

Narayan G. Mahajan Vs. Maharashtra Housing and Area Development Authority

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Court : Mumbai

Decided On : Aug-12-2016

Judge : Anoop V. Mohta & G.S. Kulkarni

Appeal No. : Writ Petition No. 2204 of 2013

Appellant : Narayan G. Mahajan

Respondent : Maharashtra Housing and Area Development Authority

Judgement :

Oral Judgment: (G.S. Kulkarni, J.)

1. Rule, returnable forthwith. Respondent waives service. By consent of the parties, taken up for final hearing.
2. The Petitioner retired from the services of the Respondent as an Executive Engineer on 31.02.2011. The grievance of the Petitioner is to the impugned order dated 1.07.2011 which reads thus:

With reference to the Office Note on page N-39 to N-40 ante, it appears that Shri Mahajan has been allowed to retire from the services subject to final outcome of the Criminal proceedings initiated against him. On this background, the issue regarding payment of his dues towards retirement benefits is arising. It is seen that

Shri Mahajan has been convicted visavis collapse of cessed building situated at Saraf Manzil 57/57 Temkar Street, Nagpada, Mumbai. Thereafter it is pointed out that against the conviction order Shri Mahajan has preferred Appeal in the Hon. High Court and his Appeal is pending. On this background, the matter will have to be referred to the Authorised Officer/Competent Authority appointed under the MHAD (CPF Rules) 1985 as well as MHAD Gratuity Regulations for deciding the issue in accordance with law

3. The case of the Petitioner is that by virtue of the above order, the terminal benefits which are entitled to the Petitioner are withheld by the Respondent. The contention is that the Petitioner was permitted to retire and that only because criminal proceedings are pending against the Petitioner, it would not entitle the Respondent to withhold the terminal dues. More so when the Petitioner was permitted to retire and no disciplinary proceedings were initiated during the subsistence of the Petitioner s employment with the Respondents.

4. Though this Petition is filed on 27.11.2012, till date the Respondent though appeared in these proceedings has chosen not to file any counter affidavit opposing the Petition. This despite several adjournments in that regard. Further on the last two occasions we had adjourned the matter to enable the Respondent to appraise the Court as to whether there exists any rule which would authorize the Respondent to withhold the terminal benefits for the reasons as set out under the impugned order dated 1.7.2011 (supra). However, Mrs. Bhide, learned counsel appearing for the Respondent fairly concedes that there is no such rule which would permit the Respondent to withhold the payment of the terminal dues when the Petitioner was permitted to retire on the ground as contained in the impugned order.

5. If this be the position, then certainly the terminal benefits which are legitimately entitled to the Petitioner on his retirement cannot be withheld and the same are required to be released. We may observe that admittedly, at the time of Petitioner's retirement there were no departmental proceedings which were pending against the Petitioner and the Petitioner was permitted to retire. Part of the benefits are already granted to the Petitioner. In this view of the matter, the

petition deserves to succeed.

6. The writ petition is accordingly allowed in terms of prayer (a) which reads thus :

a) That this Hon ble Court be pleased to exercise its powers under Article 226 of the Constitution and issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction to call for the records and proceedings leading to the orders dated 1.7.2011 and 29.9.2011 and after going through the same quash and set aside the said orders dated 1.7.2011 and 29.9.2011.

7. The Respondent is directed to make the payment of the outstanding dues within a period of eight weeks from today along with simple interest at 9% per annum.

8. Rule made absolute in the above terms.

9. There shall be no order as to costs.

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