

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 71 OF 2020

(Subject – Interest on Delayed Payments)

DISTRICT : JALGAON

Bharatsing s/o Vitthalsing Patil,)
Age : 69 years, Occu. : Retired,)
R/o : Jamner, Shiva Colony,)
Plot No. 16/2, Dist. Jalgaon.)

.. **APPLICANT**

V E R S U S

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

2) **The Superintendent of Police,**)
Jalgaon.)

.. **RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde, Advocate for the
Applicant.

: Shri S.K. Shirse, Presenting Officer for
Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **09.07.2021.**

O R D E R

1. The Original Application Stamp No. was filed on January 31, 2020 which was numbered as O.A. No. 71/2020 and thereby; following reliefs have been sought :-

- “A) The Original Application be allowed with costs.*
- B) The Respondents may kindly be directed to pay to the Applicant interest on delayed payment of monetary benefits to the tune of Rs. 12,87,616/-.*
- C) Any other equitable and appropriate relief to which the Applicant is found due and entitled in the facts & circumstances of the case may be granted in favour of the applicant.”*

In addition, the Applicant had sought interim order as under-

- “(a) The Respondent be directed to deposit in the office of this Hon’ble Tribunal an amount of RS. 12,87,616/- and fix it in any nationalized bank with direction to make payable interest accruable thereon to the Applicant till disposal of this Original Application.*
- (b) To grant any other appropriate and equitable relief to which the Applicant is found due and entitled in the facts and circumstances of the case as deemed fit by this Hon’ble Tribunal.”*

2. The background facts of the case of the Applicant is that he was placed under suspension by an order dated May 17, 2003 after an offence No. 3016/2003 was filed against him under s. 7, 13 (1) (d) read with s. 13 (2) of Prevention of Corruption Act, 1988 on May 16, 2003, at Bhusawal Bazar Police Station, District-Jalgaon. The applicant was convicted by Special Judicial

Magistrate, district- Jalgaon on December 06, 2004 and following punishments were inflicted on him-

- i. *For offence u/s 7 of the Prevention of Corruption Act, 1988- rigorous imprisonment of one year along with a fine of Rs. 500/-; on failure to pay the amount of fine, an additional rigorous imprisonment for three months.*
- ii. *For offence u/s 13 (1) (d) of Prevention of Corruption Act, 1988- rigorous imprisonment of two years and a fine of Rs. 1000/-, on failure to pay the amount of fine, an additional rigorous imprisonment of six months.*
- iii. *For offence u/s 12 of Prevention of Corruption Act, 1988- rigorous imprisonment of one year and a fine of Rs. 1000/=, on failure to pay the amount of fine, an additional rigorous imprisonment of three month.*

3. On conviction, the Applicant was dismissed from service by an order of Superintendent of Police, Jalgaon on December 09, 2004. Upon conviction by the Court of the Special Judicial Magistrate, Jalgaon, the Applicant had filed Criminal Appeal No. 814/2004 before Hon'ble Bombay High Court, Bench at Aurangabad. The Applicant was acquitted by the Appellate Court vide judgment dated March 23, 2018. However, the Applicant had retired on attaining age of superannuation on May 31, 2007, i.e. much before his acquittal.

4. As per orders passed by the Superintendent of Police, Jalgaon on October 10, 2018, Departmental Enquiry initiated

against the Applicant was closed as the alleged misconduct was for a period prior of four years from the date of superannuation. However, considering the remarks of the Departmental Enquiry Officer and being of the opinion that the acquittal of the Applicant was not on merit but by giving benefit of doubt, the Superintendent of Police, Jalgaon decided the period of suspension from December 10, 2004 to May 31, 2007 as "suspension period" and this period was regularized on the basis of 'without pay' and only for the purpose of computation of pension the same was decided to be treated as 'duty period' as per provisions of the Rule 70 (1) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules 1981.

5. Aggrieved by the orders of the Superintendent of Police, Jalgaon dated, October 10, 2018, the Applicant filed O.A. No. 861 of 2019 before the Maharashtra Administrative Tribunal, Bench at Aurangabad. The Tribunal passed orders in the O.A. No. 861 of 2019 on February 28, 2019 (Coram: Justice A. H. Joshi, Chairman) setting aside impugned order passed by Superintendent of Police, Jalgaon dated October 10, 2018; directing the Respondent No. 2 i.e. Superintendent of Police, Jalgaon to pay the Applicant entire amount of salary and

allowances from the date of suspension till the date of superannuation, by treating entire intervening period as period spent on duty for all purpose, and payment of cost of Rs. 10,000/- along with arrears. The compliance of the said orders of the Tribunal was ordered to be made within 60 days from the date of judgment by the Tribunal. The operative part of the order of the Tribunal is reproduced as under for ready reference-

“[A]. Impugned order Annexure A-2 dated 10.10.2018, page No. 51 and 52 of paper book is set aside.

[B]. Respondent No. 2 is directed to pay to applicant entire amount of salary and allowances from the date of suspension till the date of superannuation, by treating entire intervening period as period spent on duty for all purpose.

[C]. Costs of Original Application are quantified to Rs. 10,000/- which too be paid along with arrears.

[D]. The order be complied within 60 days from the date of this judgment.

[E] The Presenting Officer is directed to communicate this order to the Respondent No. 2.”

6. The Applicant has submitted a calculation sheet for interest amount claimed by him and marked as Annexure-A-2 (Page No. 18 of paper book) claiming the rate of interest on all amounts due @ 4% only; a photo copy of his bank pass-book as

Annexure A-3 and a copy of Pension Rules as Annexure A-4. As per the calculation sheet, the interest amount comes to be Rs. 6,43,808/- only and the Applicant has finally claimed an interest amount of Rs. 12,87,616/- when interest is payable at GPF rate i.e.8%.

7. The two Respondents in the O.A. No. 71/2020 were served notices on February 17, 2020. Affidavit in reply was filed by Respondent No. 2 on September 14, 2020 and thereby opposed the Original Application on following main grounds-

- I. The Respondent No. 2 has already paid the gratuity, arrears of pension and other pensionary benefits as per the order of this Tribunal, Bench at Aurangabad in O.A. No. 861/2018 passed on February 28, 2019. The Hon'ble Tribunal had not passed any orders for, or, did not mention that any interest, as being demanded, was to be paid to the Applicant. There is, therefore, no issue of interest payment left. The total cost to be paid to the Applicant was determined by the Hon'ble Tribunal to be Rs. 10,000/- which has been paid along with the arrears.
- II. The case of Applicant was sub-judice from 2013 to 2018 for trial in District & sessions Court at Jalgaon to appeal in Hon'ble Bombay High Court, Bench at Aurangabad. Therefore, time taken in judicial process does not amount to administrative delay as stipulated in Rule 129 (B) (1) of the Maharashtra Civil Services (Pension) Rules, 1982.

- III. The Respondent could not have decided the amount payable to the applicant in view of conviction of applicant by the Court of Special Judicial Magistrate Jalgaon on December 06, 2004 until the Applicant was acquitted by the Hon;ble Bombay High Court, Aurangabad Bench in Criminal Appeal No. 814/2004 by judgment dated March 23, 2018. Therefore, there is no administrative delay on part of the Respondent No. 2.
- IV. As per Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982, no gratuity is to be paid during the period the matter is sub-judice. The relevant part of this rule is as follows- *“no gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon”*. Therefore, the gratuity amount was not payable until passing of acquittal of the Applicant by Hon’ble Bombay High Court, Bench at Aurangabad.
- V. Ratio laid down in case of Vinod Kumar Narayan Dixit Vs. M.S. (2018) (6) Mah. L. J. 697) is applicable after final decision on judicial matter pending before Hon’ble Courts.
8. As the pleadings were completed, the matter was fixed for hearing at the stage of admission, vide this Tribunal’s orders dated June 11, 2021 (Coram: Hon’ble Shri V. D. Dongre, Member-J).

9. The two sides advanced their respective arguments on July 02, 2021 as follows-

(a) **Arguments by the learned Advocate Shri S. D. Dhongde, for the Applicant-** before starting his arguments in the matter, the learned Advocate Shri S. D. Dhongde submitted one set of compilation of certain documents containing 42 pages but, without indexing them, for making reference during arguments. He also submitted a document titled as 'प्रतिज्ञा पत्र' signed by the applicant, dated July 01, 2021. Gist of argument made by him is as follows-

- i. First of all, learned Advocate Shri S. D. Dhongde made reference to Para 9 (c) of the order passed by this Tribunal in O.A. No. 861/2018, dated February 28, 2018 and stated that the Tribunal has determined that the acquittal of the Applicant by Hon'ble High Court in the criminal appeal No. 814/2004 by an order dated March 23, 2018 was not on the basis of 'benefit of doubt'. Moreover, the Tribunal had finally, allowed the O.A. No. 861/2018 and directed Respondent No. 2 to pay entire amount of salary and allowances from the date of of suspension till the date of superannuation by treating the entire intervening period spent on duty for all purposes.
- ii. The learned Advocate for the Applicant has also drawn reference to contents of Affidavit in Reply filed by

Respondent No. 2, Superintendent of Police, Jalgaon stating that the delayed payment was not for reason of administrative lapse but for the reason of time taken in court proceedings covering trial and appeal. The Respondent No. 2 has also stated that even the Tribunal had not mentioned about the interest to be payable as being demanded by the Applicant. Learned Advocate Shri S.D. Dhongde, has contested these arguments appearing in affidavit in reply on the ground that the Applicant has finally been acquitted by the appellate Court.

- iii. The learned Advocate for the Applicant has then referred to clauses 2 (1), 3 (1) and 3 (2) of a Notification dated- November 01, 2008, issued by the Finance Department of the State Government, Mantralaya, Mumbai to assert that there is a provision for interest payment without referring the matter to Finance Department of the State Government.
- iv. The learned Advocate for the Applicant has made reference to Government Resolution dated November 22, 1994, issued by Finance Department of Government of Maharashtra to support his argument that interest is payable on delayed payment of salary, dearness allowance, other supplementary allowance, amount of increase in pay, advance increments etc.
- v. Lastly, the learned Advocate for the Applicant had cited following judgments of the Hon'ble High Court of Judicature of Bombay -
 - a) Judgment dated April 03, 2018 passed by Hon'ble High Court of Judicature at Bombay in W.P. No. 12966 of

2017, Vinod Kumar Narayan Dixit Vs. State of Maharashtra.

- b) Judgment dated April 16, 2015 by Hon'ble High Court of Judicature of Bombay in W.P. No. 3785 of 2009, Mrs. Padma Manwani Vs. State of Maharashtra and 3 others.
- c) Judgment dated August 13, 2014 by Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad in W.P. No. 1505 of 2014, Prabhakar Ramrao Kulkarni Vs. Shri V. N. Jdhav and another.

(b) **Arguments by the learned Presenting Officer Shri S. K.**

Shirase, for the Respondents-

The learned presenting officer has stated that he has already submitted all points of arguments in the affidavit in reply filed by the Respondent No. 2. He was given liberty to cite case law, if any; however, he has not done so.

10. **Considered rival arguments and analyzed as follows-**

- a. There is no dispute regarding the fact that in the instant case, the Respondent No. 2 had ordered on October 10, 2018 for treating suspension period of applicant from May 20, 2003 to December 09, 2004 as '*suspension period*' and the period from December 10, 2004 to May 31, 2007 as '*on duty*' only for the purpose of pension and otherwise on basis of '*No Work No Pay*'. However, in compliance of Tribunal's orders in O.A. No. 861/2018, dated- October 10, 2018, the Respondent No. 2 has passed revised orders on May 26, 2019 treating the entire period from May 20, 2003 to May 31, 2007 as on duty.

- b. The critical dates in respect of the Applicant are as follows-
- i. Date of suspension- May 20, 2003
 - ii. Date of conviction by Court of Special Judicial Magistrate- December 10, 2004.
 - iii. Date of dismissal on conviction- December 10, 2004.
 - iv. Date of retirement on superannuation May 31, 2007.
 - v. Date of acquittal in criminal appeal No. 814/2004- March 23, 2018.
 - vi. Date of orders in O.A. No. 861/2018, February 28, 2019.
 - vii. Date of passing revised orders- May 26, 2019.
- c. The dates / treasury bill details regarding payment of post-retirement benefits to the Applicant are as under-
- i. Group Insurance Amount- Rs. 26,626/- paid on December 07, 2019.
 - ii. Leave encashment- Rs. 1,44,900/- Treasury Bill No. 297/2020 dated May 21, 2020.
 - iii. Salary arrears – Ra. 4,31,444/- Treasury Bill No. 23, dated September 21, 2019.
 - iv. Gratuity- 1,27,969/- paid on May 21, 2019.
 - v. Additional Gratuity Rs. 97,586/- paid on December 07, 2019.
 - vi. Cost imposed by the Tribunal Rs. 10,000/- too, has been paid.
 - vii. No provisional pension had been sanctioned, therefore, interest for delay period becomes payable as per extant Rules under Maharashtra Civil Services (Pension) (Amendment) Rules, 2008.

- d. It is a matter of record that the Hon'ble Tribunal had not passed any orders in the O.A. No. 861/2018 for payment of interest on delayed payments or, did not mention that any interest had to be paid to the Applicant.
- e. Likewise, it is a fact that the criminal case of Applicant was sub-judice from 2013 to 2018 from trial in District & Sessions Court at Jalgaon to appeal in Hon'ble Bombay High Court, Bench at Aurangabad. The Respondent could not have decided the amount payable to the applicant in view of his conviction by the Court of Special Judicial Magistrate Jalgaon on December 10, 2004 until the Applicant was acquitted by the Hon'ble Bombay High Court, Aurangabad Bench in Criminal Appeal No. 814/2004 by judgment dated March 23, 2018. Therefore, the time taken in the judicial process does not amount to *administrative delay* as stipulated in Rule 129 (B) (1) of the Maharashtra Civil Services (Pension) Rules, 1982.
- f. As per Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982, no gratuity is to be paid during the period the matter is sub-judice. The relevant part of this rule is as follows-

“no gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon”.

Therefore, the gratuity amount was not payable until passing of acquittal of the Applicant by Hon'ble Bombay High Court, Bench at Aurangabad. Ratio laid down in case

of Vinod Kumar Narayan Dixit Vs. M.S. (2018) (6) Mah. L. J. 697) is applicable after final decision on judicial matter pending before Hon'ble Courts.

g. On perusal of the judgment dated August 13, 2014 delivered by Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad in W.P. No. 1505 of 2014, Prabhakar Ramrao Kulkarni Vs. Shri V. N. Jadhav and another, it appears that the ratio in this case is different as there was a delay on part of administrative department in restarting departmental enquiry against the Applicant after the departmental enquiry started earlier had been quashed by Maharashtra Administrative Tribunal and the Respondents were specifically directed to release pensionary benefits as early as possible taking in to consideration Rule 129 A and 129 B of the MCS (Pension) Rules, 1982. The Respondents in the instant matter have mentioned in affidavit in reply that in the instant matter the Applicant was convicted by the trial court and was later on acquitted by the appellate court, the duration during which the matter was sub-judice was not considered as administrative delay and the Tribunal had not passed such specific orders regarding interest payment.

h. On perusal of the judgment dated April 16, 2015 delivered by Hon'ble High Court of Judicature of Bombay in W.P. No. 3785 of 2009, Mrs. Padma Manwani Vs. State of Maharashtra and three others, it appears that the facts and circumstance of the case were different and there had been no element of delayed payment due to matter being sub-

judice comprising of conviction of Applicant / petitioner by a trial court followed by quashing of order of conviction by an appellate court.

- i. On perusal of Judgment dated April 03, 2018 delivered by Hon'ble High Court of Judicature at Bombay in W.P. No. 12966 of 2017, Vinod Kumar Narayan Dixit Vs. State of Maharashtra, it is clear that facts in this case are, to a large extent, similar to the matter in hand. In the cited case too, the acquittal in a criminal proceedings took place after superannuation of the Applicant/ petitioner. Hon'ble High Court has, in the cited case, emphasized conjoint and harmonious reading of Rules 129 A and 130 of the MCS (Pension) Rules, 1982 on one hand and the executive instructions in the Finance Department GR No. सेनिवे-1091/55/सेवा-4, dated 6th May 1991 on the other and allowed payment of interest @ 8% on delayed payments of pension, gratuity etc. Clause 2 and clause 3 of the said GR dated 6th May 1991, to the extent of relevancy, have been quoted by the Hon'ble High Court which is extracted, for convenience of reference:-

“2. It has been brought to the notice of Government that in case of retirement on superannuation the work of assessment of the demands outstanding against the retiring Government servants commences two years in advance whereas in other cases of retirement, assessment of Government dues, etc. can begin only after the retirement of the Government servants has been approved by Government. A doubt has,

therefore, been raised whether the provisions of rule 129-A are also applicable to those who retired otherwise on superannuation and if so, whether the time limit of 3 months is to be observed in such cases. The position has been reviewed and the Government is now pleased to decide that **if the payment of gratuity has been delayed due to administrative lapses for no fault of the retiring Government servant in cases of retirement other than superannuation**, the payment of interest may be regulated by the concerned Administrative Department, in consultation with Finance Department in the following manner:-

(a). In such cases if the Government servant is exonerated of all charges and where the gratuity is paid on conclusion of such proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement. If the payment of gratuity has been authorized after 3 months from the date of retirement, interest may be allowed beyond the period of 3 months from the date of retirement.

(b).....

(c) In cases where the Government servant is not fully exonerated on conclusion of disciplinary / judicial proceedings, and where the competent authority decides to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen due on the date of the issue of orders by the competent authority for payment of gratuity. If the payment of gratuity is delayed in such cases, interest will be payable for the period of delay beyond 3 months from the date of issue of the above mentioned orders by the competent authority.”

“3. As far as retirement on superannuation is concerned, the existing procedure for grant of interest if payment of gratuity is delayed due to administrative reasons / lapses for no fault of the retiring Government servant will continue to be applicable. In other words, interest will be allowed for the period of delay beyond 3 months from the date of retirement.”

j. Facts on record and arguments advanced by the two sides, including following facts have been taken into consideration:-

(a) The Applicant who had been convicted by the trial court, had later on been acquitted by the Appellate Court and as per judgment of High Court of Judicature of Bombay in W.P. No. 12966 of 2017, Vinod Kumar Narayan Dixit Vs. State of Maharashtra, payment of interest amount had been allowed for the period starting from the date of retirement on superannuation and date of acquittal in criminal proceedings.

(b) This Tribunal has passed orders in O.A. No. 861 of 2018, in addition to other components of the order, as follows- *“Respondent No. 2 is directed to pay to applicant entire amount of salary and allowances from the date of suspension till the date of superannuation, by treating entire intervening period spent on duty for all purpose” and*

(c) *It is in the interest of justice to take conjoint and harmonious reading of Rules 129 A and 130 of the MCS (Pension) Rules, 1982 and the executive instructions in the Finance Department GR No. सेनिवे-1091/55/सेवा-4,*

dated 6th May 1991 as per dictum in the Judgment dated April 03, 2018 delivered by Hon'ble High Court of Judicature at Bombay in W.P. No. 12966 of 2017, Vinod Kumar Narayan Dixit Vs. State of Maharashtra,

11. In view of above, the Original Application is, hereby, allowed in following terms :-

- I. Interest be paid on delayed payment of gratuity, additional gratuity, GIS, pension and additional pension at a rate applicable to GPF deposit, as stipulated in Maharashtra Civil services (Pension) (Amendment) Rules, 2008,
- II. Interest be paid on account of delayed payment of salary arrears and leave encashment, which shall be computed @ 8% per annum.
- III. Amount payable on accounts of items mentioned above at I and II may be got calculated by the Respondent No. 2 as per procedure prescribed and the amount determined to be payable should be paid within 3 months of passing this order.
- IV. No order as to costs.
- V. As the principle of admissibility of amount of interest on delayed payment of pensionary benefits, salary arrears etc. for the period during which the matter was sub-judice, has been laid down by case law / judgment of Hon'ble High Court of Judicature at Bombay, in W.P. No. 12966 of 2017, **Vinod Kumar Narayan Dixit Vs. State of Maharashtra**, the CPO may bring the case law to the notice of the Finance Department of the government of Maharashtra, so that steps may be taken for amendments in related Rules.

PLACE : AURANGABAD.

DATE : 09.07.2021.

KPB S.B. O.A. No. 71 of 2020 BK 2021 Interest of Delayed Payments

(BIJAY KUMAR)

MEMBER (A)