

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 982/2018**

Chandralekha d/o Rupsingh Pusam  
(maiden name: Chandralekha wd/o late  
Motiramji Kangale),  
Aged about 66 years, Occ-Retired,  
R/o Plot No.48, Ujjwal Society,  
Near Gorde Layout, Jaitala Road,  
Nagpur-22.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Social Justice and  
Special Assistance,  
Mantralaya, Mumbai-400 032.
- 2) The Commissioner of Social Welfare,  
3, Church Road, Pune.
- 3) The Regional Deputy Commissioner,  
Social Welfare, Opposite I.T.I.,  
South Ambazari Road, Nagpur.
- 4) The Assistant Commissioner,  
Social Welfare, Opposite I.T.I.,  
South Ambazari Road, Nagpur.

**Respondents**

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Shri P.D. Meghe, Ld. counsel for the applicants.  
Shri A.M. Khadatkhar, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri M.A. Lovekar, Member (J).**

**Dated: - 27<sup>th</sup> January 2022.**

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Heard Shri P.D. Meghe, learned counsel for the applicant and Shri A.M. Khadatkar, Ld. P.O. for the respondents.

2. In this O.A., the applicant has impugned—

(i) Order dated 1.3.2018 (Annexure A-1) treating the period of her absence from 12.1.2007 to 1.1.2008 as period of extraordinary leave without pay,

(ii) Order dated 28.3.2018 (Annexure A-2) imposing punishment of deduction of 6% amount from her pension amount for a period of one year, and

(iii) Order dated 24.1.2018 (Annexure A-3) treating the period from 2.1.2008 to 18.1.2010 as period of suspension.

The applicant has further claimed interest for delayed payment of pension and gratuity, U/s 129 (A) and 129 (B) of the Maharashtra Civil Services (Pension) Rules, 1982.

3. Undisputed facts—

(i) In the year 2006, the applicant was working as House Master at Sant Chokha Mela Government Boys Hostel, Nagpur.

(ii) On 15.7.2006, respondent No.2 visited the hostel and issued certain instruction to the applicant vide communication (Annexure A-4).

(iii) On 19.7.2006, the Secretary of the Department visited the hostel and issued certain instructions to the applicant vide communication (Annexure A-5).

(iv) On 12.9.2006, the applicant informed the concerned engineer vide Annexure A-6 that the hostel was not getting electricity supply since last two days because of bursting of D.P., and to restore the supply by laying a cable.

(v) By order dated 20.9.2006 (Annexure R-1 / A-18), the applicant was directed to proceed on compulsory leave, as substance was found in complaints received against her.

(vi) By order dated 11.1.2007 (Annexure R-2), order dated 20.9.2006 (Annexure R-1) was revoked, and the applicant was transferred to Government Boys' Hostel, Gaddigodam. (According to the applicant, she was not served with this order).

(vii) By order dated 16.5.2007 (Annexure R-4), the applicant was asked as to why she had not joined at Gaddigodam, why she had not made any communication and whether she desired transfer at some other place.

(viii) By letter dated 12/16 July, 2007 (Annexure R-6), the applicant was asked to join at Gaddigodam or else, face departmental action.

(ix) By order dated 2.1.2008 (Annexure R-3), the applicant was placed under suspension.

(x) By order dated 19.1.2010, suspension of the applicant was revoked.

(xi) Alongwith covering letter dated 1.3.2010 (Annexure A-7), the applicant was served with the charge-sheet.

(xii) The applicant submitted her defence dated 21.4.2010 (Annexure A-8) and denied all the charges.

(xiii) On 31.7.2010, the applicant stood retired on superannuation.

(xiv) The enquiry was conducted against the applicant. With covering letter dated 26.8.2014 (Annexure A-9), copy of Enquiry Report was forwarded to her.

(xv) In the enquiry, out of nine charges, one charge i.e. charge No.2 (disruption of electricity supply) was held to be partly proved and charge No.5 (failure to cut wild grass) was held to be proved.

(xvi) Thereafter, show cause notice dated 21.6.2017 (Annexure A-10) proposing punishment of deduction of 6% amount from her pension for one year was issued to the applicant.

(xvii) The applicant gave reply dated 2.8.2016 (Annexure A-11) to the show cause notice.

(xviii) The applicant then filed O.A. No. 76/2017 before this Tribunal. By order dated 2.8.2017 (Annexure A-12), direction was given to release pension and pensionary benefits payable to the applicant. Further direction was issued to take decision pursuant to show cause notice issued to the applicant, within three months.

(xix) By order dated 1.3.2018 (Annexure A-1), period of absence of the applicant from 12.1.2007 to 1.1.2008 was treated as extra ordinary leave without pay.

(xx) By order dated 28.3.2018 (Annexure A-2), punishment of deducting 6% amount from the pension payable to the applicant for a period of one year was imposed.

(xxi) By order dated 28.3.2018 (Annexure A-13), show cause notice was issued to the applicant as to why period of her suspension from 2.1.2008 to 18.1.2010 be not regularized as period of suspension.

(xxii) The applicant gave reply dated 29.3.2018 (Annexure A-14) to show cause notice dated 28.3.2018.

(xxiii) The applicant then filed Contempt Petition No.05/2018 in this Tribunal, which was decided on 12.7.2018 (Annexure A-15). By this order, liberty was given to the applicant to make representation for interest on delayed payment of retiral benefits.

(xxiv) By order dated 24.10.2018 (Annexure A-3), by rejecting representation of the applicant not to treat the period from 2.1.2008 to 18.1.2010 as period of suspension was rejected.

4. It was submitted by Shri P.D. Meghe, learned counsel for the applicant that undisputed facts / chronology (which is given above) would suffice to come to the conclusion that all the reliefs claimed by the applicant deserve to be granted.

5. Reply of respondent Nos. 1 to 4 is at pages 79 to 85. They resisted the application on the following grounds:-

(i) Directions issued by this Tribunal in O.A. No.76/2017 and C.P. No.05/2018 have been obeyed by releasing pensionary benefits. Detailed representation made by the applicant was considered. Its rejection was communicated to the applicant vide letter dated 27.3.2019.

(ii) By letter dated 11.1.2007, the applicant was directed to join at Gaddigodam. She disobeyed these directions. Therefore, under Rule 63 (6) of the M.C.S. (Leave) Rules, 1981, the period of absence from 12.1.2007 to 1.1.2008 was treated as extraordinary leave.

(iii) The Competent Authority, by exercising powers vested in it under sub-rules (5) and (7) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during

Suspension, Dismissal and Removal) Rules, 1981 treated suspension period of the applicant as period of suspension. It would follow that the applicant would not be entitled to get the increments falling due in this period.

(iv) Because of the pendency of the departmental enquiry, pensionary benefits of the applicant were withheld as provided under Rule 130 of the M.C.S. (Pension) Rules, 1982. Therefore, question of paying interest for alleged delay in making payment of retiral benefits would not arise.

6. In her rejoinder (at pages 88 to 95), the applicant has raised following grounds:-

(i) In the departmental enquiry, charge No.9 was framed in respect of alleged disobedience of order of transfer by the applicant. It was held to be not proved. Therefore, period from 12.1.2007 to 1.1.2008 ought not to have been treated as extraordinary leave without pay.

(ii) Charge No.2 was held to be partly proved because there was no electricity supply to the hostel since afternoon of 8.9.2006, there were holidays on 9/10 September, 2006, and electricity supply was restored on 12.9.2006. This showed that the charge that there was no electricity supply to the hostel for 15 days was highly exaggerated.

(iii) Considering nature of charge No.2 which was held to be partly proved and charge No.5 which was held to be proved, punishment of deducting 6% amount from the pension for a period of one year was highly disproportionate.

7. Charge No.2 was, "माननीय मंत्रीमहोदयांनी भेट देण्याच्या 15 दिवस पूर्वीपासून वसतिगृहाचा विदूतपुरवठा खंडित होता". About this charge, the Enquiry Officer recorded a finding that electricity supply was disrupted in the afternoon of 8.9.2006, there were holidays on 9/10 September, 2006 and electricity supply was restored on 12.9.2006. Charge No.5 levelled against the applicant was, "माननीय श्री. सुमित मलिक, माननीय सचिव यांनी वसतिगृहास भेट दिली असता वसतिगृह परिसरात गाजर गवत 3 ते 4 फूट वाढलेले होते. संपूर्ण परिसर अस्वच्छ होता". This charge was held to be proved by the Enquiry Officer.

8. Affidavit-in-reply filed by respondent No.4 is at pages 140 to 145. To this reply, respondent No.4 has annexed *inter alia* letter dated 16.5.2007 (Annexure R-4). Contents of this letter are as follows:-



“आपणास कळविण्यात येते की, आपणास या कार्यालयाचे आदेश क्र.११६४ दि. २०.९.२००६ अन्वये गैर व्यवस्थापन प्रकरणी रजेवर पाठविण्यात आलेले होते व सदर आदेश क्र. ११३ दिनांक ११.१.२००७ चे आदेशान्वये रद्द करण्यात आले. परंतु आपण अध्यापही आपले पदावर रुजू झाले नसल्याचे उपरोक्त संदर्भाकीत पत्रावरून दिसून येते व आपले लेखी म्हणणे सुद्धा कळविले नाही.

करिता आपणास पुन्हा याद्वारे सूचित करण्यात येते की, वसतिगृहातील परिस्थिति निवळल्यामुळे आपण त्वरित पदस्थापनेच्या ठिकाणी रुजू व्हावे. आपणास वसतिगृहात रुजू व्हावयाचे नसल्यास अथवा अन्यत्र बदली पाहिजे असल्यास याबाबतचे लेखी निवेदन त्वरित सादर करावे.”

Postal receipt of this letter is at page No.151. It bears residential address of the applicant. In this O.A., the applicant has given the same address. Postal receipt further bears an endorsement “refused”. On the basis of this endorsement, service of the letter (Annexure R-4) on the applicant can be inferred. It may be reiterated that aforesaid charge No.9 refers to letter issued anterior in point of time i.e. on 14.3.2007. However, Annexure R-4 and accompanying postal receipt shall suffice to conclude that the applicant was duly served with this communication dated 16.5.2007, on 18.5.2007. This circumstance considered with the negative finding on charge No.9 discussed above would lead to the conclusion that period of absence of the applicant from 12.1.2007 to 17.5.2007 could not have been treated to be the period for which she was not entitled to get full pay. The applicant can be taken to

have been served with the letter dated 16.5.2007 on 18.5.2007 as reflected in the postal receipt attached to the letter (Annexure R-4). Therefore, the order of treating the period of absence as extraordinary leave without pay can be sustained only to the extent of period from 18.5.2007 to 1.1.2008. One of the impugned orders i.e. Annexure A-1 will have to be accordingly modified.

9. By order dated 24.10.2018 (Annexure A-3), period of suspension of the applicant from 2.1.2008 to 18.1.2010 was treated as period of suspension as provided under sub-rules (5) & (7) of Rule 72 of the M.C.S. (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981. Relevant portion of the said Rule reads as under:-

**“72. Reinstatement of a Govt. servant after suspension on specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.**

(1) x x x

(2) x x x

(3) x x x

(4) x x x

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after

considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) x x x

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority directs that it shall be so treated for any specified purpose:

Provided that if the Govt. servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Govt. servant.

(8) x x x

(9) x x x

Sub-rule (2) of Rule 72 takes care of a contingency of Government employee dying during suspension. Sub-rule (3) takes care of a contingency when the Government comes to the conclusion that suspension of the employee was wholly unjustified. In the instant case, neither of these contingencies has arisen. Therefore, the competent authority could proceed under sub-rule (5) quoted above. The applicant was ultimately found guilty, though, only under two out of nine charges. On behalf of the applicant, no cogent ground was shown to interfere with the order dated 24.10.2018 (Annexure A-3).

10. I have referred to charge No.2 and charge No.9 levelled against the applicant. Charge No.2 was held to be partly proved. Charge No.5 was held to be proved. So far as charge No.2 is concerned, there was material to show that the applicant had taken necessary steps for restoration of electricity supply. Charge No.5 was in respect of not cutting wild grass in time. Considering the nature of charges which were held to have been proved, punishment of deducting 6% amount from pension for a period of one year appears to be harsh. I have, therefore, come to the conclusion that the matter needs to be remanded to the competent authority to appropriately scale down the punishment so that it will be proportionate to the proved facts.

11. The applicant has claimed interest on payment of retiral benefits. On this point, contention of the respondents is to be found in paras 10 and 11 of their affidavit-in-reply. These paras read as under:-

**“10.** It is submitted that, in the light of departmental enquiry pending against the applicant and pursuant to that, the pensionary benefits of the applicant were withheld under Rule 130 of the M.C.S. (Pension) Rules, 1982. Thus, the demand of the applicant for want of interest w.e.f. 1.8.2020 @ 12% p.a. till actual payment of gratuity and arrears of pension to the applicant is not legitimate.

**11.** It is further submitted that, all pensionary benefits payable to the applicant have been totally released to

her. Therefore, nothing survives in the present O.A. It is further submitted that, there is no deliberate delay in deciding the departmental enquiry. Therefore, there is no question of saddling these respondents with interest which otherwise is not the legitimate demand of the applicant which please be considered by this Hon'ble Tribunal."

12. Rule 130 of the M.C.S. (Pension) Rules, 1982 provides for payment of provisional pension where departmental or judicial proceeding may be pending. Rule 1 (c) of said Rule lays down that no gratuity shall be paid to the Government servant until the conclusion of departmental or judicial proceeding and issue of final orders thereon. In **Prabhakar V/s State of Maharashtra (Judgment dated 23.7.2008)**, Division Bench of the Bombay High Court has held—

"In other words, interest becomes payable, only if gratuity has been authorised. Considering the language of Rule 130 (1) (c), gratuity cannot be authorized till the departmental proceedings had concluded and a final order was passed thereon. In our opinion, therefore, a conjoint reading of Rule 130 (1) (c) and Rule 129 (A) (1) makes it clear that interest for delayed payment of gratuity is payable only in the event of the conclusion of the departmental proceedings and payment of gratuity is authorised and after such authorisation it is not paid within three months."

13. To sum up, order dated 1.3.2018 (Annexure A-1) will have to be modified. So far as order dated 28.3.2018 (Annexure A-2) is concerned, matter will have to be sent to the competent authority to consider the question of appropriately scaling down quantum of punishment. Order dated 24.10.2018 (Annexure A-3) cannot be faulted, as the same is in accordance with sub-rule (5) and sub-rule (7) of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981. Reasons have been recorded above as to why the applicant would not be entitled to claim interest on delayed payment of retiral benefits, since the payments were withheld in terms of Rule 130 of M.C.S. (Pension) Rules, 1982. Hence, the following order:-

### **ORDER**

The O.A. is allowed in the following terms—

- (i) Order dated 1.3.2018 (Annexure A-1) is modified. Period of absence of the applicant from 12.1.2007 to 17.5.2007 shall be treated as duty period.
- (ii) The competent authority shall take a decision about appropriately scaling down quantum of punishment imposed by order dated 28.3.2018 (Annexure A-2).
- (iii) Order dated 24.10.2018 (Annexure A-3) is maintained.

- (iv) Prayer of the applicant to award interest on payment of retiral benefits is rejected.
- (v) No order as to costs.

(M.A.Lovekar)  
Member (J)

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