

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.41 OF 2017**

**(Subject :- Provisional Pension)**

**DISTRICT : AURANGABAD**

**Baburao s/o Nanasaheb Ardad,** )  
Age: 75 years, Occu.: Nil, )  
R/o. 46, Bhimashankar Colony, )  
Beed Bypass Road, Mahadev Mandir Parisar, )  
Oppo. Hotel Kailas, Aurangabad. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Revenue Department, )  
M.S., Mantralaya, Mumbai- 32. )
2. **The Deputy Director of Land Records,** )  
Aurangabad. )
3. **The Superintendent of Land Records,** )  
Aurangabad. )
4. **The Deputy Superintendent of** )  
Land Records, Soygaon, )  
Dist. Aurangabad. )...**Respondents.**

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**Shri Avinash S. Deshmukh, learned Advocate for the Applicant.**

**Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondents.**  
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**CORAM** : **B.P. PATIL, ACTING CHAIRMAN**

**RESERVED ON** : **02.12.2019.**

**PRONOUNCED ON** : **04.12.2019.**

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**ORDER**

1. By filing the present Original Application the Applicant has challenged the impugned communication dated 12.10.2015 issued by the Respondent No.2 to the Treasury officer, Aurangabad to stop the provisional pension and prayed to quash the said communication and also prayed to direct the Respondents to start provisional pension to him and to continue to pay the same till final disposal of the SLP (Criminal) No.10072/2015 pending before the Hon'ble Supreme Court of India.

2. On 16.02.1960, the Applicant entered the service in the Land Records Department as Surveyor. He served as Surveyor for about 16 years and thereafter he was promoted as a Nimtandar in the year 1976. Thereafter, in the year 1983, he was promoted as Head Clerk. In the year 1989, he was promoted in Class-II cadre on the post of Taluka Inspector of Land Records (TILR)-cum-City Survey Officer. He worked on that post till his retirement. He retired as TILR while working at Soygaon w.e.f. 31.3.1999.

3. In the year 1995, he was serving as TILR, Jalna. He was falsely implicated in an offence under Prevention of Corruption Act, 1988. Consequently he was prosecuted in Special Case No.11/1997 before the Special Judge, Jalna. The case was decided on 08.03.2002 and he was acquitted from the offences alleged against him. The State challenged the said decision before the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad by filing the Criminal Appeal No.328 of 2002.

4. Meanwhile, the Applicant retired on 31.03.1999 on attaining the age of superannuation during the pendency of the Special Case No.11/1997. The Respondent Nos.1 to 4 granted him provisional pension under Rule 27 (4) w/w Rule 130 of the M.C.S. (Pension) Rules, 1982. Though he retired w.e.f. 31.03.1999, his pension case was not finalized and regular pension was not granted to him. Not only this, but gratuity and commuted value of pension, etc. were not granted to him. But he was receiving monthly provisional pension in view of the Rule 27 (4) and 130 of the M.C.S.R. (Pension) Rules, 1982. Infact, after his acquittal in Special Case No.11 of 1997, the Respondents ought to have processed and finalized his pension case and extended all the pensionary benefits to him. But the Respondents had not taken action in that regard. They continued to pay the provisional

pension to the Applicant. In the month of March 2015, the Respondents suddenly stopped payment of provision pension to him without any reason. Thereafter on 23.09.2015, the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad decided the Criminal Appeal No.328 of 2002 and quashed and set aside the judgment and order dated 08.03.2002 passed by the Special Judge, Jalna and convicted him under Section 7,13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 and sentenced him to suffer minimum rigorous imprisonment for 6 months on each of the counts for the offence punishable under Section 7 and minimum rigorous imprisonment for 1 years for the offence punishable under Section 13 (1) d r/w Section 13 (2) of the Prevention of Corruption Act, 1988.

5. The Applicant challenged the said judgment dated 23.09.2015 passed by the Hon'ble High Court before the Hon'ble Supreme Court of India by filing the Special Leave Petition (Criminal) No.10072/2015. The Hon'ble Supreme Court is pleased to grant leave and ordered that the appellate be released on bail.

6. It is contention of the Applicant that in view of the said facts, the Respondents have no reason to stop his pension from March 2015 onwards in view of the fact that the Applicant approached to the Hon'ble Apex Court. But the Respondents

illegally stopped the provisional pension of the Applicant. He submitted the representation dated 17-20/06/2016 to the Respondent No.2 and sent the copy to the Respondent No.3 and requested to grant provision pension to him.

7. It is his contention that on 25.02.2019, the Respondent No.1 issued order withdrawing his total pension w.e.f. the date of his conviction by the Hon'ble High Court i.e. from 23.09.2015 i.e. with retrospective effect without following the provision of law. It is his contention that the M.P.S.C. has not recommended for withdrawal of total pension of the Applicant. But the State Cabinet rejected the recommendation of the M.P.S.C. without recording the reason. It is his contention that order issued by the Respondent No.1 regarding withdrawal of his total pension without giving reason is illegal and against the provision of law. The impugned communication shows that the Government intended to impose punishment equivalent to the punishment of dismissal from service that too with retrospective effect which is illegal and therefore, he prayed to quash the impugned communication issued by the Respondents and prayed to direct the Respondents to start the provisional pension and to continue to pay till the final disposal of the SLP pending before the Hon'ble Apex Court and also prayed to direct to pay arrears of pension from March, 2015.

8. The Respondent Nos.1 and 2 have filed their affidavit-in-reply and resisted the contention of the Applicant. It is their contention that in view of the provision of Rule 130 (1) (b) of the Maharashtra Civil Services (Pension) Rules, 1982, the Applicant is entitled only for provisional pension during the pendency of judicial proceedings and accordingly provisional pension was granted to him in view of the Rule 27 (4) read with Rule 130 of M.C.S.R. (Pension) Rules, 1982. Pension case of the Applicant was not finalized because of the pendency of the Criminal Appeal before the Hon'ble High Court. It is their contention that they never stopped the provisional pension of the Applicant till the final decision of the judicial proceedings and they never stopped the provisional pension from March, 2015. It is their contention that the Applicant was convicted on 23.09.2015 and thereafter his provisional pension has been stopped by the order dated 12.10.2015. The provisional pension has been paid to the Applicant by the end of 31.08.2015. Thereafter, his provisional pension has been stopped because of his conviction by the Hon'ble High Court. It is their contention that there is no illegality in the impugned communication and therefore, they justified the impugned order and prayed to reject the Original Application.

9. I have heard Shri A.S. Deshmukh, learned Advocate for the Applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondents. I have perused the documents on record.

10. Admittedly, the Applicant was appointed on 16.02.1960 as Surveyor in the Land Records Department. In the year 1976, he was promoted as Nimtandar and in the year 1983, he was further promoted as Head Clerk. He was promoted in the Class II cadre of Taluka Inspector of Land Records (TILR)-cum-City Survey Officer in the year 1989. In the year 1999, he retired as TILR on attaining the age of superannuation w.e.f. 31.3.1999. Admittedly, in the year 1995, he was serving as TILR, Jalna and at that time he was found involved in the offence under Prevention of Corruption Act, 1988 and therefore, Special Case No.11 of 1997 has been registered against him in the Court of Special Judge, Jalna. Special Case was decided on 08.03.2002 and the Applicant was acquitted.

11. Admittedly, State preferred the appeal against the judgment and order passed by the Special Judge, Jalna in Special Case No.11/1997 by filing the Criminal Appeal No.328/2002. The Hon'ble High Court decided the appeal on 23.09.2015 and allowed the appeal and quashed the judgment and order passed by the

Special Judge, Jalna and convicted the Applicant under Section 7,13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988. Admittedly, during the pendency of trial, the Applicant retired w.e.f. 31.3.1999. On his retirement, the Respondents granted him provision pension but other pensionary benefits had not been extended to him. The Applicant received the provisional pension till the end of August, 2015. Admittedly, on conviction of the accused in Criminal Case by the Hon'ble High Court, the Respondents passed the order dated 25.02.2019 and withdrew the pension of the Applicant from the date of order of the Hon'ble High Court in Criminal Appeal No.328 of 2002. Prior to that the Respondent No.2 issued the impugned order dated 12.10.2015 and stopped the provisional pension on the ground that the Applicant was convicted in Criminal Case.

12. Learned Advocate for the Applicant has submitted that the Applicant received the provisional pension till the end of August, 2015 i.e. the date of conviction of accused in the Criminal Appeal No.328 of 2002. He has submitted that the now the grievance of the Applicant is limited to the extent of granting provisional pension during the period from September, 2015 to till the passing the order dated 25.02.2019 withdrawing his pension.



13. Learned Advocate for the Applicant has argued that the provisional pension was granted to the Applicant after his retirement in view of the provision of Rule 27(4) and Rule 130 of the MCS (Pension) Rules, 1982. He has submitted that infact the Respondents ought to have processed the pension case of the Applicant after his retirement and granted him regular pension and pensionary benefits. But the Respondents had not take action in that regard and he continued to pay only the monthly provisional pension. He has submitted that initially the Applicant was acquitted by trial court in Special Case No.11/1997 and thereafter he was convicted on 23.09.2015 in Criminal Appeal No.328 of 2002. He has submitted that in view of the provision of Rule 27 of the MCS (Pension) Rules, 1982 the Government is empowered to withhold or withdraw permanently whole pension of Government servant if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. He has submitted that in view of the said fact, the Respondent No.1 ought to have withdrawn his pension from the date of order i.e. on 25.02.2019. Instead of it, the Respondent No.1 issued the order withdrawing the pension w.e.f. the date of decision of the Hon'ble High Court in Criminal Appeal No.328 of 2002 i.e. from 23.09.2015. He has submitted that said order issued by the Respondent No.1 is in contravention of the

provision of Rule 27 r/w Rule 130 of M.C.S. (Pension) Rules, 1982. Therefore, he has prayed to quash the same by allowing the Original Application.

14. Learned Advocate for the Applicant has further submitted that the Applicant has retired as Taluka Inspector of Land Records (TILR)-cum-City Survey Officer i.e. Class-II employee. Therefore the recommendation of the Maharashtra Civil Services (M.P.S.C.) was necessary for imposing any penalty for taking action against the Applicant who retired on 31.3.1999. He has submitted that the M.P.S.C. recommended to withdraw  $\frac{3}{4}$  (75%) pension permanently. The Respondents had not accepted the recommendation of the M.P.S.C. and they withdrawn the entire pension of the Applicant without recording any reason. He has submitted that the said act on the part of the Respondents is illegal and against the provision of M.C.S. (Pension) Rules, 1982.

15. Learned Advocate for the Applicant has further submitted that the Respondent No.1 ought to have withdrawn the pension of the Applicant from the date of issuance of order i.e. from 25.02.2019. But the Government has directed to withdraw his pension with retrospective effect from 23.09.2015 which is illegal. Therefore, he has prayed to quash and set aside the impugned order by allowing the Original Application

16. Learned P.O. for the Respondents has submitted that the provisional pension was granted to the Applicant till the end of August, 2015. In the month of September 2015, the Hon'ble High Court decided the Criminal Appeal No.328 of 2002 and convicted the Applicant on 23.09.2015. Immediately after decision the department sent proposal to the Government for taking appropriate action under the provision of M.C.S. (Pension) Rules, 1982 against the Applicant. Thereafter, the recommendation of the M.P.S.C. has been called for and on receiving the recommendation, the matter was placed before the State Cabinet as the department had not accepted the recommendation of the M.P.S.C. and proposed to withdraw the entire pension of the Applicant from the date of order of conviction. He has submitted that on the basis of proposal of department, the State Cabinet decided to withdraw the pension of the Applicant w.e.f. the date of his conviction i.e. from 23.09.2015. He has submitted that there is no illegality in the impugned order as the pension has been withdrawn on conviction of the Applicant. He has submitted that impugned order has been issued in view of the provision of MCS (Pension) Rules, 1982 and therefore, he justified the impugned order and prayed to reject the Original Application.

17. On perusal of the record it reveals that the Applicant received the provision pension till the end of August, 2015 as the Criminal Case was pending against him. On 23.09.2015, he was convicted by the Hon'ble High Court of Judicature, Bench at Aurangabad in Criminal Case No.328 of 2002. On his conviction the Applicant challenged the said decision before the Hon'ble Supreme Court of India by filing the SLP No.10072/2015. The Hon'ble Supreme Court of India granted leave to the Applicant and released the Applicant on bail. But the substantial sentence to suffer minimum rigorous imprisonment for 6 months on each of the counts for the offence punishable under Section 7 and minimum rigorous imprisonment for 1 years for the offence punishable under Section 13 (1) d r/w Section 13 (2) of the Prevention of Corruption Act, 1988 imposed on the Applicant has not been suspended. Thereafter, the Respondent No.1 submitted proposal for withdrawing the pension of the Applicant and for taking action against the Applicant on the basis of the conviction recorded against him in view of the provision of M.C.S. (Pension) Rules, 1982.

18. Thereafter, the proposal was sent to M.P.S.C. for recommendation. The M.P.S.C. recommended to withdraw the  $\frac{3}{4}$  (75%) pension of the Applicant permanently. But the department had not accepted the recommendation and proposed to withdraw

the entire pension of the Applicant in view of the provision of Rule 27 of M.C.S. (Pension) Rules, 1982. Thereafter, the matter was placed before the State Cabinet. The State Cabinet had considered the proposal of the department and had not accepted the recommendation of M.P.S.C. and decided to withdraw the entire pension of the Applicant from the date of conviction and accordingly passed the impugned order. These facts are evident from the document produced by the Respondents. The said facts show that the proposal to withdraw the pension of the Applicant has been made by the concerned authority immediately after conviction of the Applicant in Criminal Appeal No.328 of 2002. Accordingly, the provisional pension of the Applicant has been stopped by impugned communication dated 12.10.2015.

19. The impugned communication shows that the provisional pension has been stopped since the Applicant has been convicted in Criminal Appeal. The proposal was sent to the department and thereafter it was sent to M.P.S.C. for recommendation. On receiving the recommendation of the M.P.S.C., the Government placed the proposal before the State Cabinet and State Cabinet decided it thereafter. Therefore, the delay has been caused for passing the order withdrawing the pension of the Applicant and accordingly the impugned order dated 25.2.2019 has been issued by the Respondent No.1. The entire

process made by the Respondents is in view of the provision of M.C.S. (Pension) Rules, 1982 and there is no illegality in it. The Respondent No.1 has rightly withdrawn the pension of the Applicant from the date of order of conviction recorded against him in Criminal Case No.328 of 2002 decided on 23.09.2015. The impugned order dated 12.10.2015 and 25.2.2019 are in accordance of the Rule 27 of M.C.S. (Pension) Rules, 1982. I find no illegality in the said orders. Therefore, no interference in it is called for. There is no merit in the Original Application. Consequently, the same deserves to be dismissed.

20. In view of the discussion in the foregoing paragraphs, the Original Application stands dismissed. No order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place:- Aurangabad**

**Date :- 04.12.2019**

Sas. O.A.No.41 of 2017.Provision Pension. BPP