

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.203 OF 2017

DISTRICT:- PARBHANI

Shri Shamrao Gunaji Wagatkar,
Age : 63 years, Occu. : retired,
Deputy Collector/Land Acquisition Officer,
Parbhani. R/o Mahadapur post Savna,
Tq. Himayatnagar, Dist. Nanded.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai – 32.
- 2) The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
- 3) The Collector,
Parbhani.

...RESPONDENTS

APPEARANCE :Shri S.D.Dhongde, Advocate for the Applicant.
:Shri N.U.Yadav, Presenting Officer for the
respondents.

CORAM : JUSTICE A.H.JOSHI, CHAIRMAN

Reserved on : 27-02-2019

Pronounced on : 28-02-2019

ORDER:

1. Heard Shri S.D.Dhongde learned Advocate for the applicant and Shri N.U.Yadav learned Presenting Officer for the respondents.
2. Perused the record annexed to O.A. and the affidavit in reply of the respondents.
3. Case proceeds on certain admitted facts namely:-
 - (a) Applicant was serving as Special Land Acquisition Officer.
 - (b) He stood retired on superannuation on 31-03-2011.
 - (c) Applicant was paid provisional pension for six months.
 - (d) Applicant's pension case remained pending.
 - (e) Various retiral benefits were paid to applicant belatedly.
 - (f) Neither charge sheet was served nor departmental enquiry commenced against the applicant.
 - (g) No criminal case was pending against the applicant.
4. Applicant has prayed for interest @ 18% per annum on delayed payment.

5. Foundation of applicant's claim as averred in O.A. is pleaded in paragraph 6(g) which reads as below:-

“6.(g). The applicant submits that, it is thus clear from the above submitted averments that there is delay in payment of gratuity amount @ Rs. 4,61,138/- difference of provisional pension & pension amounting to Rs.2,31,880/- and the payment of encashment of leave. The applicant has been diligent enough in requesting the respondents from time to time for payment of all these amounts but there is unreasonable and unexplained delay on the part of the respondents. The applicant stood retired on attaining age of superannuation on 31.3.2011. Provisional pension was paid to him for one year. Since 31.3.2012 till 6.5.2014, he is entitled to claim interest @ 18% on the amount of pension due to him. As far as amount of DCRG is concerned, it is delayed by two years, 8 months and 19 days. Payment of leave encashment is delayed by 3 years. Difference of amount between provisional & final pension is delayed by 3 years, 4 months and 8 days. Payment of commutation of pension is delayed by about 4 years. As per the provisions of Rule 129 of the Maharashtra Civil Services (Pension) Rules, 1982, applicant is entitled to get interest @ 10% per annum if the payment is delayed beyond a period of one year. However, the applicant prays this Honourable Tribunal to direct

respondents to pay interest @ 18% per annum on the delayed payment.”

(Quoted from paper book page 5 & 6)

6. The State has opposed said paragraph 6(g) with averment contained in paragraph 10 of affidavit at paper book page 68, which reads as below:-

“10. In respect of Para No. 6 (g), I say and submit that the Govt. has issued the no D.E. and no dues certificate on 16.12.2013 and immediately on 20.02.2014 the Collector Parbhani was directed to issue no D.E. and no dues certificate and accordingly the Collector Parbhani submitted the proposal to the A.G. Nagpur for the grant of post retirement benefits to the applicant. I say and submit that as such there is no delay in grant of post retirement benefits to the applicant.”

(Quoted from paper book page 68)

7. Applicant has placed reliance on judgment of Hon'ble Bombay High Court rendered in Writ Petition No.12966/2017 in the case of Vinodkumar Narayan Dixit V/s. State of Maharashtra & Ors. (Coram Hon'ble Smt. V.K.Tahilramani Acting C.J. & Hon'ble Shri M.S.Sonak, J.) decided on 03-04-2018.

8. On perusal of Judgment of Hon'ble High Court rendered in Writ Petition No.12966/2017 it is seen that their Lordships have held as follows:

“22] Upon conjoint and harmonious reading of Rules 129A, 130 of the MCS (Pension) Rules 1982 and the executive instructions in the GR dated 6th May 1991, it is quite clear that even though the government servant cannot insist upon payment of gratuity until the conclusion of departmental or judicial proceedings against him, once the government servant is exonerated in the departmental proceedings or acquitted in the judicial proceedings, such government servant, can claim gratuity along with interest thereon to be computed from three months from the date of retirement and up to the actual date of payment of the gratuity amount.

34] As has been held by the Hon'ble Supreme Court in Y. K. Singla (supra), consequent upon the acquittal of an employee, it would be erroneous to conclude that the gratuity payable to such employee on attaining the age of superannuation was withheld on account of some fault of the employee himself. In the present case, it is not as if the petitioner, was ultimately convicted in criminal prosecution launched against him, in which case, the petitioner, could have been held to be at fault. Therefore, applying the principle explained by the Hon'ble Supreme Court in Y. K.

Singla (supra), we hold that the delay in payment of gratuity to the petitioner beyond three months from the date of retirement was for no fault of the petitioner. In terms of Rule 129A of the MCS (Pension) Rules, 1982, read with clause 3 of the GR dated 6th May 1991 therefore, the petitioner is entitled to be paid interest for the period of delay beyond three months from the date of first retirement i.e. with effect from 1st July 1997.

35] In Prabhakar Dalal (supra), the Division Bench of this Court, in the context of Rules 129A, 130 (1)(c) of the MCS (Pension) Rules, 1982 and GR dated 23rd June 1986 has held that paragraph 3 of the GR 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 person, than in those cases, on the competent authority authorising the release of gratuity, it will be presumed that the gratuity is deemed to have been fallen due on the date immediately following the date of retirement for the purpose of interest. The Division Bench has commended harmonious construction of the statutory rules and the executive instructions in the GR, so that executive instructions would not fall foul of the rules.”

(Quoted from judgment in W.P.No.12966/16)

9. It is thus mandatory that interest must be paid on delayed payment on retiral dues beyond 3 months of superannuation when delay is caused due to administration and not due to fault of Government servant.

10. In the background that the applicant has prayed for interest @ 18% per annum question which arises is as to what shall be the rate of interest.

11. In Writ Petition No.12966/2017, Hon'ble High Court has held in paragraph 37 that interest on delayed payment shall be @ 8% per annum as laid down in Rule 129A of Maharashtra Civil Services (Pension) Rules, 1982.

12. Government's policy decision provides that interest on delayed payment shall be made. Thus amount of interest is deemed to have accrued from commencement of 4th month from the date when the amount became due.

13. It is a settled principle of economics and accepted in fiscal laws that "money alone buys money". Therefore, when amount of interest had accrued month to month and was not paid, let the interest too carry the interest.

14. Therefore, interest @ 8% per annum shall be compounded by summing each month's interest to the principal amount from

the date when each sum under each head of payment became due.

15. On facts, it is clear that sheerly due to delays which are administrative or bureaucratic, applicant has suffered inordinate delay of 2 years in making payment of gratuity and 3 to 4 years delay in other payments had accrued. Interest can never be due compensation for delayed payment and receipt of money with reduced worth. Therefore, applicant is entitled to be compensated by quantified costs as has been noted by Hon'ble High Court in paragraph 32 of the judgment referred supra. Therefore, considering facts of the case, costs are quantified to the tune of Rs.30,000/- which amount be paid to the applicant along with payment of interest.

16. In the result, O.A. is allowed in terms of foregoing paragraph nos. 12, 13, 14 and 15.

(A.H.JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 28-02-2019.