

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

**ORIGINAL APPLICATION NO. 800 OF 2023  
(Subject – Suspension/pension)**

**DISTRICT : NANDURBAR**

**Chandrakant S/o. Ramdas Sonar,** )  
Age : 58 Yrs., Occu. : Retired as PSI )  
R/o : Plot No. 56A, Patonda Shivar, Anjali )  
Society, Prakash Road, Gandharva Nagar, )  
Nandurbar, Tq. and Dist. Nandurbar. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, Home Department,) )  
Mantralaya, Mumbai-32. )
2. **Director General of Police,** )  
Maharashtra State Mumbai, Police Head) )  
Quarter Near Old M.L.A. Hostel and Regal) )  
Cinema, Mumbai-400 001. )
3. **Inspector General of Police,** )  
Nasik Region, Nasik. )
4. **The Superintendent of Police,** )  
Nandurbar. )
5. **Principal Accountant General (A&E),** )  
Maharashtra, Mumbai-20. )

... **RESPONDENTS**

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**APPEARANCE** : Shri Anudeep Sonar, Counsel for Applicant.

: Shri N.U. Yadav, Presenting Officer for  
respondent authorities.

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

**DATE** : **03.01.2024.**  
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**ORAL - ORDER**

1. Heard Shri Anudeep Sonar, learned counsel appearing for the applicant and Shri N.U. Yadav, learned Presenting Officer appearing for respondent authorities.

2. By this Original Application, the applicant is seeking directions against the respondents to release the amount of Provident Fund, amount of Gratuity, Leave Encashment, Regular Pension and consequential benefits to the applicant and to regularize the suspension period from 21.11.2014 to 13.05.2016.

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

(i) The applicant was appointed as Hawaldar. After joining, the applicant rendered unblemished service. However on 20.11.2014, the ACB Nandurbar has registered crime bearing C.R. No. 102/2014 against the applicant for the offences punishable U/s 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. The applicant, however, came to be acquitted by the Special Judge of ACB and Additional Session Judge at Nandurbar by judgment and order dated 05.03.2019 in ACB Special Case No. 05/2015. The state of Maharashtra however has

challenged the said order of acquittal by filing Criminal Appeal No. 816/2022 before the Hon'ble High Court of Bombay, Bench at Aurangabad and the said appeal is pending for final adjudication. It is the case of the applicant that on the basis of aforesaid crime, the applicant was suspended by respondent No. 4 by order dated 21.11.2014 (Annexure A-2). On 13.05.2016 (Annexure A-3), the applicant was reinstated in the service by respondent No. 4. It is mentioned in the said order that the appropriate decision will be taken about the entitlement of the applicant of non-service period.

(ii) The applicant came to be retired on 31.05.2023. After retirement, however, no amount of Provident Fund, Gratuity, Leave encashment, part pension and consequential benefits paid to the applicant, though he is entitled for the same. It is well settled that amount of gratuity, Leave Encashment and other benefits cannot be withheld. Even though the applicant submitted representation to respondent No. 4, nothing has been communicated to the applicant in writing and it is only informed that the said Criminal Appeal No. 816/2022 preferred against the order of acquittal is pending before

the Hon'ble High Court of Bombay, Bench at Aurangabad and as such, the applicant is not entitled for his retiral benefits. However, the suspension period from 21.11.2014 to 13.05.2016 is not considered by the respondents as duty period and no salary for the said period has been paid to the applicant. The applicant has submitted number of attempts oral requests and also submitted representations in writing dated 28.06.2023 & 28.07.2023 (Annexure A-4 collectively), but it was of no use. Hence, the present Original Application.

4. Learned counsel for the applicant submits that it is settled view in terms of the law laid down by the Hon'ble Apex Court that if the Government servant is acquitted, his retiral benefits shall be paid to him and mere pendency of appeal against the acquittal is not bar.

5. Learned counsel for the applicant submits that the applicant is already retired on 31.05.2023. He is suffering from Chronic Diabetes and his kidneys are also affected. He is required dialysis twice in a week and he has been spent huge amount for his treatment. It is medically advised that the

applicant should go for Kidney Transplant. The applicant has to bear huge expenses for the said Kidney Transplant.

6. Learned counsel for the applicant has placed reliance in a case of **Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.** 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 similar set of facts directed to release the retiral benefits after accepting the affidavit / undertaking from the applicant. Learned counsel further placed reliance on a case of **Bhimrao S/o Namdeo More vs. The State of Maharashtra and Ors. in O.A. No. 99/2023**, decided on 21.08.2023, wherein similar view has been taken by this Tribunal based upon the view taken by the Hon'ble High Court in the aforesaid W.P. No. 6650/2020.

7. The respondent Nos. 2 to 4 have filed their affidavit in reply and based upon their affidavit in reply, learned Presenting Officer (in short P.O.) submits that as against the acquittal order passed by the Special Judge of ACB in connection with ACB Special Case No. 05/2015, in which the applicant was tried as accused, the State of Maharashtra through ACB Nandurbar has preferred Criminal Appeal No. 816/2022 against the acquittal

before the Hon'ble High Court of Bombay, Bench at Aurangabad and the said appeal is pending for final adjudication. In view of the same, the entire amount pertaining to retiral benefits was not disbursed to the applicant. However, the applicant has been given temporary pensionary benefits and he has also been paid amount of General Provident Fund. Learned P.O. submits that the payment of General Insurance Scheme is under process and the said amount will be paid to the applicant after completion of said process. Learned P.O. submits that Leave Encashment amount is not payable to the applicant in terms of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned P.O. submits that there is no merit in the present Original Application and the same is liable to be dismissed.

8. Learned counsel for the applicant on instructions submits that during pendency of the present Original Application, G.P.F. has been paid to the applicant and in view of the same, the applicant is not pressing prayer IX(C) to the extent of G.P.F.

9. It is an admitted fact that in connection with the ACB Special Case No. 05/2015, the applicant came to be acquitted for the offences punishable U/s 7 & 13(1)(d) r/w 13(2) of the

Prevention of Corruption Act, 1988 and at present the appeal preferred by the State before the Hon'ble High Court of Bombay, Bench at Aurangabad bearing Criminal Appeal No. 816/2022 is pending. It further appears that in view of pendency of said criminal appeal against the acquittal, the respondent authorities have withheld all the pensionary benefits except provisional pension, G.P.F.

10. In a case of **Ashfakali Khan Abdulali Khan** (cited supra) with the identical state of facts, the Hon'ble Division Bench by order dated 25.10.2021 has partly allowed the W.P. in terms of prayer clause-B with the rider. In para Nos. 3, 4 & 5, the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad has made following observations :-

*“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.”*

In view of above observations, the Division Bench has partly allowed the aforesaid Writ Petition and in terms of para No. 6, has passed the following order with rider :-

*“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”*

11. In the following Original Applications, this Tribunal by referring the aforesaid order passed by the Hon’ble High Court of Bombay, Bench at Aurangabad has taken a similar view and disposed of O.As., which are as follows :-

- (i) O.A. No. 178/2021 (Nandkishor C. Ramdin Vs. the State of Maharashtra and Ors.), dated 11.11.2022.
- (ii) O.A. No. 17/2020 (Bapurao R. Patil Vs. The State of Maharashtra and Ors.), dated 28.06.2022.



- (iii) O.A. No. 7/2022 (Shaikh Anwar Abdul Kadar Vs. State of Maharashtra and Ors.), dated 22.11.2022.
- (iv) O.A. No. 322/2020 (Lilachand H. Patel Vs. The Collector & Anr.), dated 06.06.2022.
- (v) O.A. No. 99/2023 (Bhimrao N. More Vs. the State of Maharashtra and Ors.), dated 21.08.2023.
- (vi) O.A. No. 31/2021 (Mumbai) (Pandurang B. Borate Vs. The State of Maharashtra and Anr.), dated 28.10.2021.

12. In view of above, in the identical set of facts, the present Original Application can be disposed of with the same directions.

13. In the instant case, however, the applicant is seeking direction in respect of his suspension period pursuant to his acquittal in the ACB Special Case No. 05/2015, Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 (for short 'Rules of 1981') is relevant in this regard. In terms of sub rule (3) of Rule 72 of Rules of 1981, there is a rider to the effect that where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule

(8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended and in terms of sub-rule (4) of said Rule, in a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes. However, in terms of sub-rule (5), in cases other than those falling under sub-rules(2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period which in no case shall exceed, as may be specified in the notice.

14. In view of the aforesaid provisions, it is for the competent authority to decide as to whether the suspension was wholly justified or not and then pass the appropriate order in terms of provisions as aforesaid. In the instant case, in the revocation order dated 13.05.2016 (Annexure A-3), it is stated that the appropriate order in respect of suspension period whether to be treated as duty period or not will be passed at the appropriate stage. In view of the same, it would be appropriate,

if the concerned respondent/s is directed to decide the said issue in terms of Rule 72 of the Rules of 1981 in time bound manner. Further the respondents shall give an opportunity of being heard to the applicant and after considering his representation in this regard, decide the issue finally.

15. Needless to say that in the event if the adverse order is passed, the applicant would be at liberty to challenge the same.

16. In view of above discussions, the present Original Application is disposed of with the following order :-

**ORDER**

- (i) The Original Application No. 800/2023 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) The respondents are hereby directed to pass the appropriate order in respect of suspension period in terms of Rule 72(3), (4) & (5) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981, as the case may be within a period of three months from the date of this order by giving an opportunity of being heard to the applicant.
- (v) Liberty is granted to the applicant to challenge the adverse order, if any passed by the respondents in this regard.
- (vi) In the circumstances, there shall be no order as to costs.
- (vii) Original Application accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 03.01.2023**

**(Justice V.K. Jadhav)**  
**Member (J)**