

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAW) NO.886/2020

IN

WRIT PETITION NO.1857 of 2020

Shoma Sen D/o Kanti Sen

Versus

State of Maharashtra and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's
orders
and Registrar's order

Mr. P.D. Meghe, Advocate for Petitioner.

Mr. D.P. Thakre, Additional Government Pleader for
Respondent Nos.1 to 3.

Mr. Arun Agrawal, Advocate for Respondent No.4.

Coram : Dipakar Datta, C.J., & R.K. Deshpande, J.

Date : 28th August, 2020

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The petitioner is a retired Professor of Rashtrasant Tukadoji Maharaj Nagpur University (hereafter "the University", for short). She retired from service on 31st July, 2020 upon attaining the age of superannuation of 60 years. On 6th June, 2018, the petitioner was arrested and detained in custody for more than 48 hours in connection with investigation of an F.I.R. that was registered, alleging that she had committed offences punishable under the Indian Penal Code, 1860 as well as the

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Unlawful Activities (Prevention) Act, 1967. In view of her continued detention beyond 48 hours, the petitioner was placed under suspension by an order dated 15th June, 2018 issued by the Vice-Chancellor of the University with retrospective effect from the date of her arrest. For almost two years after her retirement, the petitioner was not paid her retiral dues. This resulted in presentation of this writ petition before this Court on 20th July, 2020. She sought for direction on the University to release pension and other retiral benefits. A co-ordinate Bench of this Court [of which one of us (R.K. Deshpande, J.) was a member], by an order dated 13th August, 2020 directed the University to pay to the petitioner a sum of Rs.5,00,000/- within a period of one week, without prejudice to the rights and contentions of the parties. It was also directed that such payment would be subject to further adjustment upon final adjudication.

3. The University, instead of complying with this order of 13th August, 2020, has filed this civil interim application bearing No.886 of 2020. The prayer made in the said application is to permit the University to deposit a sum of Rs.5,00,000/- with the Registry of this Court and to appropriately modify the order dated 13th August, 2020 in the interest of justice.

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4. We are now tasked to decide this civil interim application.

5. Mr. P.D. Meghe, learned counsel for the petitioner, Mr. Arun Agrawal, learned counsel for the University, and Mr. D.P. Thakre, the learned Additional Government Pleader for the State have been heard at length. We have also perused the materials on record.

6. Mr. Agrawal, while pressing the civil interim application, has placed reliance on Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereafter “the Rules”, for short) as well as the decision of the Supreme Court in **Chairman-cum-Managing Director, Mahanadi Coalfields Limited v. Sri Rabindranath Choubey**, passed in Civil Appeal No.9693 of 2013, to contend that the petitioner is neither entitled to payment of gratuity nor to release of pension having regard to commencement of departmental proceedings as well as judicial proceedings within the meaning of Rule 27 of the Rules.

7. Certain facts need to be noticed first. There is indeed an order placing the petitioner under suspension with effect from the date of her arrest, i.e., 6th June, 2018. This is a deemed suspension, by operation of the Rules. It has been conceded by Mr. Agrawal that till 31st July, 2018, i.e. the date of retirement of the petitioner on superannuation, departmental proceedings were

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not initiated against her by issuance of a charge-sheet. No such proceeding has been initiated even today. Despite such position on facts, it is the contention of Mr. Agrawal that clause (a) of sub-rule (6) of Rule 27 of the Rules is attracted. We shall deal with this part of the argument a little later. It has also been contended by Mr. Agrawal, by referring to clause (b) of sub-rule (6) of Rule 27 of the Rules that the police report (charge-sheet) under Section 173(2) of the Code of Criminal Procedure (hereafter "the Code", for short) having been filed before the jurisdictional Magistrate on 15th November, 2018, judicial proceedings within the meaning of clause (b) of sub-rule (6) of Rule 27 of the Rules are deemed to have been instituted and, therefore, this is an additional ground for which the petitioner is not entitled to release of either pension or gratuity. It is, therefore, submitted by him that the University may not be required to pay the sum of Rs.5,00,000/- to the petitioner; instead, the University having shown its *bona fide* to comply with part of the Court's order dated 13th August, 2020, the said sum may be directed to be deposited with the Registry.

8. We take up for consideration the argument of Mr. Agrawal touching clause (a) of sub-rule (6) of Rule 27 of the Rules, first.

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9. Suspension, in law relating to disciplinary action, could either be an interim suspension or a suspension by way of penalty. It is well-known that while an employer initiates departmental proceedings against an employee, the employer may, in his wisdom, proceed to conduct and conclude the departmental proceedings even without placing such employee under suspension. Placing an employee under suspension, as an interim measure, thus is not a *sine qua non* for concluding departmental proceedings. It is further well-known that an employer may place an employee under suspension, as an interim measure, either in contemplation of departmental proceedings or during its pendency. The suspension could continue till the proceedings are closed by passing a final order or may be revoked even before a final order is passed, if the purpose of placing the employee under suspension does not survive. A deemed suspension of the nature the petitioner has suffered is also in the nature of an interim suspension, since its continuation would be subject to either the judicial proceedings that would follow the arrest or the departmental proceedings that the employer may choose to initiate. It is trite that an order of suspension, in contemplation of departmental proceedings, would always precede issuance of the charge-sheet. Bearing this position of law in mind and reference to “an earlier date” in the relevant clause, the conclusion is inescapable that in the event of

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an order of suspension preceding the order on which date the charge-sheet is issued, the departmental proceedings within the meaning of clause (a) of sub-rule (6) of Rule 27 of the Rules would be deemed to have been instituted on and from the date the employee is placed under suspension. If no order of suspension is issued and the departmental proceedings are drawn up by way of issuance of charge-sheet, such proceedings would be deemed to have been instituted on and from the date the charge-sheet is issued to the delinquent employee.

10. In the present case, no charge-sheet has been drawn up in connection with departmental proceedings. In our view, initiation of departmental proceedings is the *sine qua non* for the purpose of attraction of clause (a) of sub-rule (6) of Rule 27 of the Rules. We reiterate that if departmental proceedings initiated by issuance of charge-sheet is preceded by an order of suspension, the deemed date of institution of such proceedings would relate back to the date the employee is placed under suspension; whereas, if no order of suspension is issued, the deemed date of institution would be the date on which the charge-sheet is issued to the delinquent employee. Since as on date departmental proceedings have not been instituted against the petitioner by issuing charge-sheet, we hold that Mr. Agrawal's reliance on clause (a) of sub-rule (6) of Rule 27 is misplaced.

11. Insofar as judicial proceedings are concerned, we have noted that on 15th November, 2018, the police report under Section 173(2) of the Code has been filed before the jurisdictional Magistrate. Considering the length of time that has passed subsequent thereto, we shall assume that even cognizance of the offence has been taken by the said Magistrate under Section 190 of the Code. We have also noted clause (c) of Rule 130 of the Rules prescribing that no gratuity shall be paid until conclusion of departmental or judicial proceedings and issue of final orders thereon. However, what is of vital importance is that as on 31st July, 2018, i.e., when the right to receive gratuity accrued in favour of the petitioner, there was no existence of judicial proceedings instituted against her. In terms of Rule 129A of the Rules, if payment of gratuity is delayed beyond three months from the date of retirement, interest is required to be paid; therefore, at least within such period the gratuity should have been released. The University cannot be allowed to take advantage of its own lapse and contend that it is justified in not processing the papers for release of gratuity in favour of the petitioner having regard to the provision of Rule 27 of the Rules. The argument is rejected as misconceived.

12. The decision in **Sri Rabindranath Choubey** (supra) has been perused. The first paragraph thereof refers to the issues that arose for the decision of the Supreme Court. What is significant is that disciplinary proceedings had been initiated against the respondent before the Supreme Court prior to his superannuation from service and, therefore, the Court was called upon to decide whether gratuity could be withheld because of pendency of such proceedings. The observations made by the Supreme Court, to which our attention has been drawn by Mr. Agrawal, have to be appreciated bearing in mind the position obtaining on facts before the Court. The ratio of such decision can hardly be applicable in a case of the present nature where neither departmental proceedings nor judicial proceedings were pending as on 31st July, 2018, being the date on which the petitioner retired on superannuation. Law is by now settled that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. Therefore, while relying on the decision of the Supreme Court in **The Regional Manager and another v. Pawan Kumar Dubey**, reported in (1976) 3 SCC 334, we have no hesitation to hold that the ratio of the decision in **Sri Rabindranath Choubey**, (supra) would have no application here.

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13. Mr. Meghe has placed before us the decision in ***Municipal Corporation of Delhi v. Dharam Prakash Sharma and another***, reported in (1998) 7 SCC 221. The ratio of the decision is that gratuity provided for under the Pension Rules will not disentitle an employee from getting the payment of gratuity under the Payment of Gratuity Act (hereafter “the Act”, for short) and that, in view of the overriding provision contained in Section 14 of the Act and without any exemption having been claimed under Section 5 thereof, the provision for gratuity under the Pension Rules will have no effect. We do not propose to make any finding conclusive in nature on the basis of the decision in ***Dharam Prakash Sharma*** (supra) at this stage and leave it open for a decision when the writ petition is finally heard. However, sight cannot be lost of the fact that the petitioner being a teacher, would be comprehended within the meaning of ‘employee’ as defined in Section 2(e) of the Act and may be entitled to the benefits of the Act in the event any of the provisions in the Rules appears to militate against the provisions of the Act. However, as observed above, this point is left open now.

14. We enquired of Mr. Thakre and Mr. Agrawal the quantum of money the petitioner is entitled to on account of gratuity. They have regretted their inability to apprise us of such quantum for

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want of instructions. We have, however, ascertained from Mr. Meghe that the amount would be almost Rs.14,00,000/-. In the absence of proper assistance from the side of the respondents, we have no option at this stage but to accept the statement of Mr. Meghe as correct.

15. We have also noticed from the pleadings that the University has dragged its feet in processing the pension papers. Such an allegation has come from the side of the State. It is most unfortunate that during these testing times, a retired teacher has been left to fend for herself without the respondents taking adequate care and interest to clear her dues.

16. In such circumstances, we find no reason to allow the prayer of the University, as made in the civil interim application, to deposit Rs.5,00,000/- with the Registry of this Court as well as to modify the order dated 13th August, 2020. The application is absolutely without merit and it is accordingly dismissed, without any order for costs.

17. We direct the University to make over the sum of Rs.5,00,000/- in favour of the petitioner within a week from date of receipt of a copy of this order. Since the petitioner is in custody, the sum may be transferred to her bank account by

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NEFT. Payment and receipt of such sum, in terms of this order, shall be without prejudice to the rights and contentions of the parties.

18. Since the petitioner could be entitled to much more on account of gratuity and also that she is at least entitled to provisional pension in terms of sub-rule (4) of Rule 27 of the Rules and has not been paid a farthing since her retirement, we direct the State to release in favour of the petitioner an additional sum of Rs.5,00,000/-, on adhoc basis, within a period of thirty days. However, for the purpose of facilitating such release, we require the University to process all papers and to forward the same to the appropriate department of the Government within a period of one week from date of receipt of a copy of this order whereupon such department shall take necessary steps to comply with this order. Such payment shall also be without prejudice to the rights and contentions of the parties.

19. Mr. Meghe has also informed us that the petitioner had served as a teacher under the Respondent No.5- College between 1987 and 2009, and her own contribution of provident fund for such period of service has not been released. Mr. Thakre, in his usual fairness, has submitted that requisite steps would be taken to ensure that the petitioner receives her own contribution of

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provident fund for such period at the earliest. We grant the State two months' time to process the papers to ensure that the petitioner receives her dues without undue delay.

20. Let the affidavits-in-reply to the writ petition be filed within four weeks; rejoinder thereto, if any, may be filed by the petitioner within two weeks thereafter. The writ petition may be listed for hearing after eight weeks.

21. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(R.K. Deshpande, J.)

(Chief Justice)

Lanjewar, PS