

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

**ORIGINAL APPLICATION NO. 880 OF 2023
(Subject – Pension & Pensionary Benefits)**

DISTRICT : AHMEDNAGAR

Digambar s/o Bhau Mate,)
Age : 68 Yrs., Occu. : Retired as Vanpal from)
The office of Social Forestry Office, Ahmednagar,))
R/o : Plot No. 36, Gulabnagar, Savedi,)
Taluka-Nagar, District Ahmednagar.)

.... **APPLICANT**

V E R S U S

The Deputy Conservator of Forest,)
Ahmednagar, Van Bhavan, Nagar Aurangabad)
Road, Ahmednagar, District Ahmednagar-414001.)

... **RESPONDENT**

APPEARANCE : Smt. Vijaya Adkine, Counsel for the Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authorities.

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

DATE : **15.03.2024.**

O R A L - O R D E R

1. Heard Smt. Vijaya Adkine, learned counsel appearing for the applicant and Shri A.B. Basarkar, learned Presenting Officer appearing for respondent authorities.

2. Heard finally with the consent of parties at the admission stage.

3. By this Original Application, the applicant is seeking directions to the sole respondent to prepare his pension papers for submission to the Accountant General, (A.G.-1), Mumbai for sanction and further to release all the retirement benefit forthwith, as the applicant is ready to give an undertaking subject to the decision of the Criminal Appeal No. 322/2015

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

(i) The applicant was initially appointed on Daily wages and after completion of five years' service, his services were regularized by the Government and the applicant was permanently absorbed vide order dated 02.03.1996 and since then the applicant is working on the said post till his retirement. The applicant stood retired on superannuation on 31.05.2014 from the post of Vanpal and the competent authority for preparation of pension papers of the applicant is the sole respondent, who has to submit the pension papers of the applicant to the Accountant General-1, Mumbai.

(ii) It is the case of the applicant that by judgment and order dated 11.03.2014 in Session Case No. 192/2006,

thereby the learned Sessions Judge, Ahmednagar has acquitted the applicant and against the acquittal, the State has preferred Criminal Appeal No. 322/2015 before the Hon'ble High Court of Bombay, Bench at Aurangabad, which still is pending.

(iii) It is the case of the applicant that the applicant retired on superannuation on 31.05.2014 and only provisional pension is sanctioned and other retiral benefits have been withheld as per the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and Rule 130 of the said Rules of withholding of gratuity, wherein departmental and judicial proceedings are pending. The respondent authorities should have taken into consideration the Rule 26 of the said Rules of 1982. The respondent authorities after acquittal by the Sessions Court should have prepared the pension papers of the applicant subject to the decision of the Hon'ble High Court Bombay, Bench at Aurangabad in Criminal Appeal by taking an undertaking from the applicant, but the respondent authorities have not done anything. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant is getting only provisional pension. Learned counsel

submits that the applicant is retired on attaining the age of superannuation on 31.05.2014 and more than 9 years completed after his retirement. Learned counsel submits that till today no regular pension and other pensionary benefits have been paid to the applicant.

6. Learned counsel for the applicant has placed reliance on a case of **Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.** in 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 case of similarly situated employee has partly allowed the W.P. directing petitioner therein to tender an affidavit /undertaking to the respondent concerned 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.

7. Learned counsel for the applicant submits that two of the co-accused viz. Nandkishor Ramdin i.e. accused No. 2 and Vilas Gotiram Dhole i.e. accused No. 5 had filed O.A. Nos. 178/2021 and 74/2023 respectively in respect of their denial of pensionary benefits. The said O.As. are allowed by the this Tribunal by order dated 11.11.2022 and 31.07.2023 respectively (Annexure A-4 collectively). Learned counsel submits that the sole respondent is one the respondent in the above said O.As.

8. Learned Presenting Officer (hereinafter referred as P.O.) on the basis of affidavit in reply filed on behalf of sole respondent submits that being aggrieved by the judgment of acquittal, the State has preferred Criminal Appeal 322/2015 and therefore, the Government of Maharashtra decided and communicated to the office of Deputy Conservator of Forest, Ahmednagar that it is not feasible to give all pensionary benefits to the applicant till finalization of the Criminal Appeal pending before the Hon'ble High Court of Bombay, Bench at Aurangabad. Learned P.O. submits that except Death cum retirement gratuity and regular monthly pension, which were withheld due to pendency of Criminal Appeal, all other pensionary benefits viz. GPF, GIS, Leave Encashment etc. were paid to the applicant and the provisional pension is also regularly paid to him (Annexure

R-1) and after the final outcome of the case by the Session Court, remaining benefits will be disbursed to the applicant.

9. Learned Presenting Officer submits that as the Criminal Appeal No. 322/2015 is pending before the Hon'ble High Court of Bombay, Bench at Aurangabad, the pension case of the applicant is not submitted to the Accountant General, who is the sanctioning authority in granting final pension. Learned Presenting Officer thus submits that there is merit in the present Original Application and the same is liable to be dismissed.

10. The applicant came to be retired on the post of Vanpal way back in the year 2014 and even though the Criminal Case registered and tried against him resulted into acquittal, pensionary benefits such as regular pension, death cum-retirement gratuity etc. are withheld by the respondent authorities solely for the reason that the appeal preferred against the acquittal by the State against the applicant is still pending before the Hon'ble High Court of Bombay, Bench at Aurangabad.

11. In view of the aforesaid discussions, the view taken by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the case of **Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.** in W.P. No. 6650/2020 is

squarely applicable to the facts and circumstances of the present case. The applicant is getting meager amount of provisional pension and he is not getting the regular pension since 2014 i.e. for more than 09 years as on today and he has not received the amount of death-cum-retirement gratuity so far. Thus, by directing the applicant to tender an undertaking / affidavit in terms of the observations and the order passed by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P., the present Original Application can be disposed of. Hence, the following order :-

ORDER

- (i) The Original Application No. 880/2023 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 respondent 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) In the circumstances, there shall be no order as to costs.
- (v) Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 15.03.2023

(Justice V.K. Jadhav)

Member (J)

KPB S.B. O.A. No. 880 of 2023 VKJ Pension and Pensionary benefits