

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC. APPLICATION NO.568 OF 2021
IN
REVIEW APPLICATION NO.12 OF 2021
IN
ORIGINAL APPLICATION NO.313 OF 2020**

DISTRICT: SATARA

The Chief Executive Officer, ZP, Satara)
SH 58, Ajinkya Colony, Powai Naka, Satara.) ... **Review Appl.**

Versus

Mr. Nitin Laxmikant Thade,)
Aged: 60 years, Occu.: Retired)
Residing at 34, Father Michael Society,)
Nr. Sawant Petrol, Vishrantwadi, Pune.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Additional Chief Secretary,)
Rural Development & Panchayat Raj Department))
having office Opposite CST, Azad Maidan, Fort)
Mumbai.)
- 2) The Divisional Commissioner,)
Poona Club Amphitheatre, Council,)
Camp, Pune, Maharashtra – 411 001.)
- 3) The Chief Executive Officer, ZP, Satara)
SH 58, Ajinkya Colony, Powai Naka, Satara.)... **Respondents**

Dr. Uday P. Warunjikar, learned Advocate for Misc./Review Applicant (Ori. Respondent No.3).

Shri Sushant Prabhune, learned Advocate for the Original Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents No.1 & 2.

CORAM : **A.P. Kurhekar, Member (J)**

DATE : **18.01.2022.**

JUDGMENT

1. The Applicant has filed M.A. No.568/2021 for condonation of delay of 1 month caused in filing R.A. No.12/2021 in O.A. No.313/2020 to Review Judgment delivered by this Tribunal on 11.10.2021.

2. At the very outset, learned Advocate for the Original Applicant concedes to condone the delay and to hear R.A. on its own merit. Accordingly, delay is condoned and R.A. is heard on merit through Video Conference today.

3. Heard Dr. Uday P. Warunjikar, learned Advocate for Misc./Review Applicant (Ori. Respondent No.3), Shri Sushant Prabhune, learned Advocate for the Original Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents No.1 & 2.

4. O.A. No.313/2020 was filed for direction to the Respondents to release retiral benefits which was withheld though he stands retired on 31.08.2018 from the post of Project Director, Zilla Parishad, Satara. In O.A. Respondent No.1 choose not to file Reply since the Applicant retired from establishment of Respondent No.3. It is Respondent No.3 - Chief Executive Officer, Zilla Parishad, Satara who has filed Affidavit-in-Reply through Counsel.

5. The matter was taken up for hearing at the stage of admission on 11.10.2021. That date Tribunal heard Shri Sushant Prabhune, learned Advocate for the Applicant as well as Shri A.J. Chougule, learned P.O. and allowed the O.A. on merit by order dated 11.10.2021. Directions were given to release Gratuity, Leave Encashment and regular Pension within a month and D.E. was to be completed expeditiously in accordance to law within six months including passing final order therein from the date of order.

6. While deciding the O.A. on merit the Tribunal has considered legal aspects namely applicability of Rule 27 and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982. Tribunal found that the Applicant retired on 31.08.2018 and admittedly that time no D.E. was initiated or pending against the Applicant. It is on 14.06.2021, D.E. was initiated for alleged misconduct under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Tribunal considered the effect of Rule 130 of MCS (Pension) Rules, 1982 and having found that there was no such initiation of D.E. on the date of retirement, and held Respondents could not have withheld gratuity and regular pension of the Applicant. The Tribunal discussed all these legal aspects in the order dated 11.10.2021.

7. Now, this R.A. is filed *inter-alia* contending that on cause list of 11.10.2021 name of the Counsel for Z.P. was not shown and secondly

contention raised in written statement about the applicability of Rule 130 of MCS (Pension) Rules, 1982 is not been considered.

8. Needles to mention that review is permissible only in the case where there is apparent error on the face of record as contemplated under Order 41, Rule 1 of CPC.

9. Insofar as absence of name of learned Advocate for Respondent No.3 on cause list is concerned, true his name appears not shown in the cause list dated 11.10.2021. However, fact remains that board was published and the matter was fixed for hearing at the stage of admission, and it was in the knowledge of Respondent No.3. Only because name of Counsel for Respondent No.3 was not mentioned in cause list that cannot be the ground for review. Before 11.10.2021 matter was fixed for hearing at the stage of admission on 08.10.2021 and on that date also nobody was present from the side of Respondent No.3. As such, Respondent No.3 ought to have taken care of the matter when it was taken up for hearing at the stage of admission on 11.10.2021. Suffice to say the contention raised by learned Advocate for Respondent No.3 that his name was not published in cause list, and therefore order passed by the Tribunal has to be reviewed is totally fallacious and misconceived.

10. Apart, as stated above, Review is permissible only in case where there is apparent error on the face of record which is not the case in the present matter. Even if learned Advocate for Respondent No.3 was not

present care has been taken to consider whatever contention raised by him in Affidavit-in-Reply and on considering the same Tribunal has passed reasoned order on 11.10.2021. Tribunal has categorically held that since admittedly there is no initiation of D.E. on the date of retirement retiral benefits could not have been withheld on conjuncture or possibility of initiation of D.E. in future. Tribunal has interpreted Rule 130 (1)(c) along with Rule 27 of MCS (Pension) Rules and has come to the conclusion that initiation of D.E. after retirement could not permit department to withhold gratuity and other retiral benefits. The Tribunal has also referred G.R. dated 06.10.1998 issued by Government whereby clear instructions were given to all the Department that where no D.E. is initiated on the date retirement, retiral benefits cannot be withheld.

11. At this juncture, it would be apposite to refer para. 9,10,11,12 and 13 of the judgment, which is as under:-

9. Thus undoubtedly, in terms of Rule 27, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of MCS (Pension) Rules, 1982. If in such enquiry, Pensioner is found guilty for grave misconduct & negligence committed during the period of his service for which he is charged then the Government is empowered to withhold or withdraw pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement nor criminal proceedings were instituted against the Applicant till retirement. It is only after three years of retirement by order dated 14.06.2021, D.E. was initiated for alleged mis-conduct under Rules 8 of MCS (Discipline & Appeal) Rules, 1979.

10. As regards Gratuity, Rule 130 (1)(c) provides that no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Here the legislature has not used the word "Pensioner" and has specifically used the word "Government Servant", which is significant in the present

context. Thus it is explicit that for withholding of Gratuity or other retiral benefits, there has to be initiation of D.E. against the Government servant before or on the date of retirement. Once the Government servant stands retired, right to receive regular Pension and Gratuity accrues to him and it cannot be kept in abeyance or withheld only on the speculation of initiation of D.E. in future.

11. Learned P.O. could not point out any such provision or Rule empowering the Government to withheld Gratuity and regular Pension for initiation of D.E. in future. In absence of any such Rules empowering the Government to withheld retiral benefits on speculation of initiation of D.E. in future, action of withholding retiral benefits would be totally impermissible in law. In case where D.E. is initiated after retirement all that permissible is to withheld pension or to withdraw pension as Government deems fit. In other words scope and outcome of D.E. initiated after retirement is very limited and it is only in event of positive findings in D.E. orders of withholding or deduction of Pension as Government deem fit can be passed. Suffice to say, Gratuity, Leave Encashment and regular Pension cannot be withheld where no D.E. or criminal prosecution is instituted before retirement. The right to receive Pension of public servant has been held to be covered under the "right to property" under Article 31(1) of the Constitution of India by **Hon'ble Supreme Court in (2020) 4 Sec. 346 Dr. Hira lal v/s. State of Bihar.**

12. Indeed this aspect is acknowledged by the Government of Maharashtra in G.R. dated 06.10.1998 reiterating the provisions of Rule 27 of MCS (Pension) Rules, 1982 wherein it is stated as under:-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार कार्यवाही होत नाही असे शासनाच्या निर्देशनास आले आहे. त्यामुळे अशा प्रकरणामध्ये सेवानिवृत्त कर्मचा-याचे महाराष्ट्र प्रशासकीय न्यायाधिकरण तसेच लोकआयुक्तांकडे निवृत्ती वेतन इत्यादि फायदे न मिळालेबाबत तक्रारी येतात. सदर प्रकरणामध्ये वित्त विभाग शासन निर्णय क्रमांकसेनिवे-१०९४/१५५/सेवा-४, दिनांक २४ एप्रिल १९९५ अन्वये शासनाला व्याजाचा खर्च विनाकारण करावा लागतो. तेव्हा सर्व शिस्तभंग विषयक प्राधिका-यांना पुन्हा निर्देशित करण्यात येते की, वित्त विभाग शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार सेवानिवृत्त होणा-या शासकीय कर्मचा-याचे बाबतीत त्याच्या सेवानिवृत्तीपुर्वी महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील नियम २७ (६) नुसार विभागीय चौकशीची कार्यवाही सुरु करण्यात आली नसेल म्हणजेच आरोपपत्र देण्यात आले नसेल किंवा आधीच्या तारखेपासून निलंबनाधीन ठेवण्यात आले नसेल तर सेवानिवृत्तीचा दिनांकाला त्याचेविरुद्ध विभागीय चौकशी प्रलंबित आहे असे म्हणता येत नाही व त्यामुळे अशा कर्मचा-यांना सेवानिवृत्ती विषयक सर्व फायदे वेळेवर अदा करणे अपेक्षित आहे.”

13. Despite G.R. dated 06.10.1998 and settled legal position unfortunately Respondents withheld Gratuity, Leave

Encashment and regular Pension of the Applicant which is totally erroneous and unsustainable in law.

12. As such, even if O.A. is heard afresh on merit there will be no different conclusion since all legal aspects are already considered by the Tribunal. Learned Advocate for Respondent No.3 could not point out any provision of law on the basis of which it could be said that the Judgment delivered by this Tribunal is unsustainable in law.

13. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC and by no means it can be treated as a appeal in disguise. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction, whereas error apparent on the face of record can be corrected in review jurisdiction. In present case as stated above, there is no such apparent error on the face of record. Suffice to say there is no substance in review.

14. The totality of the aforesaid discussion leads me to conclude that R.A. is devoid of merit and liable to be dismissed.

15. At this juncture, learned Advocate for Respondent No.3 made request to extend period of compliance, insofar as operative order dated 11.10.2021 Clause (B) is concerned, which is as follows:-

(B) The Respondents are directed to release Gratuity, Leave Encashment and regular Pension within a month from today.

16. Learned Advocate for Respondent No.3 submits that the period of one month granted by the Tribunal is already expired and since the review is decided today the time be extended, which is opposed by learned Advocate for the Original Applicant.

17. As stated above, the Applicant stands retired on 31.08.2018 and for no reason in law his retiral benefits were withheld for more than 3 years, D.E. was initiated belatedly on 14.06.2021 was also not decided expeditiously though such D.E. was required to be completed within 6 months or maximum within a period of one year. Therefore Tribunal has given direction to complete D.E. within 6 months. Suffice to say laxity on the part of the Respondents in completing of D.E. is obvious. The Applicant retiral benefits were withheld for non-justifiable reasons. I am therefore not inclined to extend time for compliance of the directions given in order dated 11.10.2021.

18. R.A. is dismissed, with no order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 18.01.2022
Dictation taken by: N.M. Naik.