

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 454/2019 (S.B.)**

Madhav Manikrao Dhande,  
Aged about 64 years, Occ. Retired,  
R/o Laharia Nagar, Kaulkhed, Akola.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Additional Chief Secretary,  
Home Department,  
Mantralaya, Mumbai.
- 2) Superintendent of Police,  
Washim.

**Respondents.**

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**Shri S.P. Palshikar, Advocate for the applicant.**  
**Shri M.I. Khan, P.O. for the respondents.**

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**Coram :- Hon'ble Shri Anand Karanjkar,  
Member (J).**

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**Date of Reserving for Judgment : 12<sup>th</sup> February, 2020.**

**Date of Pronouncement of Judgment : 13<sup>th</sup> March, 2020.**

**JUDGMENT**

**(Delivered on this 13<sup>th</sup> day of March, 2020)**

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant was appointed in service in the year 1980 as Police Constable. Thereafter the applicant was promoted in the year 1989 as Police Sub Inspector (PSI) and in the year 2011 the applicant

was promoted as Police Inspector (PI). The applicant stood retired in the month of February, 2014 on superannuation, as Police Inspector (PI).

3. When the applicant was working at Police Station, Risod as Police Inspector (PI), in the year 2011 there was custodial death in the Police Station, Risod and for this offence was registered under Section 302 of the IPC against the applicant and 8 others. The applicant was placed under suspension and after one year the suspension was revoked. The applicant after revocation of the suspension resumed the duty and he stood retired on superannuation in Feb. 2014.

4. The learned counsel for the applicant submitted that the criminal case under Section 302 of the IPC is pending before the Additional District Sessions Judge, Washim in which witnesses are examined and the trial is going on. It is submitted that till today retiral benefits i.e. Gratuity is not paid to the applicant, it is withheld. It is submission of the applicant that amount of Gratuity cannot be withheld on any count and therefore action of the respondents not to release the amount of Gratuity is illegal. It is submitted that various representations made by the applicant were not considered and consequently direction be issued to the respondent no.2 to release the amount of Gratuity along with interest @ 18% p.a.

5. The learned counsel for the applicant has placed reliance on the Judgment in O.A.768/2018, dated 24/4/2019 delivered by the M.A.T., Mumbai, the Judgment in O.A. 25/2019, dated 8/2/2019 delivered by the M.A.T., Mumbai and the Judgment in O.A.1072/2017 decided on 7/9/2018 delivered by the M.A.T., Mumbai. In the reply, it is submission of the respondents that as the applicant is involved in a crime when the applicant was discharging the duty as a Police Inspector in the year 2011 and as the sessions trial is pending, therefore, in view of Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "The M.C.S. (Pension) Rules"), the applicant is not entitled for the Gratuity. It is submitted that there is no substance in the contention that action of the respondents withholding the amount of Gratuity is illegal. In view of the rival contentions, it is necessary to examine the claim of the applicant. In para-19 of the Judgment in O.A.768 of 2018 the M.A.T., Mumbai Bench observed that -

"once the right to receive pension and gratuity is recognized as a statutory right, a person cannot be deprived of it without statutory provision to that effect". It is also observed that after retirement of a Government servant on superannuation even if the departmental inquiry is initiated, it will not justify the action of the Government to withhold the pension or gratuity. It appears that for arriving to these

conclusions, the Bench has placed reliance on the Judgment delivered by the Division Bench of the Hon'ble Bombay High Court in case of **Manohar B. Patil Vs. State of Maharashtra & Ors.,2013 (6) Mh.L.J.,311**. The facts before the Hon'ble High Court were that the Petitioner in the Writ Petition was relieved from the employment on 30/04/2010 and thereafter disciplinary proceeding was issued. In that Writ Petition, it was prayed that the charge sheet served on him was illegal and it was after his retirement and the second prayer was to issue writ of mandamus to the respondents to release the gratuity, pension and other retirement dues together with interest. The Hon'ble Division Bench in that matter considered the Judgment in case of **Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal and Ano. Vs. Shri Bhujgonda B. Patil, 2003 (3) Mh.L.J.,602**. After examining the provisions of Rule-27 of the M.C.S. (Pension) Rules and various Judgments delivered by the Hon'ble Apex Court and Hon'ble High Court, the Hon'ble Division Bench held that Rule-27 permits institution of the departmental proceedings after superannuation of employee for the purposes of taking action contemplated by Rule 27 (1) in relation to pension and further explained that in that proceeding no penalty can be imposed in accordance with the M.C.S. (Discipline and Appeal) Rules, but ultimately the Hon'ble Division Bench dismissed the Writ Petition. In

that matter the Hon'ble Division Bench did not issue writ of mandamus to release the pension, gratuity and other retiral benefits of the Petitioner. After reading entire Judgment delivered by the Hon'ble Division Bench, it must be accepted that right is confirmed under Rule 27, Sub Rule 2 (b) to initiate the departmental proceeding against the Government servant even after his retirement subject to the limitations which are mentioned in the rules. Once this right is exercised by the Government to initiate the departmental inquiry even after retirement as provided under Rule 27 (2) (b) of the M.C.S. (Pension) Rules, then the Government has jurisdiction to take decision as per the Rule 27 (1) regarding withholding of pension or releasing of the pension in part or in entirety.

6. It is rightly submitted by the learned P.O. that the above view formed is not correct, because in case of Shivgopal v state of U.P. AIR 2019 Allahabad 168 the Hon'ble Full Bench of Allahabad High Court has explained in para 112 that -

“The Division Bench in laying down the above principle distinguished the Supreme Court decision in the case of Jitendra Kumar Shrivastava by observing that it was a case from Jharkhand where the provisions of Rule 43(b) of the Pension Rules of Jharkhand were under consideration which were pari material to Rule 351-A of the Civil Service Regulations as applicable to the State of U.P. and the said

decision is limited to the pension Rules of Jharkhand which had no provision similar to that as Regulation 919-A (3) of the Civil Service Regulations as applicable in U.P. Therefore, in view of the Regulation 919-A (3) no death-cum-retirement would be admissible to a Government servant until the conclusion of the departmental or judicial proceedings or any enquiry by the Administrative Tribunal which includes the pendency of criminal case.”

7. In the present case, the facts are also together different. The applicant was arrested for a crime under Section no.302 of the IPC in 2011 and after the investigation of that crime, the charge sheet was submitted against him when he was in service and the trial is now part heard. Under these circumstances, the case is covered under Rule 130 (1) (c) and as the criminal case was pending at the time of retirement of the applicant in the year 2014, the applicant is not entitled to claim any relief in the O.A.

8. In view of this, the O.A. stands dismissed. No order as to costs.

**Dated** :- 13/03/2020.

**(A.D. Karanjkar)**  
**Member (J).**

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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 Member (J).

Judgment signed on : 13/03/2020.  
and pronounced on

Uploaded on : 16/03/2020.

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