

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.469/2015.

(S.B.)

Ashok Rajaram Bhopale,
Aged about 68 years,
Occ:-Retired,
R/o Ramashraya Apartment,
Adarsha Colony, Akola, District Akola.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Addl. Chief Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. The Dy. Director of Health Services,
Nagpur Division, Nagpur.

Respondents

Shri S.P. Palshikar, the Ld. Advocate for the applicant.
Shri A.M. Ghogre. the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

JUDGMENT

(Delivered on this 4th day of July 2018.)

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

2. The applicant, a Medical Officer, Group-II, Grade-A has retired on superannuation on 31.7.2004. Just before his retirement in the month of July 2004 itself, a charge-sheet was served on the applicant in the departmental enquiry and the departmental enquiry was initiated against him. On 23.1.2013, a decision was taken in the departmental enquiry whereby the pension of the applicant to the tune of 25% has been stopped permanently. The applicant, therefore, could not get his retiral benefits.

3. After conclusion of the departmental enquiry, an amount of leave encashment worth Rs. 41,515/- was sanctioned to the applicant on 2.7.2014 and it was paid to him on 2.8.2014. Similarly, the amount of Rs. 2,33,321/- was sanctioned to the applicant on 19.6.2014. It was paid to him on 10.7.2014. The applicant, therefore, received the amount almost 10 years after his retirement.

4. On 14.1.2015, the applicant filed representation and claimed interest at the rate of 18% p.a. However, he did not get the amount and, therefore, he had filed this O.A. claiming interest on the amount of leave encashment and gratuity.

5. The respondent No.1 has filed reply affidavit. It is stated that the applicant committed misappropriation of the

Government fund and hence he was kept under suspension on 4.4.2004. A charge-sheet was served on the applicant on 6.7.2004 and 25% amount of pension was permanently deducted in the departmental enquiry vide order dated 23.1.2013. Another enquiry was also initiated against the applicant for issuing false medical certificate regarding the height of recruited candidates in the State Excise Department and the said enquiry was initiated as per the order passed by the Hon'ble High Court in W.P. No. 1389/2001. The applicant was, however, exonerated and discharged in the said enquiry vide order dated 14.2.2013. As per the rules, the respondents are entitled to withhold the benefits during the pendency of enquiry.

6. The learned counsel for the applicant submits that the applicant, though retired in 2004 on superannuation, departmental enquiry was completed in the year 2013 for which the applicant was not at all responsible and, therefore, the applicant is entitled for interest on retiral benefits from the date of retirement till he actually received the amount. The learned counsel for the applicant placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **State of Jharkhand V/s Jitendra Kumar Srivastava and another, reported in 2013 (10) SCALE-310.** It is a case under

Bihar Pension Rules and the issue involved was whether in the absence of any provision in the pension rules, the State Government can withhold a part of pension and/or gratuity during pendency of departmental / criminal proceedings and the said question was answered in negative.

7. Shri A.M. Ghogre, the learned P.O. submits that the case of the applicant is under the provisions of Service Rules in Maharashtra and under the Maharashtra State, there are specific service rules which authorize the Government to withhold the amount of gratuity as well as the amount of leave encashment.

8. Admittedly, the applicant has received the amount of gratuity of Rs. 41,515/- on 2.8.2014 after conclusion of departmental enquiry on 21.3.2016. The learned counsel for the applicant has invited my attention to Rule 68 (6) (a) of the Maharashtra Civil Services (Leave) Rules, 1981. The said relevant rule reads as under:-

“Rule 68:- Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation:-

(6) (a) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Govt. servant who retires from

service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of proceedings, he shall become eligible to the amount so withheld after adjustment of Govt. dues, if any.”

9. Plain reading of the aforesaid rule clearly shows that the amount of leave encashment can be withheld by the Government till the conclusion of departmental proceedings.

10. It is an admitted fact that, the applicant has received the amount of gratuity of Rs. 2,33,321/- on 10.7.2014. Admittedly, the departmental enquiry was initiated against the applicant before his retirement and it was pending and finally concluded on 23.1.2013. It is not necessary for this Tribunal to go into the merits as to who was responsible for the delay of enquiry, as it is not the case of any of the parties. Fact remains that, the enquiry was pending from July 2004 till 23.1.2013 and after conclusion of departmental enquiry, the amount of gratuity was released.

11. The learned counsel for the applicant placed reliance on Rule 130 (1) (c) of the Maharashtra Civil Services

(Pension) Rules, 1982. The said relevant Rule (1) (c) reads as under:-

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

(1) (a).....

(b).....

(c) No gratuity shall be paid to the Govt. servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.”

12. Plain reading of the aforesaid rule clearly shows that, the Government is entitled to withhold the gratuity amount till final orders are issued in the departmental or judicial proceedings.

13. From the facts of the case, as already stated, it will be thus clear that admittedly the departmental enquiry was pending against the applicant from 2004 to 2013 and, therefore, during the pendency of the said enquiry, the applicant was not entitled to claim gratuity amount as well as the amount of leave encashment. Record shows that the departmental enquiry was concluded on 23.1.2013 and thereafter on 2.8.2014, the amount of leave encashment was paid to the applicant and on 10.7.2014, the amount of gratuity was paid. In such circumstances, it cannot be said that the respondents have deliberately withheld the amount to which the applicant was

entitled to. I, therefore, do not find any merit in this O.A. The applicant is not entitled to any interest on the delayed payment of leave encashment and the amount of gratuity, in the circumstances, as already stated. Hence, I proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
4.7.2018