

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 955 OF 2014

Uday Purushottam Apsingekar.

... Petitioner.

V/s.

The Registrar General,

High Court of Judicature at Bombay and others.

... Respondents.

I.R.Yadav i/b. C.R.Naidu & Co. for the petitioner.

S.R.Nargolkar for respondent No.1.

Bharat Mehta, AGP for respondent Nos.2 and 3.

CORAM : NARESH H. PATIL AND
RAVINDRA V. GHUGE, JJ.

DATED : 27th June 2014.

PC. :

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. From 1979 to 1988 the petitioner was working in the office of the Industrial Court, Mumbai. On 5th April 1988, he was appointed as Court Stenographer in the High Court of Bombay. On 1st April 1998, he was promoted as Personal Secretary attached to the Judge of the High Court. On 18th March 2005, by the Government Resolution (G.R.) issued by the Law and Judiciary Department certain Court Stenographers, Personal Assistants and Personal Secretaries were upgraded to the post of

Private Secretary and Personal Assistant in the pay-scale as specifically mentioned in the said G.R. In December 2006, the petitioner was appointed as Private Secretary to the Hon'ble Judge with effect from 1st April 2005 and his pay-scale was accordingly fixed.

3. On 1st July 2013, the petitioner applied for voluntary retirement from service with effect from 30th September 2013. Pursuant to the notice for voluntary retirement, petitioner's service book was sent for verification to the Pay Verification Unit of the Pay & Accounts Office. On 2nd August 2013, respondent No.3 raised an objection regarding the fixation of pay made by the office of respondent No.1. Accordingly, service book of the petitioner was returned to the registry stating that the fixation done under rule 11(1) is wrong and it should be done under rule 11(2) of Maharashtra Civil Services (Pay) Rules, 1981 ("said Rules" for short). The petitioner further contends that respondent No.1 vide order dated 30th September 2013 allowed the petitioner to retire voluntarily with effect from 1st October 2013. On 4th October 2013, the registry of the High Court replied to respondent No.3 that the fixation made by their office is correct and that the objection dated 2nd August 2013 taken by respondent No.3 is wrong. Respondent No.3 was, accordingly, requested to approve the pay fixation made by the registry so that the same can be forwarded to the Accountant General, Maharashtra-I, Mumbai for grant of pension to the petitioner. On 19th October 2013, respondent No.3 replied to the registry of the High Court that the reply sent by the registry vide letter dated 4th October 2013 is contrary and hence the earlier objection taken vide dated 2nd August 2013 is confirmed and the same should be complied with.

4. On 23rd January, 2014, the petitioner made representation to the registry of respondent No.1 to get his service book verified and for grant of pension. Since the petitioner did not receive any reply from respondent No.1, he made an application under the Right to Information Act for ascertaining the status of his representation. On 21st March 2014, the petitioner received reply from the office of respondent No.1 stating that his representation is under process.

5. Learned counsel for the petitioner, on instructions, submits that the service book of the petitioner is now returned to the office of respondent No.1 duly verified.

6. The respondent No. 3 has filed affidavit-in-reply duly sworn by Mr.Sandip Khurape, Accounts Officer, Pay Verification Unit in the office of the Directorate Accounts and Treasury, who is also present in the Court. In paras-3 and 4 of the affidavit, the deponent contends that the revision of pay was with the change in designation. The G.R. does not mention about the change in duties and responsibilities for the said post on account of promotion. The department was, therefore, of the view that the pension was to be fixed as per rule 11(2) of the said Rules. The said department, therefore, took objection for fixation of pay under rule 11(1)(a) which was done by the office of respondent No.1.

7. In paras-5 and 6 of the affidavit, the deponent contends that on receipt of reply from the office of respondent No.1 dated 20th May 2014, the confusion with regard to the applicability of rule 11(2) instead of rule 11(1)(a) was removed. Learned A.G.P, appearing for respondent Nos.2 and 3 submits that due to confusion with the Officer concerned,

who was dealing with the file of the petitioner and interpretation of rules 11(1)(a) and 11(2) of the said Rules, the service book of the petitioner could not be verified in time. According to the learned A.G.P., the delay occurred is unintentional.

8. Learned counsel appearing for respondent No.1 submits that the service book of the petitioner is now received duly verified and, as such, further necessary steps would be taken in respect of disbursement of service benefits to the petitioner.

9. We have perused the record placed before us and considered the submissions advanced. The communication made by the office of respondent No.1 dated 20th May 2014 addressed to the Accounts Officer, Pay Verification Unit, Mumbai specifically refers that the duties assigned to the post of Private Secretary are higher and of more responsible nature than the post of Personal Secretary. It is also mentioned in the said letter that the said fact was already communicated to the Accounts Officer vide their letters dated 4th October 2013 and 13th December 2013. In spite of said communications we find that the Accounts Officer of the Pay Verification Unit did not process the file within a reasonable time and due to which the disbursement of pension and service benefits of the petitioner got delayed. In the facts of the case, we find that the Accounts Officer would have diligently dealt with the file of the petitioner.

10. Learned counsel for the petitioner submits in other cases of retirement of Private Secretaries of High Court, their files were processed in time and verification of their service books was done in time without raising such objection and, as such, their service benefits could be

disbursed within time. In para-16 of the petition, it is contended that as many as 29 Personal Secretaries were appointed as Private Secretaries to Hon'ble Judge vide High Court Notification dated 3rd August 2005 and their fixation was made under rule 11(1)(a). Out of these 29 Private Secretaries, 7 Private Secretaries have retired long back and no such objection was ever raised over their fixation of pay. They all are getting pension as per the fixation made by the office of respondent No.1.

11. We may not further go into these details. As the service book of the petitioner is now verified, we direct the respondents to take necessary steps in order to disburse the service benefits to the petitioner as expeditiously as possible in accordance with the rules. Learned counsel appearing for the petitioner submits that in view of this delay, the petitioner may be granted interest on the pension amount for a period of six months. He submits that the petitioner may be granted interest at the rate of 15% per annum. We are of the view that in view of the delay caused by respondent Nos.2 and 3, the petitioner is entitled to interest on the pension amount. The respondent Nos.2 and 3 shall pay to the petitioner interest on the pension amount at the rate of 9% per annum for a period of six months within three months from today. The learned counsel prayed for costs

12. Rule is made absolute, in the above terms. No costs.

(RAVINDRA V. GHUGE, J.)

(NARESH H. PATIL, J.)

Sanjay Nanoskar, PS..