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Post-Retirement Disciplinary Action Must Rest on Clear Sanction: Supreme Court Quashes MSWC Debarment

AUTHOR Nidhi Singh, Rahul Sundaram

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Introduction

Can a public-sector corporation initiate disciplinary proceedings after an employee has superannuated, withhold his gratuity, provident fund and leave encashment, and recover alleged losses, even though its own service regulations are silent on such power? The Supreme Court's judgment of 6 January 2026 in *Kadir Khan Ahmed Khan Pathan v. Maharashtra State Warehousing Corporation & Ors.*, Civil Appeal arising out of SLP (C) No. 10869 of 2021, [2026 INSC 16], answers the question with an emphatic "no" and restates the golden thread that runs through service jurisprudence: retiral benefits are property, interference must be traceable to an express provision, and every mandatory safeguard is exactly that mandatory.

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Factual Matrix

The appellant, Shri Kadir Khan Pathan, joined the Maharashtra State Warehousing Corporation on 4 January 1969 and retired as Storage Superintendent on 31 August 2008. No enquiry was pending on the date of superannuation; he was neither suspended nor was any loss initially pinned on him. Eleven months later, on 18 August 2009, the Corporation issued a show-cause notice attributing storage and railway-transit losses of Rs 22.22 lakh and Rs 15.20 lakh respectively to his period as Centre Head. A charge-sheet under Regulations 741(5) and 742(13) of the Maharashtra State Warehousing Corporation (Staff) Service Regulations, 1992 followed. The appellant asked for documents, did not receive them, and the enquiry proceeded ex parte. A second show-cause notice came on 9 November 2012; the punishment order of 10 December 2012 held him accountable for Rs 18,09,809 and appropriated his retiral benefits of Rs 4,43,013. A third notice in 2016 sought recovery of the balance. The final order dated 4 March 2017 reiterated the monetary guilt and directed recovery of the remaining Rs 13.66 lakh.

Litigation Trajectory

Pathan challenged the entire action in Writ Petition No. 10858 of 2018 before the Aurangabad Bench of the Bombay High Court. The Division Bench by its judgment of 25 January 2021 refused to interfere on merits, accepted the Corporation's plea that Rule 110 of the 1992 Regulations attracted Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, and held that only gratuity could be withheld. The court granted liberty to pursue the internal appeal under the Regulations.

Rival Submissions in the Supreme Court

Pathan contended that the Corporation never had jurisdiction to launch a post-retirement enquiry because the 1992 Regulations contain no enabling clause; Rule 110 is merely a residuary referral provision and cannot create substantive power where none exists. It was further submitted that even if Rule 27 of the 1982 Pension Rules were attracted, sub-rule (2)(b)(i) makes prior sanction of the State Government a condition precedent for instituting proceedings after retirement, a condition admittedly unfulfilled. The action, it was argued, violated the principles of natural justice and the property rights embedded in retiral benefits.

The Corporation, through its counsel, defended the action on the footing of consistent past practice: Rule 110, it maintained, empowers it to regulate silence in the 1992 Regulations by adopting Government rules applicable to Maharashtra civil servants. Approval granted by the Cooperation & Textiles Department on 31 March 1990 to the entire code of Regulations, it was submitted, carried an in-built sanction for future recourse to Rule 27. Relying on the appellant's acceptance of a refund cheque

of Rs 1.89 lakh for non-gratuity benefits in February 2021, the Corporation also invoked the doctrine of approbate-reprobate.

Legal Framework Analysed

Rule 110 of the 1992 Regulations reads: “All matters for which specific provisions have not been made in these Regulations shall, as far as possible and to such extent as may be considered appropriate by the Corporation, be regulated in the same manner as in the case of employees of the Government of Maharashtra.” Rule 27 of the 1982 Pension Rules, inter alia, empowers the Government to withhold or withdraw pension or gratuity if a pensioner is found guilty of grave misconduct or negligence, but sub-rule (2)(b)(i) stipulates that if the proceeding has not been instituted while the servant was in service, it “shall not be instituted save with the sanction of the Government.” The Court also examined the judgments in *Girijan Coop. Corpn. v. K. Satyanarayana Rao*, (2010) 5 SCC 322, *Bhagirathi Jena v. Board of Directors, O.S.F.C.*, (1999) 3 SCC 666, and *Anant R. Kulkarni v. Y.P. Education Society*, (2013) 6 SCC 515, all emphasising that in the absence of an explicit provision, a corporation cannot continue an enquiry after retirement or tinker with retiral dues.

Court’s Reasoning

The Bench, comprising Justice J.K. Maheshwari and Justice Vijay Bishnoi, held that Rule 110 is a benevolent gap-filling clause and not a source of plenary power; it requires a conscious, documented decision by the Board of Directors to adopt the entire bouquet of Government rules. No such resolution or circular was produced. More importantly, the mandatory language of “shall not be instituted save with the sanction of the Government” in Rule 27(2)(b)(i) is protective of superannuated employees and cannot be diluted into a one-time, omnibus approval granted in 1990. The Court found that the cause of action related to events more than four years prior to the 2009 notice, compounding the infirmity. The enquiry having commenced without jurisdiction, every subsequent step, including the withholding of Rs 4.43 lakh and the direction to recover the balance, was tainted.

Final Mandate

The appeal was allowed, the High Court’s judgment set aside, and the departmental proceedings quashed in their entirety. The Corporation was directed to release all retiral benefits, inclusive of gratuity, provident fund, leave encashment and interest, within eight weeks, and to refund any amount already recovered. Pending applications were disposed of.

Conclusion

Pathan is a salutary reminder that disciplinary power over retired personnel is an exception, narrowly carved and strictly construed. A corporation cannot ride on a residuary clause to fashion a new jurisdiction; still less can it by-pass the statutory safeguard of prior government sanction. Retiral benefits, the Supreme Court has reaffirmed, are not leverage for retrospective accountability they are property protected by due process, and any intrusion must be anchored in clear, unambiguous authority.

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