

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 70 OF 2022**

DISTRICT : JALNA

**Ramkisan Karbhari Mante,** )  
Age. : 59 years, Occ. Pensioner, )  
(Police Head Constable) )  
R/o Near Saraswati Mandir, )  
House no.3, Gokulwadi Road, Jalna, )  
Tq. and Dist. Jalna. ) .. **APPLICANT**

VERSUS

**The Superintendent of Police, Jalna, )**  
Administrative Building, Jalna, )  
Jalna, Tq. and Dist. Jalna. ) .. **RESPONDENT**

-----  
**APPEARANCE** : Shri V.B. Wagh, Counsel for Applicant.  
: Shri N.U. Yadav, Presenting Officer for  
respondent.

-----  
**CORAM** : **JUSTICE P.R. BORA, VICE CHAIRMAN.**

-----  
**DATE** : **21.08.2023.**

**ORAL - ORDER**

1. Heard Shri V.B. Wagh, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent.

2. Applicant has retired on 30.6.2021 on attaining the age of superannuation from the post of Head Constable from the office of the respondent. Applicant entered into the Police services on 14.8.1983. On 12.7.2001, he was promoted as Police Head Constable. In the year 2013, a criminal prosecution was initiated against the applicant for the offences punishable under the Prevention of Corruption Act. On registration of the said offence against the applicant, he was placed under suspension w.e.f. 8.12.2013. His suspension continued till 25.2.2016. Special Case (ACB) No. 04/2014 registered against the applicant was decided on 8.3.2019 by the Additional Sessions Judge, Jalna and the applicant came to be acquitted of the charges framed against him. Against the order of acquittal recorded in favour of the applicant, the State has preferred an appeal before the Hon'ble High Court bearing A.L.S. No. 131/2019 and the same is pending before the Hon'ble High Court. On 9.7.2021, respondent had passed an order, thereby regularizing the period of suspension from 8.12.2013 to 25.2.2016 and directed the said period to be treated as duty period of the applicant. Subsequently, respondent cancelled the order passed on 9.7.2021 vide order dated 29.12.2023 and directed that the decision as about regularization of the period

of suspension will be independently taken after the appeal pending in the Hon'ble High Court is decided. Respondent has also directed recovery of the amount, if paid on the basis of the order passed on 9.7.2021.

3. Aggrieved by the order dated 29.12.2021 passed by the respondent the applicant has preferred the present O.A.

4. Shri V.B. Wagh, learned counsel appearing for the applicant assailed the said order on various grounds. Learned counsel submitted that without giving any notice or opportunity of hearing to the applicant, respondent has abruptly withdrawn the order dated 9.7.2021. Learned counsel further submitted that as because the order dated 9.7.2021 has been withdrawn by the respondent, the final pay fixation of the applicant cannot be done and consequently his amount of pension also cannot be determined. Learned counsel submitted that time and again the applicant has requested the respondent to reconsider the order dated 29.12.2021 and to remit the retiral benefits to the applicant and also to forward his proposal to the Accountant General's Office, Nagpur for determining the amount of his final pension but his request has not been considered. Learned

counsel, in the circumstances, has prayed for allowing the application by setting aside the order dated 29.12.2021.

5. The contentions raised in the O.A. and the prayers made therein are opposed by the respondent. Respondent has filed the affidavit in reply and resisted the contentions made in the O.A. Respondent has supported the order dated 29.12.2021. It is contended that as per the provisions under rule 72(6) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, the period of suspension can only be regularized after final disposal of the case in which the Government servant is involved. It is contended that in view of the aforesaid provision, earlier order dated 9.7.2021 was rightly recalled by the respondent. It is further contended that rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 prohibits the payment of retiral benefits like gratuity till the final decision of the criminal case pending against the Government servant. On all these grounds, the respondent has prayed for dismissal of the O.A.

6. Shri N.U. Yadav, learned Presenting Officer reiterated the contentions raised by the respondent in its affidavit in reply and

in the sur-rejoinder submitted by the said respondent. Learned P.O. submitted that in the matters like the present one, where the criminal appeal is pending against the acquittal of the applicant in the special case, the provisional pension only can be paid to the applicant, but the payment of all other retiral benefits depend upon final decision of the criminal case in which the Government servant is involved. Learned P.O. submitted that the provisional pension has already been fixed and is being paid to the applicant. The learned P.O., in the circumstances, prayed for dismissal of the O.A.

7. I have duly considered the submissions made on behalf of the applicant, as well as, the respondent. It is not in dispute that the applicant retired on 30.6.2021 on attaining the age of superannuation. There is further no dispute that the Special Case (ACB) No. 04/2014 was registered against the applicant for the offences punishable U/s 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act. Admittedly, the applicant has been acquitted of the charges so levelled against him vide the judgment delivered by the Special Judge & Additional Sessions Judge, Jalna on 8.3.2019. It is not the case of the respondent that the Departmental Enquiry was also conducted against the applicant in the matter of alleged incident of accepting the bribe

by the applicant. As has come on record, the State has challenged the order of acquittal recorded in favour of the applicant in Special case (ACB) No. 4/2014 by filing A.L.S. No. 131/2019 before the Hon'ble High Court and the said appeal is pending. As is revealing from the record on 9.7.2021 the respondent has passed an order, thereby regularizing the period of suspension undergone by the applicant during the period from 8.12.2013 to 25.2.2016 and the said period was directed to be treated as duty period of the applicant. Vide subsequent order passed on 29.12.2021, respondent recalled the earlier order dated 9.7.2021 and has declared that the decision as about regularization of the period of suspension will be independently taken after the criminal appeal pending before the Hon'ble High Court is decided. As noted hereinabove, the aforesaid order has been challenged by the applicant.

8. Shri V.B. Wagh, learned counsel for the applicant has placed reliance on the judgment delivered by Aurangabad Bench of Hon'ble Bombay High Court in **W.P. No. 6650/2020 [Ashfakali Khan Abdulali Khan Vs. the State of Maharashtra and Ors.]**. The Hon'ble High Court has ruled that the retiral benefits of the Government Employee cannot be withheld on the ground that Criminal Appeal filed against the order of acquittal

recorded in favour of the Government employee is pending before the High Court. The judgment delivered by the Hon'ble High Court in the aforesaid matter is a short judgment and I deem it appropriate to reproduce herein below the entire said judgment.

*"1. We have considered the strenuous submissions of the learned Advocates for the respective sides. The learned Advocate for respondent Nos.2 and 3 and the learned AGP have vehemently opposed this petition and pray for it's dismissal. It is pointed out that though the petitioner has been acquitted for committing offences punishable under sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 vide judgment dated 19/07/2019 in Special Case (ACB) No.07/2007, a criminal appeal challenging such acquittal is pending in this Court.*

*2. The petitioner has put forth prayer clause B, C and D as under :-*

*"B. By Writ, order or directions the respondent No.2 and 3 may kindly be directed to fix final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of justice.*

*C. By writ, order or directions the respondent No.2 and 3 may kindly be directed to pay the difference of final regular pension deducting the amount paid to the petitioner by way of provisional pension from 01.07.2017 till the actual grant of regular pension as per 7th Pay Commission and to pay interest @ 12% on regular pension from 20.07.2019 till the grant and payment of actual regular pension and for the payment of interest on the amount payable to the petitioner of gratuity from 01.07.2017 till the*

*actual payment of gratuity in the interest of justice.*

*D. Pending hearing and final disposal of this Writ Petition the respondent No.2 and 3 may kindly be directed to fix the final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of Justice."*

*3. It is settled Law that gratuity cannot be forfeited unless the offence amounting to moral turpitude is proved to have been committed by the petitioner, u/s 4, 6(d)(2) of the Payment of Gratuity Act, 1972 and in the light of the judgment delivered by the Hon'ble Apex Court in the matter of Union Bank of India and others Vs.C.G.Ajay Babu and another [(2018) 9 SCC 529].*

*4. The learned Advocate for the Corporation submits that the provisional pension is being granted to the petitioner. He, however, cannot point out any provision under the MCS (Pension) Rules, 1982 that an appeal pending against acquittal would empower the employer to hold back regular pension.*

*5. In the light of the facts as recorded above and keeping in view that an appeal against the acquittal is pending adjudication, the petitioner need not be made to suffer the rigours of litigation, though, we intend to pass an equitable order.*

*6. In view of the above, this petition is partly allowed in terms of prayer clause "B" with the following rider :-*

*[a] The petitioner shall tender an affidavit/undertaking to respondent No.3 Municipal Commissioner 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.*

*[b] After such affidavit is filed satisfying the above stated ingredients, the Corporation shall initiate steps for compliance of prayer clause "B" and ensure that such compliance is made within 12 (twelve) weeks from the date of the filing of such affidavit by the petitioner."*

9. In view of the law laid down by the Hon'ble High Court the present O.A. deserves to be allowed. The respondent has grossly erred in withdrawing order dated 9.7.2021 vide the impugned order. Instead of withdrawing the said order the respondent should have modified the said order by mentioning therein that the period of suspension undergone by the applicant is regularized subject to the decision of Criminal Appeal bearing A.L.S. No. 131/2019 filed by the State Government before the Hon'ble Bombay High Court. As has been observed by the Hon'ble High Court, the retiral benefits cannot be withheld for the reason they have been withheld in the present O.A. As directed by the Hon'ble High Court in the aforesaid matter by obtaining an undertaking in the form of affidavit from the applicant to redeposit the amounts received to him by way of gratuity and other retiral benefits in the event the order of acquittal is converted into conviction of the applicant by the Hon'ble High Court in the pending Criminal Appeal, the

retiral benefits can be released to the applicant. Having regard to the facts as aforesaid, I deem it appropriate to pass the following order: -

**ORDER**

- [i] The order dated 29-12-2021 is set aside.
- [ii] Respondent is directed to regularize the period of suspension from 8.12.2013 to 25.2.2016, subject to the decision of the criminal appeal ALS No.131/2019 pending before the Hon'ble High Court.
- [iii] Respondent shall release all the retiral benefits in favour of the applicant on obtaining an undertaking to the effect that if he suffers an adverse order in the pending criminal appeal before the Hon'ble High Court and his acquittal is converted into conviction, he shall return the entire gratuity amount as well as other retiral benefits received to him 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 applicant to the extent of the monetary reliefs that he would be getting in view of this order.
- [iv] O.A. stands disposed of in aforesaid terms without any order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 21.8.2023**

ARJ YUK HDD O.A. NO. 70 OF 2022 (SUSPENSION)