

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 761 of 2019 (S.B.)**

Bhivaji Amrutrao Kokate,  
Aged 60 years, Occ. Retired,  
R/o Sukali, Tq. Pusad, Distt. Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra  
through its' secretary, Revenue and Forest Department,  
Mantralaya Mumbai-32.
- 2) The Collector, Yavatmal  
Tq. and Distt. Yavatmal.
- 3) The Sub Divisional Officer,  
Pusad, Tq. Pusad, Distt. Yavatmal.
- 4) The Tahsildar, Pusad,  
Tq. Pusad, Distt. Yavatmal.

**Respondents.**

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**Shri Anand Deshpande, Advocate for the applicant.**  
**Shri H.K. Pande, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

**Dated :- 20/04/2023.**

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**J U D G M E N T**

Heard Anand Deshpande, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was working as a Talathi in the establishment of respondent no.4. On 28/04/2014 the offence

punishable under Section 7 of the Prevention of Corruption Act,1988 was registered against him. After the registration of FIR, the applicant was suspended from service and Respondent no.4 initiated departmental inquiry against the applicant. Inquiry report was submitted to respondent no.3, i.e., Sub Divisional Officer, Pusad. Respondent no.3 passed order on 09/03/2018 stating that departmental inquiry was dismissed subject to the decision of the Special Court in the ACB case.

3. The applicant is retired on 30/04/2018, he is not getting pension and gratuity and therefore he approached to this Tribunal for the following reliefs –

*“(i) allow the instant original application with costs;*

*(ii) be pleased to quash and set aside the order / communication dated 01/07/2019 issued by the respondent no.4, i.e. Tahsildar, Pusad, Tq. Pusad, Distt. Yavatmal in the interest of justice ;*

*(iii) be pleased to direct the respondent nos. 3 and 4 release the full pension from the date of retirement, i.e., 30/04/2018 and also further be pleased to release the gratuity of the applicant in the interest of justice.”*

4. The O.A. is strongly opposed by the respondents. It is submitted that the Criminal case is pending against the applicant and departmental inquiry is dismissed / closed subject to the decision of the ACB case. It is also submitted that the 90% pensionary benefits are already released to the applicant. As per provisions of Rule 130 (c) of the Maharashtra Civil Services (Pension) Rules, 1982 (in short

“Pension Rules,1982”), the gratuity is withheld as the judicial proceeding is pending. Hence, the O.A. is liable to be dismissed.

5. During the course of argument, the learned counsel for applicant has pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A.No.748/2020. In the cited Judgment, Rule 27 and 130 of the Pension Rules,1982 are reproduced as under –

**27. Right of Government to withhold or withdraw pension -**

*(1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:*

*Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.:*

*Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.*

*2(a) The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.*

*(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -*

*(i) shall not be instituted save with the sanction of (Appointing Authority),*

*(ii) shall not be in respect of any event which took place more than four years before such institution, and*

*(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable the departmental to proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.*

*(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of and event which took place, more than four years before such institution.*

*(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub- rule (2), a provisional pension as provided in rule 130 shall be sanctioned.*

*(5) Where Government decided not to withhold or withdrawn pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at the rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.*

*(6) For the purpose of this rule, -*

*(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and*

*(b) judicial proceedings shall be deemed to be instituted –*

*(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and*

*(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court."*

**"130. Provisional pension where departmental or judicial proceedings may be pending.**

*(1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of*

*the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.*

*(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date of which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.*

*(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon [Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].*

*(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."*

6. Relying on the Judgment of Hon'ble Bombay High Court in the case of the **Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil: 2003 (3) Mah.L.J. 602**, the M.A.T., Principal Bench, Mumbai come to the conclusion that pension and gratuity cannot be withheld.

7. The learned Counsel for applicant has pointed out the G.R. dated 06/10/1998. The M.A.T., Principal Bench, Mumbai in

O.A.No.748/2020 has reproduced the G.R. dated 06/10/1998. In para-11 to 15 observed as under –

*“11) It would be also useful to refer the decision of Hon’ble High Court in The Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil: 2003 (3) Mah.L.J. 602. In that case, the D.E. was initiated during the service but was continued after retirement of the Respondent. In this authority also, the Hon’ble High Court highlighted the scope, ambit as well as limitation of Rule 27 of ‘Rules of 1982’. Para No.13 of the Judgment is important, which is as follows:-*

*"13) All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub rule (1) refers to an event - wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re-employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules. "*

*12) Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of Rules of 1982’ and where on*

*conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.*

*13) As regard gratuity, the Rule 130(1)(c) says "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. This leads to suggest that Rule 130(1)(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of 'Rules of 1982', in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, the right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found guilty in D.E, if initiated fulfilling embargo mention in Rule 27 (2) (b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.*

*14) The learned P.O. except Rule 130 (c) could not point out any provision to substantiate that the gratuity can be withheld where charge-sheet in D.E. has been issued after retirement. Needless to mention, the pension as well as gratuity are the statutory rights of the Government servants, which cannot be taken away in absence of express provision to that effect.*

*15. Suffice to say, there being no D.E. at the date of retirement of the Applicant, the Gratuity could not have been withheld. Indeed, this aspect is clarified by the Government in G.R. 06.10.1998 reiterating the provision of Pension Rules 1982' as under:-*

*"सेवानिवृत्त झालेल्या कमचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शासन परिपत्रक क्रमांक सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार कायवाही होत नाही असे शासनाच्या निदर्शनास आले आहे. त्यामुळे अशा प्रकरणामध्ये सेवानिवृत्त कमचा-यांचे महाराष्ट्र*





benefits to the applicant and the applicant is not disputing the same.

Hence, the following order –

**ORDER**

(i) The O.A. is partly allowed.

(ii) The respondents are directed to pay amount of gratuity to the applicant within a period of three months from the date of receipt of this order.

(iii) No order as to costs.

**Dated** :- 20/04/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 20/04/2023.