

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 106 OF 2023  
(Subject – Interest on Delayed Payment)**

**DISTRICT : AURANGABAD**

**Mohammad Fiaz Mohammad Ibrahim,** )  
Age : 63 Yrs., Occu. : Pensioner, Retired as Ex. Engineer,) )  
R/o : Silk Mill Colony, Lane No. D-13, ) )  
Behind Mohammadi Masjid, Aurangabad. ) )

.... **APPLICANT**

**V E R S U S**

1. **The Secretary,** )  
EGS & Planning Department, )  
Mantralaya, Mumbai-32. )
2. **The Secretary,** )  
Water Resources Department, )  
Govt. of Maharashtra, 3<sup>rd</sup> Floor, Madam )  
Kama Marg, Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai-32. )
3. **The Chief Executive Officer,** )  
Zilla Parishad, Parbhani. )

... **RESPONDENTS**

-----  
**APPEARANCE** : Shri D.R. Irale Patil, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for  
respondent authorities.

: Shri K.S. Solanke, counsel for respondent No.3

-----  
**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE** : **14.03.2024.**  
-----

**ORAL - ORDER**

1. Heard Shri D.R. Irale Patil, learned counsel appearing for the applicant, Shri A.B. Basarkar, learned Presenting Officer appearing for respondent authorities and Shri K.S. Solanke, learned counsel for respondent No. 3.

2. Heard finally with the consent of parties at the admission stage.

3. By this Original Application, the applicant is praying for grant of interest on delayed payment of gratuity and pension as contemplated under Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 and direct the authorities to make the payments within time limit as just and proper.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows:-

- (i) The applicant is Government servant. He came to be transferred to M.I. Z.P. Sub-Division, Jintur, District Parbhani and joined thereof on 21.09.1999 and continued on the said post till 02.09.2005. He was also given the additional charge of the post of Dy. Engineer, Water

Supply. During the said period, the EGS Committee had visited to Z.P. Parbhani on 10<sup>th</sup> and 11<sup>th</sup> May, 2007 and reviewed the EGS work. The said committee has observed that most of the works sanctioned under EGS 2003-2004 yet not completed and therefore, proper action shall be taken against those persons / officers, who failed to discharge their duties.

(ii) It is further case of the applicant that after lapse of 11 years, for the first time the department has issued charge-sheet dated 28.07.2018 through the District Water Conservation Officer, Zilla Parishad (Minor Irrigation), Parbhani against the applicant through letter dated 01.08.2018 (Annexure A-3). The applicant immediately filed his reply and explained how the applicant is not responsible. It is further case of the applicant that in the meantime, he came be retired on attaining the age of superannuation on 31.08.2018, when he was working under Walmi Aurangabad.

(iii) According to the applicant, after retirement pension papers including application for leave encashment were submitted to the higher authority for sanction by onward

transmission to the Accountant General-II Nagpur. By communication dated 01.10.2018, the Water Conservation Department, Government of Maharashtra has informed to the Chief Auditor (Chief Accountants Parikshak), Water and Irrigation, Maharashtra State, Walmi, Aurangabad that during pendency of the departmental proceeding the applicant is not entitled for the amount of gratuity, commutation and leave encashment. The applicant has received only provisional pension for six months and thereafter the department has not continued the same. Meanwhile, the Divisional Commissioner has made the appointment of enquiry officer by order dated 18.12.2018 and fixed the time limit of six months for completing the enquiry. There are other 10 employees, who had also joined in the said Departmental Enquiry.

(iv) It is further case of the applicant that after retirement only provisional pension has been paid to the applicant and no other benefits. Therefore, the applicant has filed O.A. No. 412/2019 before this Tribunal for necessary directions. By order dated 13.04.2022, this Tribunal has directed the Government to take appropriate decision within 08 weeks.

(v) It is further case of the applicant that the Enquiry Officer has completed the enquiry and submitted its report to the Government on 26.08.2021. The Government has accepted the report submitted by the enquiry officer and passed an order on 01.06.2022 and exonerated the applicant from the departmental proceedings.

(vi) According to the applicant, there was a considerable delay to grant and release the retiral benefits, for which the applicant was not at fault and hence, the present Original Application.

5. Learned counsel for the applicant submits that in terms of the provisions of Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred as the Rules of 1982), the applicant is entitled for the interest on gratuity and pension. Learned counsel submits that if in the departmental proceedings the Government servant is exonerated, it will be presumed that the gratuity is deemed to have fallen due on the date immediately falling due on the date of retirement for the propose of interest.

6. Learned counsel for the applicant submits that after completing the enquiry, the respondent department has taken

decision to release the amount of gratuity of Rs. 14,000,00/- and pension. The office of Accountant General-II, Maharashtra State, Nagpur acting upon the proposal issued PPO on 23.09.2022 and thereby released the amount of gratuity, as well as, authorized to withdraw the regular monthly pension from 31.08.2018. Learned counsel submits that difference of pension amount and the amount of gratuity have been paid to the applicant.

7. Learned counsel for the applicant submits that in terms of the provisions of Rule 129-A of the Rules of 1982, where the payment of retirement gratuity or death gratuity, as the case may be has been delayed beyond the period of three months from the date of retirement or death and it is clearly established that the delay in payment was attributed to the administrative lapse, an interest at the rate applicable to the GPF deposits shall be paid on the amount of gratuity in respect of the period beyond 03 months. Learned counsel submits that similarly in terms of Rule 129-B of the Rules of 1982 interest on delayed payment of pension (i) where the payment of pension or family pension authorized after 06 months from the date when its payment become due, an interest at the rate applicable to GPF deposit shall be paid on the amount of pension in respect of period beyond 06 months. Learned counsel submits that the applicant

came to be retired on 31.08.2018 and he has received the amount of gratuity on 15.10.2022. Thus excluding the period of three months, the applicant is entitled for the interest for the period of 04 years, 11 months and 15 days. Similarly, the applicant has received pension amount on 12.12.2022 i.e. after 04 years, 09 months and 11 days and as such, he is entitled for the interest for the said period. Learned counsel submits that the present Original Application deserves to be allowed.

8. Learned counsel for respondent No. 3 on the basis of affidavit in reply submits that in terms of the order passed by this Tribunal the enquiry was expedited and accordingly, the authority has exonerated the applicant on 01.06.2022. Learned counsel submits that while disbursing the payment of gratuity, the delay occurred not due to the administrative lapses, but due to pendency of the disciplinary proceedings against the applicant on the date of retirement and therefore, the applicant is not entitled to claim the interest on the delayed payment of gratuity. Learned counsel submits that there is no substance in the present O.A. and the same is liable to be dismissed.

9. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No. 2 submits that after

completion of Department inquiry at the Government level, the gratuity was sanctioned on 23.09.2022 by the Accountant General, Nagpur and paid the same by the office to the applicant on 14.10.2022.

10. Learned Presenting Officer submits that the applicant is supposed to submit his pension papers six months before the date of his retirement i.e. 28.02.2018 as required under Maharashtra Civil Services (Pension) Rules, 1982. There was delay on part of the applicant in submission of pension papers of almost six months. The applicant has applied for leave encashment on 05.09.2018 and the office sanctioned the leave encashment vide office order No. 171, dated 12.09.2018 and the Treasury Office, Aurangabad passed the bill on 29.09.2018. Thus the leave encashment has been paid to the applicant immediately. Thus the applicant is not entitled for interest on the amount of leave encashment. A letter from the Water Conservation Department regarding holding the payment of DCRG, Leave Encashment and Commutation was received on 15.10.2018 in the office of Chief Auditor, Water and Irrigation, Government of Maharashtra.

11. Learned Presenting Officer submits that it is not correct to say that the applicant has only received the provisional

pension and no other benefits. Learned P.O. submits that leave encashment amount was paid to the applicant on 03.10.2018, 90% of General Provident Fund amount was paid on 05.05.2018 and remaining 10% amount of GPF was paid on 24.10.2018 and Group Insurance Scheme amount was paid to the applicant on 26.02.2017. Learned P.O. further submits that the Accountant General, Nagpur by letter dated 23.09.2022 sanctioned the pension to the applicant. However earlier to that the applicant was paid the temporary retirement pay regularly. Further remaining amount of pension was sanctioned vide letter dated 23.09.2022.

12. Learned Presenting Officer submits that the applicant retired from the Government service on 31.08.2018 on attaining the age of superannuation. However, at that time the Departmental Enquiry at the Government level was going on and it was completed on 01.06.2022. Thus the gratuity has been paid to the applicant on 14.07.2022, which is well within the expected time limit of 03 months. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

13. The applicant though retired on 31.08.2018, he was exonerated from the Departmental Enquiry on 01.06.2022. In

terms of the provisions of Rule 129-A the Rules of 1982, the Government servant is entitled for the interest on the delayed payment of gratuity and in terms of the provisions of Rule 129-B of the Rules of 1982, interest on the delayed payment of pension, where the payment of retirement gratuity or death gratuity, as the case may be has been delayed beyond the period of three months from the date of retirement or death, and it is clearly established that the delay in payment was attributable to administrative lapse, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of gratuity, in respect of the period beyond three months. However, no interest shall be payable to the failure on the part of the Government servant to comply with the procedure. Similarly, in terms of the provisions of Rule 129-B, where the payment of pension or family pension authorized after six months from the date when its payment became due, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of pension, in respect of the period beyond six months.

14. In terms of Rule 130 of the Rules of 1982, however after the conclusion of departmental or judicial proceedings final orders are to be passed by the competent authority in respect of

final pension and till then the provisional pension as authorized by the Head of Office for a period of six months and such provisional pension shall be continued up to and including the date on which the departmental or judicial proceedings completed by passing the final orders. Similarly, no gratuity shall be paid to the Government servant until conclusion of the departmental or judicial proceedings and issue of final orders thereon. However, there is an exception for payment of gratuity, if the Government servant is facing the departmental proceedings in respect of imposing of any minor penalties.

15. Rule 130 of the Rules of 1982 is reproduced herein below :-

***“130. Provisional pension where departmental or judicial proceedings may be pending-*** (1) (a) *In respect of a Gazetted or Non-gazetted Government servant referred to in subrule (4) of rule 27 the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.*

*(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.*

*(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.*

*[Provided that where departmental proceedings have been initiated under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant]*

*(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”*

16. In the instant case, the applicant came to be retired on attaining the age of superannuation on 31.08.2018. However, the Departmental Enquiry as against him was concluded and final order passed by the competent authority on 01.06.2022. He was subjected to the Departmental Enquiry for imposing the major penalties.

17. In terms of the provisions of Rule 129-A and 129-B of the Rules of 1982, the interest on the delayed payment in respect of the gratuity and pension is only admissible.

18. Learned counsel for the applicant has placed his reliance in a case of **State of Kerala and Ors. Vs. M. Padmanabhan Nair**, wherein the Hon'ble Supreme Court has held that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have

become under the decisions of the Supreme Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current rate till actual payment. However, in the facts of the said case the respondent retired from the service of the appellant State on 19.05.1973 and his pension and gratuity were ultimately paid to him on 14.08.1975 i.e. after a delay of more than two years and three months. The Government servant (respondent therein) was not subjected in Departmental enquiry and the department has taken a stand that he has attributed the reasons for delayed payment. Thus, the ratio laid down in the aforesaid case is not applicable to the facts and circumstances of the present case.

19. Learned counsel for respondent No. 3 has placed his reliance in a case of **Prabhakar Marotirao Dalal Vs. State of Maharashtra and another, 2009(1) Mh.L.J. 209**, wherein by giving reference of provisions of Rule 130(1)(c) of the Rules of 1982, the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in para No. 6 has made the following observations:-

*“6. The learned counsel, however, draws our attention to the Government resolution dated 23.6.1986. We may gainfully reproduce para 3 of the English translation, which has been placed for our consideration.*

*"3. That, in respect of the cases of the Government servant against whom, disciplinary or judicial proceedings are pending on the date of his retirement, the provisional pension is authorized as per Rule 130 of M.C.S. (Pension) Rules, 1982. In such cases, the amount of gratuity is not paid until the proceedings are completed and the final orders are passed thereon. However, on finalization of such proceedings, if the competent authority authorizes for release of gratuity, it shall be presumed that, such delayed payment of gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. However, the Government servants died pending judicial/disciplinary proceedings and ultimately the proceedings against them have been closed shall not be entitled to the benefits of this order."*

*A perusal of the said Government resolution would show that on completion of the finalisation of the proceedings, if the competent authority authorises the release of gratuity, it shall be presumed that such delayed payment of gratuity is deemed to have fallen due on the date immediately following the date of retirement.*

*Based on this, the learned counsel submits that the moment the disciplinary proceedings have been completed and the competent authority authorises release of gratuity, even if punishment has been imposed, the petitioner is entitled to interest. It is not possible for us to accept this submission made by the learned counsel. Firstly, under Rule 129-A(1) read with Rule 130(1)(c), until the competent authority decides to pay the gratuity, interest would not be due and payable. These rules have been made in exercise of the powers conferred by Article 309 of the Constitution of India. It is now settled law that no directions can be issued, which would be contrary to the provisions of the Rules made under Article 309. However, it will be open to the respondent - Government to issue a Government resolution in respect of those matters where the rules are silent and such instructions are not in conflict with the rules. In the instant case, in our opinion, the rules are clear and if so read, admittedly the Government resolution would be contrary to the provisions of the said rules. We are also mindful of the fact that Courts normally would not strike down a rule or notification if it is possible to save the rule or notification whether it be legislation or notification in the exercise of executive power. In our opinion, correctly read para 3 of the said Government resolution will have to be construed to mean that on a person against whom disciplinary or judicial proceedings were pending, if he is discharged or the disciplinary authority comes to the conclusion that no punishment needs to be*

*imposed and in case of judicial authority, such authority acquits such a person, then in those cases, on the competent authority authorising the release of gratuity, it will be presumed that the gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. If it is so read, then the Government resolution would not fall foul of Rules 130(1)(c) and 129-A of the Pension Rules.”*

20. In the instant case, the departmental proceedings for imposition of major penalties was pending against the applicant even at the time of his retirement and concluded on 01.06.2022 by passing the final order therein. It further appears from the annexures and also not disputed by the applicant that the applicant has been paid the provisional pension till the Departmental Enquiry was concluded and thereafter, difference amount of pension was paid to the applicant within few months after conclusion of the Departmental Enquiry. Similarly, the gratuity has been paid to the applicant, for which there is no delay attributed to the administration lapses as contemplated under Rule 129(A) of the Rules of 1982.

21. In view of the discussion in foregoing paragraphs, there is no substance in the present Original Application and the same is liable to be dismissed. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby dismissed.

- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**

**DATE : 14.03.2023**

**(Justice V.K. Jadhav)**

**Member (J)**

**KPB S.B. O.A. No. 106 of 2023 VKJ interest on delayed payment**