

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

REVIEW PETITION NO. 02 OF 2018
IN
ORIGINAL APPLICATION NO. 123 OF 2018

DIST. : AURANGABAD

Shrikant s/o Trimbak Mahajan,)
Age. 64 years, Occu. : Retired,)
R/ At C-12, Rathi Towers,)
Dashmeshnagar, Osmanpura,)
Aurangabad.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Home Department, Mantralaya,)
Mumbai - 32.)
2. V.V. Gujar,)
Deputy Commissioner)
(Development),)
Regional Departmental Enquiry)
Officer, Aurangabad.)
3. The Commissioner of Police,)
Office of Commissioner of Police,)
Amravati.)
4. The Accountant General II,)
Nagpur.).. **RESPONDENTS**

APPEARANCE :- Shri Prasad D. Jarare, learned Advocate for
the applicant.
: Shri B.S. Deokar, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 10th October, 2019

PRONOUNCED ON : 14th October, 2019

ORDER

1. The applicant has filed the present review petition for review of order dtd. 8.10.2018 passed by the Tribunal in O.A. no. 123/2018.

2. It is contention of the applicant that he filed the application bearing Original Application no. 123/2018 challenging the order dtd. 7.12.2017 passed by the res. no. 1 the Secretary, Home Department, Mantralaya, Mumbai thereby deducting 6% amount from the pension of the applicant for the period of one year. The Original Application was decided on 8.10.2018 by the then Vice Chairman of this Tribunal and it was allowed. By the said order the impugned order dtd. 7.12.2017 passed by the res. no. 1 has been quashed and set aside by the Tribunal and it was directed to the respondents to release the pension amount withheld by them. It is contention of the applicant that while deciding the said O.A. this Tribunal has not decided the issue regarding grant of interest on the gratuity amount due to oversight and inadvertently. It is his contention that the gratuity is a legitimate claim of the Government employee. The gratuity has been withheld by the respondents for the period of five years i.e. from 2013 to 2018 and therefore he is entitled to get interest on it. The amount of gratuity of Rs. 4,83,945/- has been disbursed to the applicant

during the pendency of the O.A. but no interest was granted thereon and therefore he filed the present review petition and prayed to direct the respondents to pay interest on the amount of gratuity from the due date till its actual payment, by allowing the present review petition.

3. The res. no. 4 filed his affidavit in reply and resisted the contentions of the applicant. It is contention of the res. no. 4 that the applicant retired on 30.6.2013 on attaining the age of superannuation. On that date the gratuity otherwise payable to the applicant was not released on account of initiation of departmental enquiry by the res. no. 3. It is contended by him that his office received the pension case of the applicant on 14.2.2013 and he issued the Pension Payment Order, Commutation Payment Order and Death cum Retirement Gratuity Order on 22.3.2013. The res. no. 3 the Commissioner of Police, Amravati vide his fax dated 18.7.2013 intimated his office that the Government of Maharashtra had decided to initiate departmental enquiry against the applicant and hence requested to issue instructions to withhold the pension and pensionary benefits of the applicant and had further processed the payment of provisional pension under rule 130 of Maharashtra Civil Services (Pension) Rules, 1982. The res. no. 3 had also requested to stop

payment of commutation value of pension. Accordingly as the departmental enquiry was pending against the applicant, the office of res. no. 4 vide telegram dated 5.8.2013 had requested the Treasury Officer, Aurangabad to stop the payment of Pension, Commutation of Pension and D.C.R.G. to the applicant. The Treasury Officer, Aurangabad returned the P.P.O., G.P.O. & C.P.O. authorities with non-payment certificate. Further in response to the proposal received from the office of res. no. 3 for extension of provisional pension, the office of res. no. 4 had issued authority for extension of provisional pension on 22.5.2014 w.e.f. 1.1.2014 till conclusion of the departmental enquiry. On conclusion of the departmental enquiry inducing reduction in pension by 6% for a year, the res. no. 3 forwarded the pension proposal of the applicant vide communication dtd. 26.3.2018. The office of the res. no. 4 finalized the said proposal promptly and P.P.O. / G.P.O. has been issued vide letter dtd. 24.5.2018. In view of the order of the Tribunal in O.A. no. 123/2018 dtd. 8.10.2018 the res. no. 4 issued instructions to the Treasury Officer, Aurangabad to set aside the action for reduction of pension @ 6% for a year, till further orders. It is his contention that as per rule 130(1)(c) of the M.C.S. (Pension) Rules, 1982 no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. It is his

contention that every case of delayed payment of retirement gratuity or death cum retirement gratuity as the case may be, shall be suo motu considered by the concerned administrative department and if the department is satisfied that the delay in payment of such gratuity was caused on account of administrative lapse, the said department shall sanction payment of interest after obtaining the admissibility report, in this behalf from the Accountant General (Accounts & Entitlement), Mumbai or Nagpur as the case may be. The approval of the Finance Department for payment of such interest is not necessary. It is further contention of res. no. 4 that the action taken by his office is as per the rules contained in M.C.S.(Pension) Rules, 1982 and therefore he has prayed to reject the present Review Petition.

4. I have heard the arguments advanced by Shri Prasad D. Jarare, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

5. Learned Advocate for the applicant has submitted that the applicant has filed O.A. no. 123/2018 in this Tribunal challenging the order dtd. 7.12.2017 passed by the res. no. 1 in the departmental enquiry. The said O.A. was decided on 8.10.2018 by the then Vice Chairman of this Tribunal and it was allowed. By

the said order the impugned order dtd. 7.12.2017 passed by the res. no. 1 has been quashed and set aside by the Tribunal. He has submitted that in the said O.A. the applicant has claimed pension and gratuity with interest. He has submitted that during the pendency of the O.A. gratuity amount of Rs. 4,83,945/- had been paid to the applicant on 24.5.2018. He has argued that the payment of gratuity has been withheld by the respondents illegally for the period of five years w.e.f. 2013 to 2018 and therefore the applicant is entitled to get interest on it. But no order regarding interest has been passed by the Tribunal inadvertently while deciding the O.A. Therefore he prayed to review the order passed by the Tribunal in O.A. 123/2018 dtd. 8.12.2018 by allowing the Review Petition.

6. Learned Advocate for the applicant has submitted that it is the right of the Government servant to receive the gratuity in-time and if it is not paid to the Government servant in time, then he is entitled to get the interest on it. In support of his submissions he has placed reliance on the judgment of Hon'ble Supreme court in case of **H. Gangahanume Gowida Vs. Karnataka Agro Industries Corporation Limited** reported at **2003 DGLS (SC) 138 : 2003 AIR (SC) 1526**, wherein it has been held as follows :-

“Payment of Gratuity Act, 1972 - Section 7 - interest on delayed payment of gratuity – there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity - it was not the case of the respondent that the delay in the payment of gratuity was due to the fault of employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground - Respondent is directed to pay interest @ 10 % on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount.”

7. Learned Presenting Officer has submitted that the pension and gratuity of the applicant has been withheld by the respondents as departmental enquiry was going on against him. He has submitted that the said amount has been withheld in view of the provisions of M.C.S. (Pension) Rules, 1982 and there was no illegality. The applicant was punished in the departmental enquiry and it has been challenged by him in O.A. no. 123/2018 and the order passed in the departmental enquiry has been quashed by the Tribunal in the said O.A. by the order dtd. 8.10.2018. He has submitted that during the pendency of the O.A. gratuity amount has been paid to the applicant. He has submitted that as amount of gratuity has been withheld in view of the provisions of M.C.S. (Pension) Rules, 1982, the applicant is

not entitled to get interest on it as there was no administrative lapse on the part of the respondents and therefore this Tribunal has not granted interest as claimed by the applicant. He has submitted that there was no chance to review the order of the Tribunal passed in O.A. no. 123/2018 dtd. 8.10.2018 and therefore he prayed to reject the review petition.

8. On perusal of record it reveals that this Tribunal has passed following order in O.A. no. 123/2018 on 8.10.2018 :-

“1. The Original Application is allowed without any order as to costs.

2. The impugned decision 7.12.2017 of the respondent No. 1 is hereby quashed and set aside.

3. The necessary consequence of the release of the pension amount withheld shall be carried by the respondents and to complete the procedure within a period of six weeks from the date of this order.”

9. Admittedly the departmental enquiry was initiated against the applicant and in the departmental enquiry charges were proved against him and therefore punishment was imposed on him. The applicant challenged the order of punishment by filing O.A. no. 123/2018. After retirement of the applicant the respondents sanctioned pension and other pensionary benefits to

him, but after initiation of the departmental enquiry the res. no. 3 requested the res. no. 4 to withhold the gratuity and pension granted to the applicant till further order and accordingly gratuity amount has been withheld by the res. no. 4. But the gratuity amount has been released to the applicant on 24.5.2018 during the pendency of the O.A. The payment of gratuity amount has been withheld in view of the provisions of rule 130 of M.C.S. (Pension) Rules, 1982. This Tribunal while passing the order in O.A. no. 123/2018 on 8.10.2018 has quashed the order of punishment in the departmental enquiry and directed the respondents to release the pension amount withheld by them. It shows that this Tribunal had considered the fact regarding payment of gratuity and interest on it and as the respondents were not found at fault in delaying the payment of gratuity and as the amount of gratuity was withheld by the respondents in view of the provisions of M.C.S.(Pension) Rules, 1982, the interest has not been granted to the applicant. If the applicant has any grievance regarding the order passed by the Tribunal in O.A. no. 123/2018 dtd. 8.10.2018 he is at liberty to challenge the said order before the appropriate forum. Not only this but the applicant has remedy to approach this Tribunal claiming interest on delayed payment of gratuity if there was administrative lapses on the part of the res. no. 3 in grating the gratuity amount beyond the period

prescribed in rules if there is delay on the part of the respondents in disbursing the said amount. Therefore in my opinion there is no just ground to review the order dtd. 8.10.2018 passed by the Tribunal in O.A. no. 123/2018. There is no merit in the review petition. Resultantly, the review petition deserves to be dismissed.

10. In view of the discussion in foregoing paragraphs, the review petition no. 2/2018 in O.A. no. 123/2018 stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 14th October, 2019