

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

**ORIGINAL APPLICATION NO. 369 OF 2023
(Subject – Pension & Pensionary benefits)**

DISTRICT : AURANGABAD

Lala Bhaurao Chabukswar,)
Age : 63 Yrs., Occu. : Retired as Head Constable,)
R/o : Sara Swarangan, Gangapur Jahangir,)
Shendra MIDC, Aurangabad.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through: The Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)

2. The Superintendent of Police (Rural),)
T.V. Center Road, Cidco, N-10,)
Aurangabad.)

3. The Accountant General-II,)
Civil Lines, Nagpur.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Shri I.S. Thorat, Presenting Officer for
respondent authorities.

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

DATE : **31.01.2024.**

O R A L - O R D E R

1. Heard Shri K.B. Jadhav, learned counsel appearing for the applicant and Shri I.S. Thorat, learned Presenting Officer appearing for respondent authorities.

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

3. By this Original Application, the applicant is seeking directions to the respondents to pay the regular pension, amount of Commutation and amount of Gratuity /DCRG to the applicant forthwith along with interest from the date of retirement till actual payment. The applicant is also seeking directions to pay the benefits of 7th Pay Commission recommendations with all consequential benefits.

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

(i) The applicant was initially appointed on 15.02.1989 on the post of Police Constable with respondent No. 2 and he was promoted on the post of Police Naik and thereafter promoted on the post of Head Constable in year 2013. Further the applicant came to be retired on attaining the age of superannuation on 31.08.2017 on the post of Head Constable from the office of respondent No. 2 and the applicant is getting provisional pension.

(ii) It is further case of the applicant that while working on the post of Head Constable, on 08.11.2013 a crime was registered against him bearing Crime No. 38/2013 under Section 7, 13(1)(d) r.w. 13(2) of the Prevention of Corruption Act, 1988 in the Shillegaon Police Station, Tq. Gangapur, Dist. Aurangabad. Further due to the registration of crime against the applicant, he was suspended from service on 16.11.2013 and he was reinstated in service on 13.11.2015.

(iii) It is further case of the applicant that the applicant came to be acquitted from the Special Case (ACB) No. 01/2014 arising out of the said crime vide the order of acquittal passed by the Learned Special Court, Vaijapur, Dist. Aurangabad on 04.03.2022 (Annexure A-2). The applicant thereafter filed application dated 08.08.2022 to the respondents for regularization of suspension period and by order dated 20.07.2022, the respondent No. 2 has regularized the suspension period of the applicant as duty period. Copy of the said order is marked as Annexure A-3.

(iv) It is further case of the applicant that being aggrieved by the judgment of acquittal delivered by the Learned

Special Court, the State has preferred Criminal Appeal bearing ALS No. 64/2022 before the Hon'ble High Court, Bench at Aurangabad, which is still pending.

(v) It is further case of the applicant that respondent No. 2 has paid him the leave encashment after acquittal, but the regular pension and other pensionary benefits are not paid to him till today. Hence, the present Original Application.

5. Learned counsel for the applicant submits that it is well settled that the gratuity cannot be withheld unless the offence amounting to moral turpitude is proved to have been committed by the employee and the said view has been reiterated by the Hon'ble Apex Court in the matter of **Union Bank of India and others Vs. C.G. Ajay Babu and another, reported in (2018) 9 SCC 529.**

6. Learned counsel for the applicant submits that the applicant is getting meager amount of provisional pension and, therefore, he is unable to maintain himself and his family members. The applicant has received only amount of G.P.F., G.I.S. and Leave Encashment, however, he is not getting the regular pension and the amount of gratuity and commutation is

also withheld. Learned counsel submits that the applicant is retired on attaining the age of superannuation and more than 5 years completed after his retirement. Learned counsel submits that till today no regular pension and the amount of gratuity have been paid to the applicant. The applicant has no other source of income.

7. Learned counsel for the applicant has placed reliance on a case of **Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.** in W.P. No. 6650/2020, decided on 25.10.2021, wherein the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the case of similarly situated employee has partly allowed the W.P. directing petitioner therein to tender an affidavit /undertaking to the respondent concerned stating therein that if he suffers an adverse order in the pending proceedings for challenging the acquittal and his acquittal is converted into conviction, he shall return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the petitioner to the extent of the monetary reliefs that he would be getting in view of this order.

8. Learned Presenting Officer (hereinafter referred as P.O.) on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that being aggrieved by the judgment of acquittal, the State has preferred Criminal Appeal bearing ALS No. 64/2022 on 30.04.2022 and the said appeal is pending before the Hon'ble High Court of Bombay, Bench at Aurangabad. Learned P.O. submits that the office of respondent Nos. 1 and 2 have already paid the benefits of leave encashment to the applicant after his acquittal from the Special Case. But the regular pension and other rest of the benefits have not been paid to the applicant so far. The applicant has already received the amount of G.P.F., G.I.S. and Leave Encashment in view of the acquittal from the Special Case.

9. Learned Presenting Officer submits that the Departmental Enquiry was very well initiated against the applicant and the enquiry was conducted by the SDPO, Vaijapur as an Enquiry Officer. It was conducted in terms of the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the Enquiry Officer vide departmental enquiry report dated 28.04.2015 had come to the conclusion that the applicant was found responsible to dereliction of duties due to his misbehaviour in service. Learned P.O. submits that

considering the pendency of criminal case at that time the result of findings recorded in the aforesaid Departmental Enquiry was kept as dormant file with suggestion that the case of the applicant is recommended for imposing punishment after decision of the criminal case pending against him in the Special Court, Vaijapur.

10. Learned Presenting Officer submits that the provisions of Rule 130(C) of the Maharashtra Civil Services (Pension) Rules, 1982 cannot be made applicable to the case of the applicant due to pendency of the Criminal Appeal preferred by the State against the applicant. Learned P.O. submits that the regular pension, amount of gratuity and benefits of commutation are required to be withheld due to pendency of Criminal Appeal before the Hon'ble High Court, Bench at Aurangabad. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed with costs.

11. The applicant came to be retired on the post of Head Constable way back in the year 2017 and even though the Criminal Case registered and tried against him resulted into acquittal, pensionary benefits such as regular pension, amount

of gratuity and commutation etc. are withheld by the respondent authorities solely for the reason that the appeal preferred against the acquittal by the State against the applicant is still pending before the Hon'ble High Court of Bombay, Bench at Aurangabad.

12. Though learned Presenting Officer has vehemently submitted that the Departmental Enquiry has been initiated against the applicant and the findings are recorded by the Enquiry Officer in affirmative, however, the said findings recorded in the file was kept in dormant file for the reason that at the relevant time the said case was pending before the Special Court. At present even though the said case has been disposed of by acquitting the present applicant, no order of punishment has been passed against the applicant. It further appears from affidavit in reply filed on behalf of respondent Nos. 1 and 2 that the Enquiry Officer has recorded findings in affirmative against the applicant regarding dereliction of duties due to his misbehaviour in service. In view of the nature of charges as stated to have been proved against the applicant, it appears that at the most the applicant will have to face minor penalties as specified in sub-clause (i), (ii) & (iv) of Clause (1) of Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Further the applicant also came to be retired from service in the

year 2017 itself. It is also not disputed that the Department Enquiry was initiated in view of the aforesaid crime registered against the applicant and not for any other reason.

13. In view of the aforesaid discussions, the view taken by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the case of **Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.** in W.P. No. 6650/2020 is squarely applicable to the facts and circumstances of the present case. The applicant is getting meager amount of provisional pension and he is not getting the regular pension since 2017 i.e. for more than 07 years as on today and he has not received the amount of gratuity and commutation so far. Thus, by directing the applicant to tender an undertaking / affidavit in terms of the observations and the order passed by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P., the present Original Application can be disposed of. Hence, the following order :-

ORDER

- (i) The Original Application No. 369/2023 is hereby partly allowed.
- (ii) The applicant shall tender an affidavit/ undertaking to respondents stating therein that if he suffers an adverse order in the pending proceedings for challenging the

acquittal and his acquittal is converted into conviction, he shall return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the petitioner to the extent of the monetary reliefs that he would be getting in view of this order.

- (iii) After such affidavit is filed satisfying the above stated ingredients, the respondents shall initiate steps for remittance of admissible monetary benefits within 12 (twelve) weeks from the date of the filing of such affidavit by the applicant.
- (iv) So far as prayer about direction to the respondents to pay the applicant benefits of 7th Pay Commission, the applicant will be at liberty to file appropriate representation before the respondents and after filing of the said representation, the respondents shall decide the said representation as expeditiously as possible and communicate the decision thereof to the applicant in writing.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 31.01.2023

KPB S.B. O.A. No. 20 of 2021 VKJ Pension and Pensionary benefits

(Justice V.K. Jadhav)

Member (J)