

Kadirkhan Ahmedkhan Pathan Vs. Maharashtra State Warehousing Corporation & Ors.

Civil Appeal No. _____ of 2026 arising out of SLP (C) No. 10869 of 2021 · Supreme Court of India · 2026-01-06 · J K Maheshwari · Vijay Bishnoi · F2J-C-1010

Full judgment text

Kadirkhan Ahmedkhan Pathan Vs. Maharashtra State Warehousing Corporation & Ors.

[Civil Appeal No. _____ of 2026 arising out of SLP (C) No. 10869 of 2021]

J.K. Maheshwari J.

1. Leave granted.

2. Assailing the final judgment dated 25.01.2021 passed by the Division Bench of High Court of Judicature at Bombay Bench at Aurangabad (hereinafter referred to as "High Court") in Writ Petition No. 10858 of 2018, disposing of the writ petition with directions to the appellant (retired employee) to prefer appeal against the order of disciplinary authority directing recovery, the instant appeal has been preferred.

3. The issue in the present lis revolves around the institution of the departmental enquiry by the respondent - Maharashtra State Warehousing Corporation (for brevity, 'Corporation') against the appellant after his superannuation in absence of any provision in the governing service rules and regulations, i.e., 'Maharashtra Civil Services (Pension) Rules, 1982 (in short '1982 Pension Rules')' and 'Maharashtra State Warehousing Corporation (Staff) Service Regulations, 1992 (in short '1992 Regulations')'.

4. The case of the appellant before High Court was that he had superannuated from the service as 'Storage Superintendent' on 31.08.2008, whereafter, he was served with a show-cause notice seeking explanation for unresolved railway transportation losses. A charge-sheet was served to him, which was followed by the punishment order, whereby he was held responsible for financial loss to the Corporation to the tune of Rs. 18,09,809/-, directing recovery against him. Aggrieved, the appellant preferred writ petition inter-alia praying for quashing of show-cause notice as well as the action taken in furtherance thereto. The High Court vide impugned judgment refused to entertain the writ petition and disposed it off with directions to take recourse of appeal specified in the 1992 Regulations. Hence, the present appeal.

FACTS

5. Shorn of unnecessary details, the facts put in brief are that the appellant had joined the Corporation on 04.01.1969 and superannuated on 31.08.2008 as Storage Superintendent. After approximately 11 months, based on the allegations of storage loss and Railway Transit Loss (RTL) to tune of Rs. 22,22,561/- and Rs. 15,20,666/- between March, 2006 to June, 2008 during his tenure as 'Centre Head', a show-cause notice dated 18.08.2009 was served to the appellant, inter-alia alleging that on review, increase in storage loss was found from 1% to 5.75% and 6.87% and transportation loss was also much higher than reasonable and expected amounts.

The appellant was asked to submit explanation within 10 days, failing which, departmental enquiry would be initiated. Having found the reply of the appellant unsatisfactory, the Corporation alleged that appellant had violated Regulation 741(5) and 742(13) of the 1992 Regulations and served him charge-sheet dated 18.02.2010.

6. Appellant vide letter 06.03.2010 submitted reply and denied the charges, however, he was asked to appear before the Enquiry Officer on 24.03.2011. The appellant appeared and prayed to supply the material documents, on which the next was scheduled on 12.05.2011. The appellant did not appear on the said date on the pretext of non-supply of the documents.

The department continued the enquiry and served the second show-cause notice dated 09.11.2012, asking explanation as to why disciplinary action should not be taken against him on the findings of the charges which were found partially proved. Disputing the same, the appellant again submitted a reply,

however in vain. The Corporation vide order dated 10.12.2012 held him responsible for the losses to the tune of Rs. 18,09,809/- and consequently, withheld his retiral benefits of Rs. 4,43,013/-, inclusive of gratuity, provident fund and leave encashment.

7. The appellant through RTI (right to information) found that the RTL was reduced to Rs. 2,46,461/-, however, on further contest, the appellant sought release of his retiral benefits. The Corporation served him with the third show-cause notice dated 20.10.2016 seeking explanation as to why he should not be held responsible for the loss caused to the Corporation to the tune of Rs. 3,70,820/- and why such be not recovered from him. Finally, the Corporation vide punishment order dated 04.03.2017 found the appellant guilty and responsible for the financial losses to the tune of Rs. 18,09,809/- and directed recovery. Out of said amount, the Corporation withheld the retiral benefits of the appellant of Rs. 4,43,013/-, and the remaining dues of Rs. 13,66,796/- were directed to be recovered.

8. Aggrieved, the appellant preferred Writ Petition No. 10858 of 2018 seeking following reliefs:-

"a. This Hon'ble Court be pleased to issue writ of mandamus or any other writ order or direction in the nature of writ of mandamus and be pleased to quash and set aside the enquiry and the action, if any, taken pursuant to the show cause notice dated 18.08.2009;

b. This Hon'ble Court be pleased to quash and set aside the communication dated 4th March, 2017 and further be pleased to direct the respondents to forthwith pay to the petitioner all the retiral benefits such as provident fund, gratuity, leave encashment, arrears of 6th Pay Commission etc. with interest till realization of the amount;

c. This Hon'ble Court be pleased to quash and set aside the impugned show cause notice dated 20.10.2016 issued by the General Manager (QC) of respondent no. 1;

d. Pending hearing and final disposal of this writ petition, the respondents be forthwith directed to pay this petitioner all the retiral benefits such as provident fund, gratuity, leave encashment etc. with interest till realization of the amount;

9. In the backdrop of the facts, the appellant posed the issue of jurisdiction to institute the departmental proceedings against him after his superannuation by the Corporation in absence of having any provisions in the 1992 Regulations. It was said, he was neither placed under suspension, nor any enquiry was pending against at the time of superannuation. On the contrary, it was the case of the Corporation that in terms of Rule 1103 of the 1992 Regulations, in cases for which specific provision has not been made, the Corporation can proceed under Rule 274 of 1982 Pension Rules. By impugned judgment, the High Court accepted the contention of the Corporation and said that though there is no specific provision in the 1992 Regulations for institution of the departmental proceedings post superannuation, however, instituting proceedings against the retired employee, with the aid of Rule 27 of the 1982 Pension Rules can be done in terms of Rule 110 of 1992 Regulations. On the question of withholding the retiral benefits, since his service was not pensionable, it was concluded, as per Rule 9(37) of 1982 Pension Rules, 'pension' includes 'gratuity' and hence, the Corporation was entitled to withhold only gratuity and no other retiral benefits like provident fund, leave encashment and insurance. Lastly, considering the remedy of appeal in the 1992 Regulations, the High Court refrained to delve into the merit and disposed the writ petition granting liberty to the appellant to challenge the order of the disciplinary authority before the appellate authority. Hence, the present appeal.

ARGUMENTS OF THE APPELLANT AND THE RESPONDENTS

10. Mr. Anjani Kumar Jha, learned counsel for the appellant submits that the Corporation at the very inception lacked the jurisdiction to institute the departmental proceedings. Rule 110 of the 1992 Regulations deals the contingencies for which a specific provision in the Regulations has not been made. It is in the nature of residuary clause (or mere a referral clause), which equips the Corporation to regulate the matters as far as possible alike retired 'employees' of Government of Maharashtra. It does not confer jurisdiction to make out a new case for carrying out departmental enquiry against retired employees of the corporation.

11. It is further submitted that, the Rule 27 of the 1982 Pension Rules does not come to the aid, for the reason that as per clause (b), if departmental proceedings had not been instituted while the government servant was in service before his retirement, or during his re-employment, it could not have been instituted without the sanction of the Government, which was not secured at appropriate

level.

12. Per contra, Mr. Ravindra Keshavrao Adsure, learned counsel for the respondent, submitted that in compliance of the order passed by the High Court, an amount of Rs. 1,89,548/- qua other retiral benefits except gratuity was already returned to the appellant vide cheque dated 22.02.2021, which was accepted by the appellant. In this view, estoppel is operative against him to challenge the order of the High Court.

13. On the issue of jurisdiction to institute the departmental enquiry, it is urged that such objection was never raised before the Corporation or at any stage of enquiry or proceedings. Further, Rule 110 of the 1992 Regulations in specific terms stipulate, all matters for which no specific provision has been provided, they shall be regulated as far as possible in the same manner as in the case of the employees of the Government of Maharashtra. The 1982 Pension Rules are applicable to the employees of Government of Maharashtra and as per Rule 27, the Corporation has the right alike Government to withhold or withdraw the pension of an employee for the financial loss caused to the Corporation during his tenure.

14. Insofar as requirement of prior sanction of the State Government as contemplated under Rule 27(2)(b)(i) of 1982 Pension Rules for instituting departmental proceedings is concerned, it is said, 1992 Regulations were drafted by the Corporation and sent to the State Government vide letter dated 04.03.1990 for approval. The State Government had granted approval to the same vide letter dated 31.03.1990, whereafter the Regulations were published in the Maharashtra State Gazette Part-IVC dated 02.01.1992. Therefore, once the State Government had granted approval then it shall include sanction for exercising power under Rule 27 of the 1982 Pension Rules.

APPRECIATION OF ARGUMENTS

15. Learned counsel for the parties are heard at length and records are perused. The question that falls for our consideration is 'whether in absence of any provision in the 1992 Regulations for institution of departmental proceedings against a superannuated employee, the Corporation could have proceeded against the appellant applying Rule 27(1)(2)(b)(i) of the 1982 Pension Rules? In case enquiry is instituted after retirement of appellant, whether the Corporation had the jurisdiction to continue such enquiry and impose punishment, withholding the retiral benefits and direct recovery?'

16. Since both the questions are inter-linked, they are taken up together for discussion and answered simultaneously. Before advertng to the submissions of parties, it is necessary to refer the relevant Regulations, which are reproduced as thus:-

Rule 110 of 1992 Regulations -

"Application of Rules, Regulations, and Orders of the Government of Maharashtra- 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 as appropriate by the Corporation, be regulated in the same manner as in the case of employees of the Government of Maharashtra."

A bare perusal of above, it reveals, in all such cases for which there is no specific provision contained in the Regulations, the Corporation as far as possible and to such an extent, as may be considered appropriate by it, regulate such cases in the same manner as in the case of employees of the Government of Maharashtra. In other words, it is in the nature of miscellaneous provision, incorporated in the Regulations with an intent to cover such cases on which the Regulations are silent. If Corporation considers it appropriate to adopt and to apply the Service Rules as applicable to the employees of Government of Maharashtra, they are at liberty to do so.

17. Rule 27 of the 1982 Pension Rules -

27. Right of Government to withhold or withdraw pension

(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re- employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview: Provided further that where a part

of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of Superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

On reading of the above, it is luculent that the Government has the right to withhold or withdraw the pension or any part thereof for a limited period or for the period as it deemed fit or recover the loss, if any, on account of grave misconduct or negligence of the pensioner during his employment or upon reemployment after retirement, after consultation with the Public Service Commission. While doing so, in case of withholding or withdrawing the pension, remaining pension shall not be reduced to the threshold fixed by the Government.

18. In case the departmental proceedings have not been instituted while government servant was in service or before his retirement or during his re-employment, and the Government wishes to institute the proceedings, it may be instituted with the sanction of the Government. It is also made clear that the institution of any proceeding after retirement can be for a cause which took place within four years prior to the institution. Similarly, if the proceedings are already instituted, but have not culminated, they can be continued in the same pace and manner as specified in Rule 27(1). After institution of the proceedings, if the government servant attains the age of superannuation and the proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 130 shall be sanctioned.

19. On appreciation of Rule 27(b), it can safely be observed that in cases where the departmental proceedings were instituted post-retirement without obtaining sanction of the government till culmination as specified in the rules and simultaneously if the cause of action of such proceedings arose prior to four years of date of institution, such proceedings could not have been instituted or continued. Therefore, the provision is benevolent in nature, as it regulates the State's discretion to institute or continue departmental proceedings.

20. As referred above, in particular Rule 110, which appears to be a miscellaneous provision and residuary in nature. The adoption of 1982 Pension Rules in Rule 110 of 1992 Regulations is limited, when there is no specific provision and if the Corporation considers it appropriate to apply 1982 Pensions Rules, the same can be made applicable for the purpose of regulation of the employees of the Corporation alike the employees of the Government of Maharashtra. Therefore, 1982 Pension Rules do not have ipso facto application until they have been either adopted or applied by a conscious decision taken at appropriate level.

21. On appreciation of the facts of the present case, it is undisputed that the appellant stood retired on 31.08.2008. The first show cause notice dated 18.08.2009 was served on him approximately after 11 months from the date of his superannuation asking explanation with respect to the financial losses

occurred during his tenure as Centre Head. It is the specific case of the appellant that the Corporation lacks jurisdiction to institute the departmental proceedings against him in absence of any provision in 1992 Regulations.

Per contra, the Corporation has tried to make out a case on the anvil of Rule 110, laying much emphasis on the fact that it empowers the Corporation to deal with the employees of the Corporation alike the cases of employees of Government of Maharashtra in absence of any specific provision. Therefore, the case of the appellant ought to be dealt under 1982 Pension Rules, and accordingly punishment order was passed against him, directing recovery.

22. In such factual backdrop, when the matter posted for hearing on 11.11.2025, certain queries cropped up and in the proceedings, a detailed order was passed, which is reproduced as thus:-

"1. During hearing, learned counsel for the petitioner referring to Clause 110 of the Maharashtra State Warehousing Corporation (Staff) Service Regulations (For short, the 'Regulations') contended that applicability of the Rules, Regulations and orders of the Government of Maharashtra is not ipso facto. The said fact finds support from the Maharashtra Civil Services (Pension) Rules, 1982 (for short, the 'Pension Rules') which are made applicable against him in particular clause 27(I)(2)(b)(i) of the Pension Rules. It is further contended by him that by way of implication of Rules 27(4), those Rules would be applicable to those employees who are getting pension. In such circumstances, the interpretation as made by the High Court is not justified.

2. Per contra, learned counsel for the respondent referring to the findings as recorded by the High Court submits that the Pension Rules have rightly been made applicable in the facts of the case.

3. After hearing for some time, it is put forth to the respondent that in furtherance to Clause 110 of the Regulations, any decision has been taken by the Corporation indicating the applicability of the Pension Rules and, in particular, to initiate and continue the departmental enquiry which was not absolute under the Pension Rules and is subject to approval by the Government.

4. Learned counsel for the respondent prays for and is granted a week's time to ascertain the said fact and to revert on the same.

5. List on 18.11.2025 immediately after the fresh miscellaneous matters."

23. In reply, the Corporation filed additional affidavit dated 15.11.2025, stating as thus:-

"7. With regard to two queries specifically raised by this Hon'ble Court at the time of hearing on 11.11.2025, I submit on the basis of record available with MSWC as under:-

a. Regulation 110 of Maharashtra State Warehousing Corporation (Staff) Service Regulations, 1992 contemplates that all matters, for which specific provisions have not been made under those Regulations of 1992, shall as far as possible and to such an extent as may be considered appropriate by the Corporation, be regulated in the same manner as in the case of employees of Government of Maharashtra by various Rules, Regulations, Orders of Government of Maharashtra.

Perusal of MSWC's record so far, though show that there is no specific order, circular, either at the instance of MD and/or Board of Directors of MSWC for adoption and applicability of Rule 27 of MCS (Pension) Rules, 1982, but with utmost respect and accountability, it is submitted that wording in Regulation 110 does not contemplate any specific Order/Circular for adoption and applicability of Rule 27 of MCS (Pension) Rules, 1982. But admittedly, MSWC all along has been consistently resorting to, applying and adopting Rule 27 of MCS (Pension) Rules, 1982 while taking action against delinquent employee who has retired.

b. Further, with regard to issue of sanction of the State Government before instituting enquiry as contemplated under Rule 27(2)(b)(i) of MCS (Pension) Rules, 1982, it is submitted that

(i) Regulations were drafted by MSWC and vide letter dated 04.03.1990 sent to State Government for approval.

(ii) State Government (Cooperation & Textile Department) vide letter dated 31.03.1990 granted approval.

(iii) Thereafter in Maharashtra Government Gazette Part IVC (Page 29) dated 02.01.1992, those Regulations were published.

(iv) Then, Jt. MD vide Circular dated 10.07.1992 circulated those Regulations for the knowledge of all the Officers and Officers of MSWC.

(v) Thus, admittedly these Regulations came into force w.e.f. 02.01.1992 i.e., the date of publication in Government Gazette.

Thus, once State Government has granted approval on 31.03.1990 to entire Regulations; inclusive of Regulation 110 then, it clearly means that for exercising power under Rule 27(2)(b) of MCS (Pension) Rules, 1982, State Government has already granted general sanction on 31.03.1990 itself and more particularly when those Regulations were published in Maharashtra Government Gazette on 02.01.1992.

24. The perusal of the averments of additional affidavit, two things are patently clear; first, that no resolution or order was passed by the Corporation adopting or applying the 1982 Pension Rules to the employees of the Corporation and the entire exercise was being carried out based on general practice; second, even if it is assumed that Rule 27(2)(b) was applicable in the case of appellant, no document has been brought on record to show that mandate of sanction as provided in the said sub rule was complied with.

25. In reference to the above fact guidance can be taken from a judgment of 'Girijan Cooperative Corporation Limited Andhra Pradesh Vs. K. Satyanarayana Rao'⁵, wherein the issue arose regarding a case of alleged financial irregularities with respect to year 1992-93, for which disciplinary proceeding were initiated against the delinquent employees in year 1999, i.e., one year prior to their retirement in year 2000.

The proceedings were continued after the retirement based on the circular dated 29.08.1998, whereby the Cooperative Corporation in its Board's resolution for adoption of the 'Andhra Pradesh Civil Service Rules' and 'Andhra Pradesh Fundamental Rules' to its employees whenever the GCC service rules of employees are silent, conferred power to the MD to adopt the same. This Court while interpreting the circular, opined that indeed MD had the power to adopt, but no such adoption had been brought to the notice of the Court, therefore, continuance of the enquiry/departmental proceedings were not found to be valid.

26. It is pertinent to note that, in the present case, in furtherance to Rule 110 of 1992 Regulations, no board decision/order/notification adopting 1982 Pension Rules in toto for the employees of the Corporation has been brought on record. Rule 110 is general in nature and where specific provisions have not been made in the said Regulations, then in the contingency, as far as possible and to such extent as may be considered appropriate by Corporation, the cases may be regulated in the manner as in the case of government employees.

In the context of the provision of Rule 27, as discussed, it cannot be made applicable ipso facto until the Board of Directors has taken a conscious decision specifying the circumstances and making similar benevolent provision as made in 1982 Pension Rules; or having sanction of the Government as required under Rule 27(2) (b)(i) for instituting or continuing the proceedings in the contingency as specified applying the Regulations.

27. Further, the clarification given by the Corporation in its additional affidavit regarding sanction that once the 1992 Regulations were granted approval by the State Government vide letter dated 31.03.1990, 'general sanction' was accorded for instituting departmental proceedings under Rule 27(2)(b)(i) of the 1982 Pension Rules, is devoid of any discernable logic.

The usage of the word 'shall' in Rule 27(2)(b)(i) implies that the requirement of sanction from the Government prior to institution of departmental enquiry is mandatory in nature for each case. Such mandatory safeguard is intended to prevent institution of unwarranted proceedings against the superannuated employees. Therefore, such mandate cannot be diluted or by-passed by the Corporation under the pretext of general sanction or general practice, hence, stand as taken and the argument put forth by respondents are repelled.

28. At this juncture, it is apposite to refer the judgment in 'Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others'⁶, wherein this Court while dealing the issue of initiation of departmental enquiry, in absence of specific provision and its continuance after retirement, had observed as thus:-

"7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There

is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

29. In 'Anant R. Kulkarni Vs. Y.P. Education Society and Others'⁷, this Court inter-alia dealing with a similar question as to under what circumstances enquiry can be conducted against the delinquent employee who has retired on reaching the age of superannuation, observed as thus:-

30. After analyzing Rule 110 of 1992 Regulations and Rule 27 of 1982 Pension Rules and also considering the averments made in additional affidavit filed as directed on 11.11.2025, the Corporation was unable to produce a conscious decision of the Board regarding adoption of Pension Rules and the circumstances explaining the situation to apply the same rules as applicable to the employees of the Government of Maharashtra to the employees of the Corporation in the matter of institution and continuance of the disciplinary proceedings post retirement.

In light of the above discussions and in view of the judgments referred hereinabove, the irresistible conclusion can be drawn that the Corporation had no jurisdiction to institute the departmental proceedings against the appellant for the alleged misconduct and to direct recovery against him applying 1982 Pension Rules. As such the questions as posed hereinabove are answered in favour of the appellant against the Corporation.

31. Accordingly, the present appeal is allowed and the impugned order passed by the High Court is set-aside. The impugned departmental proceedings against the appellant are also hereby quashed, and the Corporation is directed to release all the retiral benefits to the appellant within a period of eight weeks. The recovery, if any, made from the appellant in the interregnum, shall also be refunded within the period as specified.

32. Pending application(s), if any, shall stand disposed-of.

.....J. (J K Maheshwari)

.....J. (Vijay Bishnoi)

New Delhi;

January 06, 2026.

1 Acts of misconduct - (5) Causing wilful damage to work in process or to any property of the Corporation.

2 (13) - Indiscipline or breach or flouting of any instructions or orders issued by the Corporation, from time to time regarding working, conduct etc.

3 Application of Rules, Regulations, and Orders of the Government of Maharashtra.

4 Right of Government to withhold or withdraw pension.

5 2010 15 SCC 322

6 (1999) 3 SCC 666

7 (2013) 6 SCC 515

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.