

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 930 of 2018 (S.B.)**

Dr. Sujata Prakash Gupta,  
Aged about 59 years, Occu. : Service,  
R/o, C/o. Health Department, Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary, Health,  
Department, Mantralaya, Mumbai-32.
- 2) The Deputy Director of Health,  
Matakacheri, Nagpur.
- 3) The District Health Officer,  
Zilla Parishad, Chandrapur.
- 4) The Chief Executive Officer,  
Zilla Parishad, Chandrapur.

**Respondents.**

---

**S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.**  
**Shri A.M. Ghogre, learned P.O. for respondent nos.1 and 2.**  
**Shri A.N. Darunde, Advocate holding for Shri B.N. Jaipurkar,**  
**Advocate for respondent no.4.**

---

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

**Dated :- 13/04/2023.**

---

**JUDGMENT**

Heard Shri G.G. Bade, learned counsel for the applicant,  
Shri A.M. Ghogre, learned P.O. for respondent nos.1 and 2, none for  
respondent no.3 and Shri A.N. Darunde, learned counsel holding for  
Shri B.N. Jaipurkar, learned counsel for respondent no.4.

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

The applicant was appointed on the post of Medical Officer, Class-II on 23/06/1992 and joined at Potegaon, Dist. Gadchiroli. The applicant was transferred to Daga Hospital, Nagpur in December, 1999. The applicant came to be suspended as per order dated 05/09/2005 on account of Criminal case pending against her. The applicant came to be acquitted in connection with Criminal case in 2011. Accordingly, suspension order came to be revoked vide order dated 10/09/2012. The applicant was granted subsistence allowance on the basis of 5<sup>th</sup> Pay Commission, even after 01/01/2006. The applicant was entitled for subsistence allowance as per the 6<sup>th</sup> Pay Commission. She made various representations, but those were not considered. The respondents have also not granted pensionary benefits. The applicant is retired on 31/07/2021.

3. The applicant has filed the present O.A. for the following reliefs –

*“(9)(i) Quash and set aside the Letter dated 24/08/2018, thereby direct the respondent Department to grant the benefits of subsistence allowances in accordance to Sixth Pay Commission.*

*ii) Direct the Department to release the benefits of subsistence allowances in accordance to Sixth Pay Commission alongwith the interest @ 18% per annum.*

*iii) Direct the Department to regularize the suspension period i.e. 23/08/2005 to 10/09/2012 as duty period.*

*(9) (iv) "Quash and set aside the Letter dated 25/02/2019 issued by the respondent no. 1.*

*(9) (v) Direct the respondent Department to regularize the suspension period and to grant all pensionary benefits arising out of retirement of the applicant, in the interest of justice."*

4. Shri A.M. Ghogre, learned P.O. for respondent nos.1 and 2. The O.A. is strongly opposed by respondent nos.1 and 2. It is submitted that applicant was suspended prior to 01/01/2006, i.e., on 23/08/2005 and as such she was not entitled for the benefit of pay fixation as per the 6<sup>th</sup> Pay Commission. Therefore, the subsistence allowance granted to her as per the 5<sup>th</sup> Pay Commission is perfectly legal and correct. The respondent nos.3 and 4 have not filed reply.

5. Heard learned counsel for applicant Shri G.G. Bade. He has pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A.No.652/2022. The learned counsel for applicant has submitted that the fact in the present O.A. is similar to the Judgment of M.A.T., Principal Bench, Mumbai in O.A. Nos. 841 and 842 of 2022, decided on 04/01/2023. The learned counsel has submitted that in view of the Judgment of M.A.T., Principal Bench, Mumbai, the applicant is entitled to get all the pensionary benefits. She is also entitled for regularization of suspension period.

6. The learned P.O. has submitted the applicant is not entitled for subsistence allowance as per the 6<sup>th</sup> Pay Commission, because, she was suspended in the year 2005. The learned counsel has submitted that the applicant was suspended on 05/09/2005 and suspension was revoked on 10/09/2012. Therefore, she is entitled for subsistence allowance as per the 6<sup>th</sup> Pay Commission after implementation of the same.

7. The learned counsel for respondent nos.3 and 3 strongly opposed the O.A. The M.A.T., Principal Bench, Mumbai in O.As. 841 and 842 of 2022 in para-10 onwards has held as under –

*“10. The learned Advocate for the Applicant also referred to the decisions rendered by this Tribunal in O.A.No.843/2016 (Baban Y Ghuge Vs. State of Maharashtra) decided on 04.07.2017 and decision rendered in O.A.No.31/2021 (Pandurang Borate Vs. State of Maharashtra) decided on 28.10.2021. I have gone through these Judgments in which similar issue has been dealt with. The Tribunal referred the decisions referred to above and relying upon the decision held that the Government cannot withhold regular pension and gratuity on the ground of pendency of Criminal Appeal. Accordingly, directions were issued to release the retiral benefits. As such, in view of these two decisions of coordinate bench of the Tribunal, in which similar issue is dealt with, I see no reason to deviate from it. The learned Presenting Officer could not point out any decision contrary to it nor shown any Rules to accept the contention that retiral benefits have to be withheld till the decision of Criminal Appeal.*

11. Thus, the conspectus of these judicial pronouncements is that the filing of revision or appeal against the acquittal cannot be said continuance of the trial and it cannot be treated as pendency of judicial proceedings. Once a person was acquitted from the charges stand at par with a person who is not being charged and was not subjected to criminal proceedings.

12. In view of above, the claim of Applicant for regular pension, gratuity and leave encashment is indefeasible. However, at the same time, the interest of Government also needs to be protected by taking bond or undertaking from the Applicant that if in future, criminal appeal is allowed and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted, or by deduction from monthly pension payable to him. In my considered opinion, such direction would suffice the purpose to balance the rights of the Applicant as well as Government.

13. The Applicant has also prayed for direction to regularize suspension period from 08.04.2014 to 29.02.2016. He was suspended by order dated 08.08.2014 consequent to registration of offence under the provisions of Prevention of Corruption Act in which he came to be acquitted. Registration of offence was the only reason for suspension. No DE was initiated after acquittal of the Applicant. This being the position, in view of catena of decisions referred to above, the pendency of appeal against acquittal cannot be the reason for not regularizing the suspension period. Since he is exonerated in Criminal Case, the period of suspension is required to be treated as a duty period.

14. The totality of aforesaid discussion leads me to conclude that impugned communication denying gratuity, leave encashment and denial to treat suspension period as duty period are unsustainable in law and liable to be quashed. Hence, the following order.

**ORDER**

*(A) Both these O.As are allowed partly.*

*(B) The impugned order dated 01.08.2019 in O.A.No.841/2022 as well as impugned order dated 19.11.2020 in O.A.No.842/2022 are quashed and set aside.*

*(C) The Respondent is directed to release regular pension, gratuity and leave encashment to the Applicant as per his entitlement within two months from today on furnishing bond/undertaking that if criminal appeal is allowed, and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted or by deduction from monthly pension payable to him.*

*(D) The Respondent is further directed to regularize suspension period from 08.08.2014 to 29.02.2016 as duty period and shall pass necessary orders within two months from today.*

*(E) No orders as to costs.”*

8. As per the Judgment of M.A.T., Principal Bench, Mumbai after acquittal of employee from criminal case, though the appeal was filed against the Judgment of acquittal. Trial is not continued. It cannot be treated as a pendency of judicial proceeding. Once a person was acquitted from the charges stand at par with a person, who is not being charged and was not subjected to Criminal proceedings. Therefore, employee who was charged and acquitted by Criminal Court is entitled for all pensionary benefits and also entitled for regularization of suspension period, etc. In the present O.A. the

applicant was suspended on 23/08/2005 because of the criminal case pending against her.

9. The applicant was acquitted by the Criminal court on 14/02/2011 (P-19). The acquittal order is challenged by the State Government before the Hon'ble High Court. The appeal No.226/2011 is now pending before Hon'ble High Court.

10. In view of the Judgment of M.A.T., Principal Bench, Mumbai pendency of Criminal appeal is not a ground to deny the pension and other service benefit to the employee. It is held by the M.A.T., Principal Bench, Mumbai after considering the Judgments of Hon'ble Supreme Court that once the employee is acquitted, he is entitled to get all the service benefits. Pendency of Criminal appeal cannot be a ground to deny the same. In view of the above cited Judgments, the following order is passed –

### **ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned order dated 25/02/2019 and order dated 24/08/2018 are hereby quashed and set aside.
- (iii) The respondents are directed to release regular pension, gratuity and leave encashment to the applicant as per her entitlement within a period of two months from the date of receipt of copy of this order, on

furnishing bond / undertaking that if Criminal appeal is allowed, and she is asked to refund gratuity, she should refund the same without raising any grievances in lump sum or installment, if permitted or by deduction from monthly pension payable to her.

(iv) The respondents are directed to regularize suspension period of the applicant from 23/08/2005 to 10/09/2012 as duty period and pay consequential benefits and shall pass necessary orders within a period of two months from the date of receipt of copy of this order.

(v) No order as to costs.

**Dated** :- 13/04/2023.

**(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 : 13/04/2023\*