

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.840/2016.

(S.B.)

Dr. Eknath Namdeo Chaudhari,
Aged about 77 years,
Occ-Retired Govt. Servant,
R/o Samata Colony, Plot No.4,
Khamgaon, Distt. Buldana.

Applicant.

-Versus-

1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-400 032.

2) The Director of Health Services,
(M.S.), Mumbai.

Respondents

Shri N. Autkar, the learned counsel for the applicant.

Shri S.A. Sainis, the learned P.O. for the respondents.

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

JUDGMENT

(Delivered on this 2nd day of January 2019.)

Heard Shri N. Autkar, the learned counsel for the
applicant, Shri S.A. Sainis, the learned P.O. for the respondents.

2. The applicant is a Retired Medical Officer. He was appointed as a Medical Officer, Class-II at Bor Project, Wardha in 1967 and was posted at various places at Government Medical Colleges. While he was serving as a Class-II Medical Officer at Government Hospital, Khamgaon, he was kept under suspension on 3.6.1995 on the allegations of committing irregularities of purchasing medicines. The said suspension was challenged by the applicant by filing O.A. No. 16/2997. In the said O.A. on 19.3.1997, the applicant was directed to be reinstated in service. On 30.6.1997, the applicant got retirement on superannuation. Thereafter, departmental enquiry was initiated against him on 23.3.1998. However, vide order dated 24.3.2003, the applicant was exonerated from all charges in the departmental enquiry.

3. Vide order dated 27.8.2003, the applicant's suspension period was regularized and his period of suspension from 13.6.1995 to 12.6.1997 and 27.6.1997 to 30.6.1997 was treated as duty period. A criminal case was also initiated against the applicant bearing Criminal Case No. 316/2003 before the Court of Chief Judicial Magistrate at Buldana and the applicant came to be acquitted in the said case on 9.5.2014.

4. After getting acquitted in the criminal case, the applicant filed representation in November 2014 to the respondents and requested that he shall be given all retiral benefits with interest. However, his claim was not considered. One of the co-accused with the applicant by name Dr. D.R. Talokar was, however, granted interest on the retiral benefits. Finally, amount of gratuity and leave encashment as well as arrears of pension were released in between July 2015 to June 2016. But the interest on the delayed payment was not paid and, therefore, the applicant has filed this O.A. He is claiming interest on the amount of delayed payment towards pension gratuity, leave encashment etc.

5. The respondents in their affidavit in reply tried to justify the delay. It is stated that death-cum-encouragement gratuity amount of Rs. 1,47,163/- has been paid to the applicant on 8.10.2015. Balance of leave encashment amount of Rs. 54,194/- has been paid to him on 1.7.1975. It is stated that since a criminal case as well as departmental enquiry were pending against the applicant, the Department was entitled to withhold the amount and as soon as the applicant was acquitted, the same has been repaid to him and, therefore, there is no question of paying interest.

6. The learned counsel for the applicant submits that admittedly in the departmental enquiry initiated against the applicant, he has been exonerated long back i.e. on 24.3.2003. So far as criminal case is concerned, it is stated that the applicant came to be acquitted by the Chief Judicial Magistrate, Buldana on 9.5.2014 and, therefore, there was absolutely no reason not to pay the amount which was due against the respondents.

7. The learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Apex Court reported in **Civil Appeal No.6770/2013 in case of State of Jharkhand V/s Jitendra Kumar Srivastava and others delivered on 14.8.2013.** Copy of the said judgment is placed on record at page Nos. 51 to 59 (both inclusive at Annexure A-7). The learned counsel for the applicant submits that Rule 43 (b) of the Bihar Pension Rules is analogous to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. It is stated that Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 only empowers the Government to withhold or withdraw pension and plain reading of the aforesaid section makes it crystal clear that such power to withhold or withdraw pension is only in case of employee found guilty of grave misconduct or negligence during the period of his service. It is, therefore, stated that if the employee is

acquitted in the criminal case or is exonerated from departmental enquiry, his pension amount cannot be withheld and he is entitled to all the amount due on the date of retirement. The contentions raised by the learned counsel for the applicant, however, are not legal and proper. Rule 27 (4) of the Pension Rules, 1982 makes it crystal clear that in case of a Govt. servant, who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or whether the departmental proceedings are continued under sub-rule (2), a provisional pension as provided under Rule 130 of the Pension Rules, 1982 shall be sanctioned. In other words, it seems that the employee will not be entitled to regular pension in case departmental proceedings are pending against him till final outcome of such proceedings.

8. The learned P.O. has also invited my attention to Rule 130 of the Pension Rules, 1982. The said Rule reads as under:-

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

(1)(a) in respect of a Gazetted or Non-gazetted Govt. servant referred to in sub-rule (4) of Rule 27, the Head of Office shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Govt. servant, or if he was under suspension on the date of retirement up to

the date of immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued up to and including the date on which after the conclusion of departmental or judicial proceedings final orders are passed by the competent authority.

(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.

Provided that, where departmental proceedings have been instituted under Rule 10 of the M.C.S. (Discipline and Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of Clause (1) of Rule 5 of the said Rules, the payment of gratuity shall be authorized to be paid to the Govt. servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Govt. servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

The learned P.O. has invited my attention to Rule 68 (6) of the M.C.S. (Leave) Rules, 1981, which empowers the

Government to withhold the amount of leave encashment. Sub-rule (6) (a) of Rule 68 of the M.C.S. (Leave) Rules, 1981 reads as under:-

“68 ((6)(a):- The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of 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 the proceedings, he shall become eligible to the amount so withheld after adjustment of Govt. dues, if any.”

9. The aforesaid provision under Rule 130 of the Pension Rules, 1982 makes it crystal clear that the Government has all powers to withhold pension or pensionary benefits including gratuity till final outcome of the departmental enquiry or criminal proceedings and gratuity cannot be paid until conclusion of such proceedings.

9. From the facts on record, it seems that admittedly departmental proceedings were pending against the applicant and he came to be exonerated from the departmental enquiry on

24.3.2003. Therefore, the Department was justified in not paying the amount of gratuity and other benefits to the applicant, as well as regular pension till 24.3.2003. Not only that, but in addition to the departmental enquiry, criminal case was also pending against the applicant and admittedly the applicant came to be acquitted in the said criminal proceedings on 9.5.2014. Thus, he was not entitled to receive regular pension and gratuity and other retiral benefits till the date of his acquittal. If this is considered, then admittedly the applicant was entitled to claim all retiral benefits including regular pension, gratuity and other emoluments on 9.5.2014.

10. Rule 129-A of the Pension Rules, 1982 states about interest on the delayed payment of gratuity. This Rule speaks that whether the payment of retiral gratuity or death gratuity has been delayed beyond the period of three months from the date of retirement or death, it is clearly established that the delay in payment was attributable to administrative lapses and interest at the rate applicable to the G.P.F. deposits shall be paid on account of gratuity interest in respect of the period beyond three months. The first proviso to the said Rule says that no interest shall be paid if the delay in payment of such gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid

down in the Chapter and the second proviso says that no interest shall be paid in case where the provisional gratuity is paid. In the present case, admittedly criminal case was pending against the applicant and it terminated in acquitted on 9.5.2014 and, therefore, till 9.5.2014, delay cannot be attributable to the Government. However, it is true that the amount of gratuity has been paid to the applicant on 20.7.2015 i.e. after more than one year and two months. Similarly, arrears of pension has been paid on 10.6.2016 whereas the arrears of leave encashment has been paid on 1.7.2015. This amount was admittedly due on the date of acquittal of the applicant i.e. on 9.5.2014. The applicant, therefore, can be said to be eligible for interest on all these amounts from the date of acquittal till the amount was actually received by him and, therefore, I proceed to pass the following order:-

ORDER

- (i) O.A. is partly allowed.
- (ii) The respondents are directed to pay interest on the delayed payment of gratuity for the period from 9.5.2014 to 20.7.2015, interest on the arrears of pension for the period from 9.5.2014 to 10.6.2016 and the interest on the

arrears of leave encashment for the period from 9.5.2014 to 1.3.2015 as per admissible rates under Rule 129-A and 129-B of the Pension Rules of 1982.

- (iii) The said amount shall be paid to the applicant within one month from the date of this order.
- (iv) No order as to costs.

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

Dt. 2.1.2019.

Pdg.