

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.538/2016

DISTRICT: AHMEDNAGAR

Sahebrao Vithal Navthar,
Age : 60 years, Occ : Service (Retired),
R/o: Pimpri Shahali, Taluka Newasa,
Dist. Ahmednagar. ..APPLICANT

V/s.

- 1] The State of Maharashtra
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
- 2] The Deputy Director of Land Records,
Nashik Division, Nashik.
- 3] The Deputy Superintendent of Land Records,
Jamkhed, Dist. Ahmednagar.
- 4] The Indian Audit and Accounts Department,
Office of the Accountant General
(Accounts and Establishments)
Pratishtha Bhavan, 101,
Maharshi Karve Road,
Mumbai-400 002. ...RESPONDENTS

APPEARANCE: Shri A.D.Sugdare learned Advocate for
the applicant.

Smt. Sanjivani Ghate learned Presenting
Officer for respondents.

CORAM: Hon'ble Shri B. P. Patil, Member (J)

DATE : 11-04-2017

ORDER

The applicant has challenged letter dated 21-10-2015 issued by the respondent no.4 and prayed to quash it and also sought declaration that he is eligible for grant of service gratuity of Rs.21,125/- and retirement gratuity of Rs.42,250/- in view of Government Resolution dated 30-10-2009.

2. The applicant was appointed as Mustering Assistant in the office of Divisional Engineer, EGS on 09-09-1985. Thereafter, he was absorbed on the post of Surveyor in the office of respondent no.3 by appointment order dated 23-07-2004. Applicant has worked as Clerk in the office of respondent no.3 till his retirement on superannuation on 31-09-2009.

3. The applicant has filed O.A.No.47 of 2011 in this Tribunal for limited purpose of claiming retirement gratuity under rules 110(1) and 111(1) of the Maharashtra Civil Services (Pension) Rules, 1982 ('M.C.S. Pension Rules, 1982' in short) as he had rendered 4 years 9 months and 29 days service till his retirement. The Tribunal had allowed the O.A. and passed order dated

13-03-2013 in favor of the applicant. It is contended by the applicant that the order of the Tribunal was not complied with in letter and spirit by the respondents. The respondents had filed Review Application St. No.2014/2013, which was rejected by the Tribunal by order dated 24-12-2014. Thereafter, respondent no.3 submitted proposal for grant of benefit of retirement gratuity to the applicant and proposed to grant retirement gratuity of Rs.50,700/-. The respondent no.4 without applying mind and without considering the provisions of Rules 110(1) and 111(1) of M.C.S. Pension Rules, 1982 held that these provisions are applicable to permanent Government servants and applicant was not in permanent Government service at the time of his retirement and therefore refused to grant retirement gratuity to the applicant. However, terminal benefits of Rs.14085/- are sanctioned by order dated 21-10-2015.

4. It is the contention of the applicant that in view of the G.R. dated 30-10-2009, he is entitled to receive pro-rata service gratuity of Rs.21,125/- and retirement gratuity of Rs.42,250/-. Respondent no.4 had not considered the said fact and rejected the proposal of the

respondent no.3 *mala-fide* and in arbitrary manner, therefore, he approached the Tribunal for quashing and setting aside the order passed by respondent no.4 vide letter dated 21-10-2015 and sought declaration that he is entitled to pro-rata service gratuity of 21,125/- and retirement gratuity of Rs.42250/- in view of the G.R. dated 30-10-2009.

5. Respondents filed their reply affidavit and contended that the applicant was appointed as Surveyor in the office of Deputy Director of Land Records by order dated 23-07-2004 and he joined his duties on 03-08-2004. At the time of his retirement he was working on the post of Clerk in the office of respondent no.3 and he was retired on 31-09-2009. They have admitted the fact that the Tribunal had passed order in O.A.No.47/2011 against which respondents filed Review Application St. No.2014/2013 which came to be rejected by the Tribunal on 24-12-2014. It is contended by the respondents that it is one of the conditions in the appointment order dated 23-07-2004 that the applicant shall produce certificate regarding typewriting speed but the applicant has not submitted the certificate till his

retirement. Therefore, benefits of permanency were not extended to him. In view of the provisions of Rules 110 and 111 of MCS Pension Rules, 1982 benefits of service gratuity and retirement gratuity are admissible to only permanent government employees. Applicant was not made permanent in any post till his retirement, therefore, he is not entitled to the benefits of service gratuity and retirement gratuity as prayed. As per Rule 30 of the MCS Pension Rules, 1982 an employee should hold substantially permanent post in the government service at the time of retirement. Terminal benefits to the retired temporary government servant are granted as per rule 30, Appendix II of MCS Pension Rules, 1982. Respondents have submitted that Appendix II states that *“a temporary employee who retires on superannuation or is discharged on account of retrenchment or is declared invalid for further service, will be eligible for gratuity at the rate of 1/3 of month’s pay for each completed year of service, provided he had completed not less than 5 years continuous service at the time of retirement/invalidation.”*

6. The Government of Maharashtra in Finance Department vide its decision dated 04-01-2008 has

further clarified that at the time of retirement Government employee should have been made permanent in the Government service to count the service as qualifying service and that the provisions of Rule 30 of the MCS Pension Rules, 1982 stands with retrospective effect. It is contended by the respondents that the applicant is eligible for grant of only terminal gratuity admissible only to temporary government employee as provided under Appendix II of the MCS Pension Rules, 1982 as he was not made permanent. As the applicant is not a permanent government servant he is not entitled to either retirement gratuity or service gratuity as claimed by the applicant. It is the contention of the respondents that in view of the provisions of Appendix II a government servant should not have completed less than 5 years continuous service at the time of retirement to be eligible for terminal gratuity. The applicant has put in only 4 years, 9 months and 29 days service under the government. However, in view of the decision of the Tribunal dated 13-03-2013 passed in O.A.No.47/2011, respondents' office has reckoned total service period of the applicant as 5 years and accordingly

terminal gratuity of Rs.14,085/- has been granted as admissible to him under the rules. Therefore, O.A. has no merit, and therefore, it is liable to be rejected.

7. Heard Shri A.D.Sugdare learned Advocate for the applicant and Smt. Sanjivani Ghate learned Presenting Officer for respondents.

8. Admittedly, applicant had joined government service as Mustering Assistant in the office of Sub Divisional Engineer, E.G.S. on 09-09-1985 and he worked there till July 2004. In view of the Government policy and G.R. dated 01-12-1995, applicant was absorbed and appointed as Surveyor in the office of respondent no.3. He joined office of respondent no.3 on 03-08-2004. He was working in the office of respondent no.3 as Clerk till his retirement on superannuation on 31-05-2009. He has rendered 4 years 9 months and 29 days service at the time of his retirement. Admittedly, the applicant has not completed 5 years' service. He approached the Tribunal by filing O.A.No.47/2011 which was allowed and it was decided that the applicant is entitled to get gratuity as per rules and there is no bar.

Respondents were also directed to pay gratuity as per law by reckoning his service as 5 years for the sake of granting benefits of gratuity. Respondent no.3 submitted proposal for grant of gratuity to the respondent no.4. On query made by the respondent no.4, respondent no.3 informed it by letter dated 22-05-2015 (Page 20) that the benefits of permanency have not been granted to the applicant as he has not submitted certificate regarding typewriting speed test as mentioned in the appointment letter dated 23-07-2004 (page 9). Respondent no.4 by its letter dated 21-10-2015 (page 22) has granted terminal gratuity of Rs.14,085/- to the applicant. It is stated that the benefits of service gratuity and retirement gratuity are admissible to permanent government employee only as per rules 110 and 111 of the MCS Pension Rules, 1982. The applicant was not made permanent in any post and therefore, only terminal benefits as prescribed under Appendix II of the MCS Pension Rules, 1982 are given to him.

9. Learned Advocate for the applicant has submitted that in view of the provisions of Maharashtra Civil Services (Compulsory Marathi Shorthand and Marathi

Typing Examinations for English Stenographers and English Typists) Rules, 1991, the applicant ought to have been exempted from passing typing examination since he had attained age of 50 years at the time of his appointment in the office of respondent no.3. Applicant has further submitted that in similar case of another employee namely Shri Landge, who had completed 6 years of service had got retiral benefits i.e. service gratuity, retirement gratuity etc. Applicant has therefore submitted that it will be just and proper to grant him such benefits as granted to Shri Landge.

10. Learned P.O. has submitted that Maharashtra Civil Services (Compulsory Marathi Shorthand and Marathi Typing Examinations for English Stenographers and English Typists) Rules, 1991 are not attracted in this case as those are in respect of English Stenographers and English Typists only. The present applicant was working as a Clerk, and therefore, the applicant cannot claim exemption under those rules. Learned P.O. has submitted that the case of Shri Landge is different than the applicant. Shri Landge was permanent government employee and he had completed continuous 6 years'

government service, and therefore, he got his admissible retiral benefits. It is also submitted by the learned P.O. that the applicant has not completed 5 years continuous service, however, in view of the order of the Tribunal his service period is reckoned as 5 years but he was not made permanent in any post. Therefore, applicant is not entitled to get service gratuity and retirement gratuity in view of Rules 110 and 111 of the MCS Pension Rules, 1982. However, in view of Rule 30 r/w Appendix II of the Pension Rules, terminal benefits are granted to him. Accordingly, respondent no.4 sanctioned terminal gratuity to the applicant. It is also submitted that the order is in consonance with the provisions of Rules 30, 110 and 111 of the M.C.S. Pension Rules, 1982.

11. On going through the provisions of Rules 110 and 111 of the Pension Rules, 1982 it is crystal clear that the service gratuity and retirement gratuity can be granted to the permanent government employees only. The applicant was not made permanent and benefits of permanency were not extended to him. This fact is evident from the letter dated 22-05-2015 (page 20) issued by the respondent no.3 and entry in that regard was

taken in the service book of the applicant (page no.21). As the applicant was not permanent government employee, he is not entitled to service gratuity and retirement gratuity in view of provisions of Rule 110 and 111 of the MCS Pension Rules, 1982. However, applicant is granted terminal benefits and gratuity in view of the provisions of Rule 30 r/w. Appendix II of the MCS Pension Rules. This fact is supported by government decision dated 04-01-2008.

12. Therefore, in my view there is no illegality in the order passed by the respondent no.4 on 21-10-2015. The applicant is not entitled to get pro-rata service gratuity and retirement gratuity as claimed by the applicant as he was not made permanent in any post by the respondents till his retirement. The respondents have rightly granted terminal benefits i.e. gratuity of Rs.14080/-. I, therefore, found no substance in the contention of the applicant. There is no merit in the O.A. Therefore, it deserves to be dismissed. Hence, O.A. stands dismissed with no order as to costs.

MEMBER (J)