

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 176 of 2021 (S.B.)

Waman S/o Madhavrao Sakharkar,
Aged about 75 years, Occ. Service,
r/o Jatpura Gate, Janak Lodge, Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
Ministry of Home,
Mantralaya, Mumbai-32.
- 2) Inspector General of Police,
Mumbai.
- 3) Deputy Superintendent (ACB),
Chandrapur, Tq. & Distt. Chandrapur.

Respondents.

**Dr. R.S. Sundaram, Miss. U.R. Tanna, S. Ramaswamy, Advocates
for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.**

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

Date of Reserving for Judgment : 27th September,2022.

Date of Pronouncement of Judgment : 30th September,2022.

JUDGMENT

(Delivered on this 30th day of September,2022)

Heard Ms. U.R. Tanna, learned counsel for applicant and
Shri S.A. Sainis, learned P.O. for respondents.

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

The applicant is a retired employee from the Police
Department w.e.f. 30/06/2003. The applicant had served in the

Military for the period from 13/02/1963 to 28/08/1969. Thereafter, he joined as a Junior Clerk in Zilla Parishad, Chandrapur. The applicant served there for about four and half years. The applicant was selected in July, 1974 as a Sub Inspector in the Police Department. The applicant served in the Police Department till his retirement on superannuation on 30/06/2003. The Crime No.3052/2001 was registered against the applicant and wife Suniti for the offence punishable under Section 13 (1) (e) and 13 (2) of Prevention of Corruption Act r/w Section 109 of the Indian Penal Code. The applicant and his wife were charge sheeted on 03/02/2004, i.e., after the retirement. The applicant and his wife both came to be acquitted by the Special Court, Chandrapur on 16/10/2018.

3. The applicant was given provisional pension from 01/07/2003 to July,2019. Now, the pension is regularised as per the order dated 30/08/2019.

4. The Commissioner of Police, Nagpur had paid the gratuity of Rs. 1,38,794/- on 28/11/2019 without interest. The said amount was to be paid on his retirement on 01/07/2003. Therefore, the applicant approached to this Tribunal for direction to the respondents to pay the interest @12% p.a. w.e.f. 01/07/2003 till the date of realisation on approved amount. The applicant has also prayed for other directions.

5. The O.A. is opposed by the respondent no.3. It is submitted that the applicant was charge sheeted. He was acquitted. Thereafter, all the amount of regular pension etc. are paid to him. There is no fault on the part of the respondents. Hence, the applicant cannot claim the interest.

6. Heard learned counsel for applicant Mrs. U.R. Tanna. She has submitted that the applicant was charge sheeted for the offence punishable under Section 13 (1) (e) and 12 of the Prevention of Corruption Act, 1988 and Section 109 of the Indian Penal Code. The applicant and his wife both were charge sheeted for having excess and disproportionate amount of Rs. 10,19,577/-. The Special Judge, Chandrapur acquitted the applicant and his wife on 16/10/2018. Thereafter, the respondents have paid the regular pension, gratuity etc., but the respondents have not paid any interest. Hence, the applicant is entitled for interest. In support of her submission pointed out the decision of Hon'ble Bombay High Court in the case of **Vinodkumar Narayan Dixit Vs. State of Maharashtra 2018 (6) Mh.L.J., 696.**

7. Heard learned P.O. for respondents Shri S.A. Sainis. As per his submission, the respondents / department were not at fault for the delay of payment and therefore the applicant is not entitled for interest.

8. There is no dispute that the applicant was charge sheeted for having accumulated disproportionate income. The said charge sheet was filed against the applicant after his retirement. The applicant was retired in the year 2003 and charge sheet was filed in the year 2004 before the Special Court, Chandrapur. The Special Court, Chandrapur acquitted the applicant.

9. In the similarly situated circumstance, the Hon'ble Bombay High Court in the case of **Vinodkumar Narayan Dixit Vs. State of Maharashtra** (cited supra) has held that the delay in payment of interest on the amount of gratuity because of pending criminal prosecution, is not legal and proper. The delay in payment of gratuity beyond three months from the date of retirement was for no fault of petitioner. The petitioner is entitled for interest for the period of delay beyond three months from the date of retirement.

10. In the cited decision, the Petitioner was prosecuted for the offences under the provisions of Prevention of Corruption Act r/w Sections 34 and 409 of the Indian Penal Code. Petitioner was retired after attaining the age of superannuation. In the cited decision, the gratuity amount was not released because of the pendency of Criminal case. The Hon'ble Bombay High Court relying on Section 129-A of the Maharashtra Civil Services (Pension) Rules, 1982 and relying on the Judgment of Hon'ble Supreme Court in the case of **Y.K.**

Singla Vs. Punjab National Bank & Ors.,(2013) 3 SCC,472 has held that the Petitioner is entitled for payment of interest @ 8% p.a. from third month after the date of retirement till the realisation of whole amount. The Hon'ble Supreme Court has also held that consequent upon the acquittal of the employee, it would be erroneous to conclude that the gratuity payable to the employee on attaining the age of superannuation was withheld on account of some fault on the part of the employee himself. Accordingly, the employee, in such a situation, has to be awarded interest under Section 7 (3A) of the Gratuity Act. The Rule 129-A (1) of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under –

“129-A. Interest on delayed payment of gratuity – (1) If the payment of gratuity has been authorised after three months from the date when its payment become due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the following rate on the amount of gratuity in respect of the period beyond three months shall be paid :-

(i) beyond 3 months and upto one year---7% p.a.

(ii) beyond one year ---10% p.a.

Provided that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter :

Provided further that, no interest shall be payable in the case in which a provisional gratuity is sanctioned”.

11. The Hon'ble Bombay High Court has held in Para nos.33 to 37 as follows –

“(33) The provisions in Rule 129-A of the MCS (Pension) Rules 1982 make reference to administrative lapses on the part of the government leading to delay in the payment of gratuity to an employee. The GR dated 6th May 1991 explains this position by reference to delay in the payment of gratuity due to administrative lapse for no fault of the retiring government servant. In fact, clause 3 of the GR dated 6th May 1991 provides that as far as retirement on superannuation is concerned, the existing procedure for grant of interest if the payment of gratuity is delayed due to administrative reason or lapse for no fault of the retiring government servant will continue to be applicable. In other words, interest will be allowed for the period of delay beyond three months from the date of retirement.

(34) As has been held by the Hon'ble Supreme Court in Y. K. Singla (supra), consequent upon the acquittal of an employee, it would be erroneous to conclude that the gratuity payable to such employee on attaining the age of superannuation was withheld on account of some fault of the employee himself. In the present case, it is not as if the petitioner, was ultimately convicted in criminal prosecution launched against him, in which case, the petitioner, could have been held to be at fault. Therefore, applying the principle explained by the Hon'ble Supreme Court in Y. K. Singla (supra), we hold that the delay in payment of gratuity to the petitioner beyond three months from the date of retirement was for no fault of the petitioner. In terms of Rule 129A of the MCS (Pension) Rules, 1982, read with clause 3 of the GR dated 6th May 1991 therefore, the petitioner is entitled to be paid interest for the period of delay beyond three months from the date of first retirement i.e. with effect from 1st July 1997.

(35) In Prabhakar Dalal (supra), the Division Bench of this Court, in the context of Rules 129-A, 130 (1)(c) of the MCS (Pension) Rules, 1982 and GR dated 23rd June 1986 has held that paragraph 3 of the GR will have to

be construed to mean that on a person against whom disciplinary or judicial proceedings were pending, if he is discharged or the disciplinary authority comes to the conclusion that no punishment needs to be imposed and in case of judicial authority, such authority acquits such person, than in those cases, on the competent authority authorising the release of gratuity, it will be presumed that the gratuity is deemed to have been fallen due on the date immediately following the date of retirement for the purpose of interest. The Division Bench has commended harmonious construction of the statutory rules and the executive instructions in the GR, so that executive instructions would not fall foul of the rules.

(36) In so far payment of interest on withheld increments or for that matter payment of interest on pension amount is concerned, we see no good ground to award same to the petitioner. Interest on withheld increments has already been paid to the petitioner at least to some extent. There is no dispute that the petitioner was in receipt of provisional pension. Therefore, in terms of MCS (Pension) Rules, 1982, there is no question of payment of any interest on pension.

(37) For the aforesaid reasons, we partly allow this writ petition and direct the respondents to pay to the petitioner interest at the rate of 8% per annum on the gratuity amount with effect from 1st April 1997 and upto 26th June 2009. In determining this rate of interest, we draw sustenance from Rule 129A of the MCS (Pension) Rules, 1982, as also, the decision of the Hon'ble Supreme Court in the case of Y. K. Singla (supra). This amount shall be paid to the petitioner within a period of three months from today."

12. The applicant has already received the pension. Therefore, he is not entitled to get interest on the amount of pension. The applicant is entitled for interest @ 8% p.a. on the amount of gratuity i.e. from 01/09/2003 till realisation of payment. The applicant came to be retired on 30/06/2003.

13. As per the pursis / affidavit filed by the applicant dated 11/7/2022, he has received the seized documents. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to pay interest @ 8% p.a. on the amount of gratuity i.e. from 01/09/2003 as per the Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982 to the applicant till the realisation of whole amount.
- (iii) No order as to costs.

Dated :- 30/09/2022.

(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 : 30/09/2022.

Uploaded on : 30/09/2022.

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