

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

ORIGINAL APPLICATION NO. 859 OF 2022

DISTRICT : BEED

Dr. Madhukar Dnyanoba Tandale,)
Age : 59 years, Occu. : Pensioner, District)
Animal Husbandry Officer,)
R/o : Behind Champavati Krida Mandal,)
“umesh Niwas” Govind Nagar, Beed-411122.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Chief Secretary for Agriculture)
Animal Husbandry Dairy, Development)
& Fishery Department,)
Hutatma Rajguru Chowk, Madam Kama)
Road, Mantralaya, Mumbai-32.)
2. **Commissioner of Animal Husbandry,**)
Maharashtra State, Opposite Spicer)
Memorial College, Aundh, Pune-67.)
3. **Regional Joint Commissioner,**)
Animal Husbandry Nashik Division)
Nashik-2, Near Ashoka Statue Gangapur)
Road, Campus and Veterinary Polyclinic)
Nashik-2.)
4. **District Deputy Commissioner of Animal**)
Husbandry Station Road, Ahmednagar.)

... RESPONDENTS

APPEARANCE : Shri B.R. Kedar, Counsel for Applicant.

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

CORAM : **Hon’ble Justice Shri P.R. Bora, Vice Chairman**

DATE : **30.08.2023.**

ORAL - ORDER

1. Heard Shri B.R. Kedar, learned counsel for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondent authorities.

2. The grievance of the applicant is that he has not been paid his retirement benefits and the regular pension on the ground that Criminal Appeal filed by the State against the order of his acquittal in Special Case ACB No. 07/2014 is pending before the Hon'ble High Court.

3. Learned counsel for the applicant has relied upon the judgment of the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad in **W.P. No. 6650/2020 (Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.)**. Learned counsel submits that in the identical facts and circumstances, the Division Bench of Hon'ble High Court has directed the respondents therein to release all such benefits by obtaining undertaking in that regard. Learned counsel submits that the applicant is ready to submit such an undertaking. Learned counsel, in the circumstances, has prayed for passing the similar order in the present matter.

4. Learned Presenting Officer has opposed the contentions raised in the O.A., as well as, prayers made therein. No judgment, however, has been cited by the learned P.O. having taken a different view than the view taken in the judgment by the Hon'ble High Court in W.P. No. 6650/2020.

5. Learned counsel for the applicant submits that the respondents have not taken any decision as about the period of suspension undergone by the applicant between 11.07.2013 and 02.06.2015. Learned counsel submits that in spite of repeated request made by the applicant, the respondents have not taken any decision. Learned counsel submits that unless the said period is regularized, it may not be possible for the Accountant General office to determine the final amount of pension and other retirement benefits payable to the applicant. It is also submitted that the applicant has been exonerated in the Departmental Enquiry, as both the charges raised against the applicant are held to have been 'not proved' by the Enquiry Officer. Learned counsel further submitted that in view of the acquittal recorded by the Special Court in Special Case filed against the applicant under Prevention of Corruption Act and his exoneration in the departmental proceedings, the period of suspension of the applicant is liable to be regularized by the respondents. Learned

counsel has, therefore, prayed for direction against the respondents to take a decision on the regularization of the period of suspension and consequently to pay the retiral benefits to the applicant.

6. Learned counsel for the applicant further submits that the applicant is also entitled for interest on the retiral benefits, which have been delayed. He has relied upon the judgment delivered by the Nagpur Bench of this Tribunal in O.A. No. 92/2022.

7. The request so made has been opposed by the learned Presenting Officer. Learned P.O. submitted that nothing has been revealed from the record that there was any mala-fide intention of the respondents in not paying the amounts, for which the applicant was entitled. It is further contended that the legal proceedings were and are being prosecuted by the State Government bona-fidely and that is the reason that retiral benefits have not yet been paid to the applicant. Learned P.O. has also opposed the contention of the applicant that nothing has been paid to him. List of the payments made to the applicant is there in the affidavit in reply filed on behalf of respondents. Learned P.O. submitted that unless the mala-fides are alleged and established on the part of the respondents, it

may not be just and proper to award interest as has been claimed by the applicant.

8. Learned counsel for the applicant in reply submitted that when the Rules provide time frame for making certain payments within certain time, then the Government is bound to observe the same.

9. After having heard the learned counsel for the parties and on perusal of the documents on record, it appears to me that the withholding of retiral benefits payable to the applicant by the respondents on the ground that the Criminal Appeal filed by the State against the judgment of acquittal recorded in favour of the applicant by the Special Court in Special Case ACB No. 07/2014 is pending before the Hon'ble High Court is wholly illegal and unsustainable. Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Ashfakali Khan Abdulali Khan** (cited supra) has held 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]. The Hon'ble Division Bench has further observed that only on the ground that an appeal against the acquittal is pending adjudication, the petitioner need not be made to suffer the rigours of litigation. The Hon'ble High Court in the said matter while allowing the petition directed the petitioner therein to tender an affidavit/undertaking 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. It appears to me that the similar orders can be passed in the present matter, since the facts in the instant matter are identical to the facts which existed in the matter before the Hon'ble High Court.

10. Insofar as the prayer for grant of interest is concerned, in absence of necessary particulars, I am not inclined to accept the said request. However, it would be open for the applicant to make a representation with the competent authority making out the case for grant of interest. No such representation has been made by the applicant. Remedy of filing representation can be availed by the applicant.

11. For the reasons stated above, the following order is passed:-

ORDER

(i) Order dated 12.08.2013 passed by respondent No. 1 is set aside.

(ii) Respondents shall regularize the period of suspension undergone by the applicant from 11.07.2013 to 02.06.2015, subject to the decision in the Criminal Appeal bearing ALS No. 263/2019 pending before the Hon'ble High Court, within 8 weeks from the date of this order.

(iii) The respondents shall pay the amount of gratuity, as well as, retiral benefits payable to the applicant by obtaining an affidavit / undertaking from the applicant to the effect that if he suffers an adverse order in the Criminal Appeal pending before the Hon'ble High Court against the order of acquittal recorded in his favour by the Special Court and if his acquittal is converted into conviction by the Hon'ble High Court, he shall return the entire gratuity amount, as well as, 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 the present order.

(iv) After filing of the affidavit / undertaking by the applicant in the aforesaid terms, the respondents shall remit the retiral benefits payable to the applicant within 12 weeks thereafter.

(v) The applicant shall make a representation to the respondents for his claim of interest on account of delay occurred in making the payments of retiral benefits within 3 weeks from the date of this order and if such representation is made, the respondents shall decide the same on its own merit within 6 weeks thereafter.

(vi) Original Application stands allowed in the aforesaid terms.

(vii) There shall be no order as to costs.

PLACE : Aurangabad.
DATE : 30.08.2023

(Justice P.R. Bora)
Vice Chairman