

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.614 OF 2021

**DISTRICT: THANE
SUBJECT: GRATUITY &
PENSION**

Shri Bipin Dhudaku Ingale,)
S/o Dhudaku Ziparu Ingale,)
Age – 65, Retired)
Residing at Plot No.14 B, “Matrupitru Bhawan”,)
Samarth Nagar, Apatewadi (Shirgaon),)
Badlapur (East), Taluka – Ambarnath,)
Dist. Thane – Pin Code – 421503.)... **Applicant**

Versus

1) The State of Maharashtra through the,)
Principle Secretary (Rural Development),)
Rural Development Departement, Mantralaya,)
Bhandhkam Vibhag, 25, Marzban Path,)
Mumbai - 400001.)

2) Chief Executive Officer,)
Zilla Parishad, Solapur, Pin Code – 413 007.)... **Respondents**

Shri P. G. Kayande, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondent No.1

Shri A.M. Misal, learned Advocate for Respondent No.2

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 28.10.2021.

ORDER

In this O.A., the challenge is to the communication dated 20.04.2021 of the Government whereby the Applicant was denied regular pension and gratuity on the ground that the same is not payable

till the decision of the judicial proceeding or departmental enquiry though the Applicant has taken voluntary retirement w.e.f. 28.02.2014.

2. Shortly stated facts giving rise to O.A. are as under:-

The Applicant was serving as Block Development Officer, Panchayat Samiti, Mohol, Dist. Solapur and given notice of voluntary retirement dated 11.11.2013. The Respondent No.1 –Government by order dated 29.01.2014 accepted the notice of voluntary retirement w.e.f. 28.02.2014 and accordingly he came to be retired. After retirement, the Respondent No.2 had forwarded his proposal to Accountant General for grant of gratuity as well as pension which were sanctioned by the said authority. However, the gratuity was not paid and it was withheld on the ground that after voluntary retirement of the Applicant, in preliminary inquiry, the Applicant along with other co-delinquents found guilty for certain mis-conduct and misappropriation of Government money. The FIR under Section 406, 409, 420 r/w IPC came to be registered on 04.06.2014. Insofar as the D.E. is concerned, the Respondent No.2 has forwarded the proposal to the Government on 19.01.2016 for initiation of D.E. against the Applicant and 12 other co-delinquents. However, till date no charge sheet has been issued or served upon the Applicant. The Applicant is granted only provisional pension. After waiting for a long period, the Applicant has made an application dated 03.02.2021 for releasing gratuity and regular pension but same is rejected by order dated 20.04.2021 which is challenged in the present O.A.

3. Heard Shri P. G. Kayande, learned Advocate for the Applicant, Smt. Archana B. K., learned Presenting Officer for the Respondent No.1 and Shri A. M. Misal, learned Counsel for Respondent No.2.

4. Learned Counsel for the Applicant urged that though the period of more than seven years from the date of voluntary retirement is over till date there is no initiation of D.E. against the Applicant, and therefore, gratuity and regular pension cannot be withheld or kept in abeyance for indefinite time. As regard, criminal offence, the FIR was registered on

04.06.2014. He submits that till date no criminal case is filed in the court of law. He thus, submits that neither there was judicial proceedings nor institution of departmental proceedings against the Applicant on the date of his voluntary retirement nor it is instituted till date in the eye of law, and therefore, withholding of gratuity and regular pension is totally impermissible in law.

5. Whereas, learned Presenting Officer for Respondent No.1 and learned Advocate for Respondent No.2 submit that after voluntary retirement of the Applicant, in preliminary inquiry report dated 29.05.2014 certain major irregularities and misappropriation of Government money was noticed by the department and in this behalf FIR was also registered on 04.06.2014. As regard initiation of departmental proceeding, the Respondent No.2's Counsel has pointed out that Zilla Parishad has forwarded the proposal to Government on 19.01.2016 for initiation of D.E. against the Applicant and 12 other co-delinquents in which quarries were raised by the Government and initiation of departmental proceeding is still in process. On this line of submission, they tried to contend that the Applicant is not entitled to gratuity and regular pension till the decision of judicial proceeding and departmental proceeding.

6. From the pleadings and submissions advanced at a bar, the admitted position is that there was no initiation of D.E. or initiation of judicial proceeding against the Applicant on the date of voluntary retirement on 28.02.2014. As per Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules') no gratuity shall be paid to the Government servant until the conclusion of departmental or judicial proceedings. Whereas, admittedly in present case, on the date of voluntary retirement, there was no initiation of departmental proceeding or judicial proceeding. It is only after his retirement some steps were taken to initiate the D.E. but till date not initiated though the period of 7-8 years is over.

7. In terms of Rule 27(6)(a) of 'Pension Rules', the departmental proceeding shall be deemed to be instituted on the date on which the statement of charges were issued to the Government servant or pensioner. Whereas, judicial proceeding shall be deemed to be instituted in case of criminal proceeding on the date on which complaint or report of the police officer of which the Magistrate take cognizance is made.

8. Insofar as the criminal proceedings are concerned, there is no averment in Affidavit-in-Reply filed by the Respondent Nos.1 and 2 to establish that after investigation, the police have filed charge sheet in the court of law.

9. At this juncture, while dictating the order, learned P.O. submits that she has just now enquired and received information that the police have filed charge sheet in the court. It is not made clear as to in which year charge sheet is filed. If this is so then in fact it should have been reflected in the Affidavit-in-Reply filed by the Government today. The Affidavit filed by Shri Vasant Mane, Under Secretary is totally silent on this point. Indeed, if the criminal case is already registered in the court of law, the care ought to have been taken to specify it in the Affidavit or pleading which is not there. Even assuming for a moment that any such criminal case is instituted in the court of law after retirement of applicant, it has no consequence. To justify withholding of gratuity and regular pension on the ground of criminal proceeding, such proceeding ought to have been in existence or initiated on the date of voluntary retirement. Suffice to say, the institution of criminal proceeding after voluntary retirement cannot be the ground to withhold the gratuity and regular pension. It is only in the event of conviction in criminal case, the competent authority is empowered to withhold or withdraw the pension as it deems fit as provided under Rule 26 of 'Pension Rules'.

10. Apart as rightly pointed out by learned Counsel for the Applicant that the institution of departmental proceedings and judicial proceedings after lapse of 4 years would not be permissible in view of bar of Section 27(2)(b) and 27(3) of 'Pension Rules' which is as under:-

“27(2)(b) : (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -

- (i) shall not be instituted save with the sanction of the Government,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.”

11. Indeed, where D.E. is instituted subject to compliance of rigor of Section 27(2)(b) of 'Pension Rules' after retirement in that event the scope of punishment in such inquiry would be to the extent of withholding or withdrawing pension or any part of it as appointing authority may deem fit in the light of Rule 26 r/w Rule 27 of 'Pension Rules'. Therefore, payment of gratuity and regular pension cannot be withheld.

12. Thus, what transpires from the record that the Applicant is deprived of gratuity and regular pension though the period of more than seven years is over from the date of his retirement. It is well settled that now pension of public servant is regarded right to property attracting Article 31 (1) of Constitution of India.

13. Suffice to say, right to property accrued to a Government servant cannot be defeated in absence of any such provision in law. Such right to receive pension and gratuity cannot be kept in abeyance for years together. It is only in event for conviction or found guilty in departmental proceeding instituted after retirement after compliance of rigor of the provisions of Section 27(2) and (3) of 'Pension Rules' Government servant's pension can be withheld or withdrawn as appointing authority deems fit.

14. Suffice to say, the stand taken by the Respondents withholding gratuity and regular pension till the decision of departmental proceeding which is not at all instituted till date and has become impermissible now by lapse of time is totally unsustainable in law. Resultantly, the impugned communication dated 20.04.2021 is devoid of law and liable to be quashed. Hence the following order:-

ORDER

- (A) Impugned communicated dated 20.04.2021 is quashed and set aside.
- (B) Respondents are directed to release gratuity and regular pension to the Applicant as per his entitlement within two months from today.
- (C) The Applicant is at liberty to redress the issue of interest independently.
- (D) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 28.10.2021
Dictation taken by: V.S.Mane

