rule 53(1) of the Maharashtra Civil Services (Pension) Rules, 1982 Government servants whose whole pensionable service has been rendered in one or the other of the posts of service mentioned below and whose qualifying service for pension is not less than 10 years, may add to their service qualifying for Superannuation Pension, the number of years by which their age on appointment exceeded 25 years, subject to a maximum addition of 5 years in respect of posts at Sr. Nos. (i) to (viii) and 10 years in respect of posts at Sr. No. (ix) and (x) . Item No. (i) is Civil Judges, Senior and Junior Divisions, and the Metropolitan Magistrates directly recruited from the Bar.

Item No. (x) is "Judges of the Bombay City Civil Court, including the Principal Judge who are appointed directly from the Bar". The petitioner contends that he falls under Item No. (i) and hence he is entitled to an addition of 5 years in his service qualifying for Superannuating Pension.

3. The short question which we have to consider is whether the petitioner can be considered as a Civil Judge, Junior Division, who was directly recruited from the Bar. The petitioner was a Police Prosecutor before he was appointed as a Civil Judge, Junior Division. Under the Bombay Judicial Service Recruitment Rules, 1956 Rule 4(4)(i) provides that appointments to the posts of Civil Judges (Junior Division) and Judicial Magistrates of the First Class shall be made "by nomination from members of the Bar (or in special circumstances, by re-employment of retired Civil Judges (Junior Division) or by nomination from among officers of other services)". There is a note at the end of sub-section (iii) which says "In the case of Police Prosecutors serving under the Government who apply for the posts their services in that capacity should be taken as practice at the Bar". This note is only for the purpose of recruitment to the posts of Civil Judges, Junior Division. This note makes it clear that Police Prosecutors are eligible for being appointed to the posts of Civil Judges, Junior Division and their period of services as Public Prosecutors shall be taken as practice at the Bar for the purpose of recruitment. This note has no bearing on Rule 53 of the Pension Rules. Unless the Civil Judges, Senior and Junior Divisions are directly recruited from the Bar they are not entitled to the weightage of five years under Rule 53(1). The petitioner is therefore, not entitled to any additional weightage of 5 years as contended by him. He has, however, been treated as in service right from the time when he was appointed as Police Prosecutor and the period of his service as Police prosecutor has been added to his total length of service for the purpose of arriving at the pensionary benefits available to the petitioner.

4. In the premises, no intervention is called for under Article 226 of the Constitution of India. Petition dismissed.