MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH : NAGPUR.

ORIGINAL APPLICATION NO.70/2010

Ramchandra Zinguji Gadekar,
Aged about 69 years,
R/o Chandrawati Nagar, Badnera Road,
Amravati, Distt. Amravati.   ---------------**APPLICANT.**

     -Vs-

1. The State of Maharashtra ,
    through its Secretary.
    Ministry of Home,
    Mantralaya, Mumbai

2. The Director General of Police,
    Maharashtra State,
    Mumbai.

3. The Commissioner of Police,
    Amravati , Distt. Amravati.   ----------**RESPONDENTS**.
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1.   Smt. P.T. Joshi, Advocate   holding for Shri G.N.
      Khanzode, for the applicant .
2.   Shri P.N. Warjurkar, Presenting Officer for the
      Respondents **.**

CORAM :   **Justice M.N. Gilani : Member (J)**

DATE   :   **30** [th]   **Sept., 2015.**

ORAL ORDER

What is the status of an employee who has been convicted   for committing a criminal offence involving moral turpitude, is the issue involved in this O.A.

2.   In 1962, the applicant entered in service as Police Constable.   In 1989, he was promoted as Head Constable. While he was   serving as   Head Constable, offence under Sections   448, 354, 376 (2) and 323   r/w 34 of the IPC was registered against him.   In 1999, he was convicted and was sentenced to suffer imprisonment for 10 years .   Appeal filed by him   came to be rejected by the High Court.   He then unsuccessfully approached the Supreme Court. On 31/7/1999, he attained the age of superannuation.   Because of pendency of judicial proceeding,   he was given provisional pension.

3.   It is the case of the applicant that on 18/8/2004 the order was passed withdrawing his total   pension with permanent effect. He had challenged this order, but   of no avail.   The departmental appeal filed by him was dismissed.

Points raised by him are that, without giving him an opportunity of being heard, the adverse order was passed. The authority which has passed the order, was not competent   and therefore, the order is ab-anitio-void.

4.   The Respondent No. 3 submitted affidavit-in-reply. It is stated that on 27/10/1999, the applicant was convicted in a Special Case No. 11/1994 for the offence punishable under Sections 448, 354, 376(2) and 323 r/w Section 34 of the IPC and was sentenced to suffer 10 years' imprisonment . The order of conviction has reached finality, about which even the   applicant does not dispute.   Since the applicant was found guilty of   grave misconduct, the order under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules) was passed .

5.   Under Clause (a) to second proviso to Article 311 (2) of the Constitution, the authority   has a power to dismiss or remove or reduce   in rank an employee on the ground of his conduct which has   led to his conviction on a

criminal charge.   For that it is not necessary to hold disciplinary enquiry. It appears from the record that before passing the order impugned, the applicant was served with show cause notice dtd. 16/6/2004 and his explanation was sought.   He had given his explanation   to   the show cause notice on 21/6/2004.   Thereafter only the order impugned came to be passed.   Rule 13 (i) of   the Maharashtra Civil Services (Discipline and Appeal) Rules,1979 provides that no enquiry as contemplated under Rule 8 to 12 is necessary   where any penalty is imposed on a   Govt.   servant on the ground of conduct which has led to his conviction on a criminal charge.

6.   In the present case, on the date when the impugned order was passed,   the applicant was already retired. Therefore, the order which   could possibly be passed   was under Rule 27 of the Pension Rules withdrawing the pension permanently.   In that view of the matter, the applicant has no ground to make grievance   about the legality of the order impugned.

7.   The second ground raised in the O.A. is about the power of the authority to pass the order of withdrawing the pension.   The material placed on the record shows that the applicant   was   on   the   establishment   of   Police Commissionerate, Amravati.   Therefore the impugned order dtd. 19/8/2004 appears to have been passed by the competent authority.

8.   In the result I do not find any substance in this O.A. Accordingly, it is dismissed with no order as to costs.

                                        (Justice M.N. Gilani)
                                          Member (J)

Skt.