

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 99 OF 2023

DISTRICT:- JALGAON

Bhimrao S/o. Namdeo More,
Age: 60 years, Occu.: Retired
(Head Constable)
R/o. Plot No. 49, Jay Hanuman
Nagar, Pimprala Shivar, Jalgaon,
Dist. Jalgaon.

APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. Director General of Police,
Maharashtra State Mumbai,
Police Head Quarter, Near Old
M.L.A. Hostel and Regal
Cinema Mumbai, 400 001
3. Inspector General of Police,
Nasik Region, Nasik.
4. Dist. Superintendent of Police,
Jalgaon.
5. Principal Accountant General (A&E)
Maharashtra, Mumbai-20.

.. RESPONDENTS.

APPEARANCE : Shri Rakesh N. Jain, learned counsel
holding for Shri Prafullasing H. Patil,
learned counsel for the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 21.08.2023

ORAL ORDER

Heard Shri Rakesh N. Jain, learned counsel holding for Shri Prafullsing H. Patil, learned counsel appearing for the applicant and Shri M.P. Gude, learned Presenting Officer appearing for the respondent authorities.

2. The applicant has filed the present Original Application seeking following reliefs: -

“A] This Original Application may please be admitted and allowed.

B] The Communication letter dated 13/01/2023 may please be quashed and set aside.

C] It may please be declared that, the period of absentee from 24/05/2007 to 02/01/2012 may be held as duty period and it may please be declared that, applicant is entitle for pay and allowances from 24/05/2007 to 02/01/2012.

D] It may please be ordered to respondents to pay and allowances along with another monetary benefits for a period of 24/05/2007 to 02/01/2012 with payment of Gratuity, earned leave, part pension with other consequential benefits to the applicant as per his entitlement with interest @ 18% p.a. from the date of entitlement till the date of realization of entire amount.

E] Any other just and equitable orders may be passed in favour of the applicant in the interest of justice.”

3. It is the grievance of the applicant that though he has been acquitted from Criminal Case bearing Special Case No. 3/2008 against him for the offences punishable under the Prevention of Corruption Act, the respondents have withheld his

gratuity amount, as well as, regular pension on the ground that the Appeal No. 70/2012 filed by the State against the order of acquittal passed by the Special Court in Criminal Case bearing Special Case No. 3/2008 against the applicant is pending before the Hon'ble High Court. Learned counsel appearing for the applicant submitted that judicial pronouncements have now settled the legal position that on the ground of pendency of such appeal by the State challenging acquittal of the Government employee recorded by the Trial Court, the employee cannot be deprived from receiving the retiral benefits. Two such decisions are placed on record and in view of the law discussed in the said decisions the learned counsel has prayed for allowing the present application.

4. Learned Presenting Officer has reiterated the contentions raised in the affidavit in reply filed on behalf of the respondents. In the affidavit in reply, the respondents have referred to provisions under Rule 130 of Maharashtra Civil Service (Pension) Rules, 1982 and more particularly Sub-rule (c) thereof justifying their action of withholding the amounts of gratuity and regular pension. Learned Presenting Officer in the circumstances has prayed for dismissal of the Original Application.

5. I have duly considered the submissions made on behalf of the applicant, as well as, the respondent authorities. It is not in dispute that the applicant retired on 29.02.2020 from the Government service on attaining the age of superannuation. There is further no dispute that though the applicant was prosecuted for the offences punishable under Section 7 and 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 vide Special Case No. 3/2008 he has been acquitted by the Special Court vide its judgment delivered on 20.6.2011. There is further no dispute that the State has filed appeal against the order of acquittal before the Hon'ble High Court and the said appeal is pending before the Hon'ble High Court.

6. The question for consideration is whether on the ground that the appeal filed by the State against the order of acquittal recorded in favour of the Government Employee is pending before the Hon'ble High Court, the retiral benefits of the Government employee can be withheld by the State. In W.P. No. 6650/2020 Aurangabad Bench of the Hon'ble Bombay High Court has dealt with this issue. It is a short judgment. I hence, deem it appropriate to reproduce the entire said judgment, which reads thus: -

“1. We have considered the strenuous submissions of the learned Advocates for the respective sides. The

learned Advocate for respondent Nos.2 and 3 and the learned AGP have vehemently opposed this petition and pray for it's dismissal. It is pointed out that though the petitioner has been acquitted for committing offences punishable under sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 vide judgment dated 19/07/2019 in Special Case (ACB) No.07/2007, a criminal appeal challenging such acquittal is pending in this Court.

2. The petitioner has put forth prayer clause B, C and D as under :-

"B. By Writ, order or directions the respondent No.2 and 3 may kindly be directed to fix final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of justice.

C. By writ, order or directions the respondent No.2 and 3 may kindly be directed to pay the difference of final regular pension deducting the amount paid to the petitioner by way of provisional pension from 01.07.2017 till the actual grant of regular pension as per 7th Pay Commission and to pay interest @ 12% on regular pension from 20.07.2019 till the grant and payment of actual regular pension and for the payment of interest on the amount payable to the petitioner of gratuity from 01.07.2017 till the actual payment of gratuity in the interest of justice.

D. Pending hearing and final disposal of this Writ Petition the respondent No.2 and 3 may kindly be directed to fix the final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra

Civil Services (Pension) Rules, 1982 in the interest of Justice."

3. *It is settled Law that gratuity cannot be forfeited unless the offence amounting to moral turpitude is proved to have been committed by the petitioner, u/s 4, 6(d)(2) of the Payment of Gratuity Act, 1972 and in the light of the judgment delivered by the Hon'ble Apex Court in the matter of Union Bank of India and others Vs.C.G.Ajay Babu and another [(2018) 9 SCC 529].*

4. *The learned Advocate for the Corporation submits that the provisional pension is being granted to the petitioner. He, however, cannot point out any provision under the MCS (Pension) Rules, 1982 that an appeal pending against acquittal would empower the employer to hold back regular pension.*

5. *In the light of the facts as recorded above and keeping in view that an appeal against the acquittal is pending adjudication, the petitioner need not be made to suffer the rigours of litigation, though, we intend to pass an equitable order.*

6. *In view of the above, this petition is partly allowed in terms of prayer clause "B" with the following rider :-*

[a] The petitioner shall tender an affidavit/undertaking to respondent No.3 Municipal Commissioner stating therein that if he suffers an adverse order in the pending proceedings for challenging the acquittal and his acquittal is converted into conviction, he shall return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the

petitioner to the extent of the monetary reliefs that he would be getting in view of this order.

[b] After such affidavit is filed satisfying the above stated ingredients, the Corporation shall initiate steps for compliance of prayer clause "B" and ensure that such compliance is made within 12 (twelve) weeks from the date of the filing of such affidavit by the petitioner."

7. The facts involved in the present O.A. are identical with the facts which existed in the aforesaid Writ Petition decided by the Hon'ble High Court. It is thus, evident that the law laid down by the Hon'ble High Court in the aforesaid matter would squarely apply to the facts of the present matter. I am, therefore, inclined to allow the present Original Application with the following order: -

ORDER

[i] The applicant shall tender an affidavit / undertaking to respondents stating therein that if he suffers an adverse order in the pending Appeal No. 70/2012 before the Hon'ble High Court and his acquittal is converted into conviction, he shall return the entire gratuity amount and the other retiral benefits received to him within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the applicant to the extent of the monetary reliefs that he would be getting in view of this order.

[ii] After such affidavit is filed satisfying the above stated ingredients, the respondents shall take decision in respect of the prayers made in prayer clause (C) and (D) of the O.A. and if the applicant is held entitled for the reliefs claimed by him, shall release the admissible pay and allowances within 12 weeks from the date of filing of the undertaking/affidavit by the applicant.

[iii] O.A. stands disposed of in aforesaid terms without any order as to costs.

VICE CHAIRMAN

O.A.NO.99-2023 (SB)-2023-HDD-Pay & Allowances