

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1008 OF 2022

**DISTRICT : RAIGAD
SUBJECT : PENSIONARY
BENEFIT**

Smt. Namita Nathuram Talkar,)
Aged : 62 years, Occ. Retired,)
R/at. Room No.205, A Wing, Bramhan Aali,)
Ramnath Road, Alibag, Tal. Alibag, Dist. Raigad) ... **Applicant**

Versus

- 1) The Commissioner & Director)
Of Municipal Administration,)
Municipal Council Administration)
Directorate, Worli, Mumbai.)
- 2) The Collector, Raigad.)
Urban Development, Raigad.)
- 3) The Chief Executive Officer,)
Municipal Council, Khopoli,)
Tal. Khalapur, Dist. Raigad.)
- 4) The Commissioner,)
Panvel Municipal Corporation,)
Panvel, Tal. Panvel, Dist. Raigad.)... **Respondents**

Shri Rajeshwar G. Panchal, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.

Shri Dushyant S. Pagare along with Ms. Urmila Palekar, learned Advocate for the Respondent No.3.

Shri Mateen Shiakh, learned Advocate for the Respondent No.4.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 21.12.2022.

JUDGMENT

1. The Applicant who stands retired on 31.08.2017 has filed this O.A. seeking direction to the Respondents to pay her retiral benefits with interest, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant was Assistant Estate Manager on the establishment of Respondent No.4 – The Commissioner, Panvel Municipal Corporation, Panvel. She was due to retire on attaining age of superannuation on 31.12.2018. However she took voluntary retirement w.e.f. 31.08.2017 which was sanctioned by Respondent No.1 – The Commissioner & Director of Municipal Administration, Municipal Council Administration, Mumbai by order dated 25.07.2018 and copies of order were sent to the Respondent No.4 for further action to release retiral benefits. The Applicant kept on making representation for retiral benefits from time to time but not responded. As such for near about 5 years nothing was paid to her towards retiral benefits. Ultimately, she filed the present O.A. for direction to the Respondents to release retiral benefits with interest on belated payment.

3. Heard Shri R.G. Panchal, learned Advocate for the Applicant, Smt. A.B. Kologi, learned Presenting Officer for the Respondents, Shri D. Pagare along with Ms. U. Palekar, learned Advocate for the Respondent No.3 and Shri Mateen Shiakh, learned Advocate for the Respondent No.4.

4. At the very outset it needs to be stated that in Affidavit-in-Reply all that Respondents are shifting responsibility on each other for delayed payment of retiral benefits. Before posting of the Applicant with Respondent No.4 - The Commissioner, Panvel Municipal Corporation, Panvel, she was on the establishment of Respondent No.3 – The Chief Executive Officer Municipal Council, Khopoli, District – Raigad from 1995 to 2013. Thereafter, she was transferred on the establishment of

Respondent No.4. It is disgusting that even till date of filing of O.A., no steps were taken by the Respondents and it is only after filing of O.A. in pursuance of direction given by the Tribunal certain steps were taken. Ultimately, Gratuity is paid on 13.12.2022 and Leave Encashment is paid on 09.12.2022, Provisional Pension for six months i.e. upto Feb-2018 was paid quite belatedly on 14.11.2022. Regular Pension is sanctioned quite belatedly as seen from the order of Accountant General dated 29.11.2022. The issue therefore remains about the interest on the belated payment on retirement dues.

5. At the very outset it needs to be stated that there was no legal hurdle to withheld retiral benefits after retirement of the Applicant. Neither there was any criminal prosecution nor D.E. against her. Indeed, in view of acceptance of V.R.S. that issue does not survives. Suffice to say, there was no legal hurdle to withheld retirement dues.

6. Maharashtra Civil Services (Pension) Rules, 1982 provides necessary steps to be taken by the head of the Office in the matter of payment of retiral dues. In this behalf, reference of Rule 118 to 120 would be relevant. Rule 118 of (Pension) Rules, 1982 provides that head of the department shall have a list prepared every six months about the Government servants who are due to retire within the next 24 to 30 months of that date. In present case the Applicant has taken voluntary retirement, and therefore Rule, 118(3) is material which inter-alia provides that in the case of a Government servant retiring for reasons other than by way of superannuation, the Head of the Office shall promptly inform the Audit Officer concerned, as soon as the fact of such retirement becomes known to him. Whereas, Rule, 120 provides that Head of the Office shall undertake the work of preparation of pension papers two years before the date on which they are going to retire. As stated above, the Applicant was due to retire on superannuation on 31.08.2017, and therefore in terms of Rule, 120 of (Pension) Rules, 1982 work of Pension papers ought to have been commenced before two years

of due date of retirement. However, no such steps were taken. The worst part is that even after voluntary retirement no further expeditious steps were taken to release retirement dues. It is only after filing of O.A., Department woke-up and started the process. Respondent No.1- The Commissioner & Director of Municipal Administration, Municipal Council Administration, Mumbai is trying to shift the blame to the Respondent No.3 - The Chief Executive Officer Municipal Council, Khopoli, District - Raigad and Respondent No.4 - The Commissioner, Panvel Municipal Corporation, Panvel. It appears that service book itself was forwarded by the Department on 18.10.2022, as submitted by learned P.O. Respondent No.3 & Respondent No.4 are also passing buck on each other. Indeed, it is for Respondent No.1 - The Commissioner & Director of Municipal Administration, Municipal Council Administration, Mumbai being head of Mumbai administration to ensure that retiral benefits are paid in terms of Rules and where it is not paid, liability of interest cannot be avoided. It is for Respondent No.1 to enquire about the delay and to fix responsibility on the concerned for delay in payment of retirement dues.

7. In terms of Rule 129-A of Rules, 1982 if payment of retirement gratuity are delayed from the period of three months and it is clearly established that the delay in payment was attributable interest at the rate applicable to GPF shall be paid in respect of the period beyond three months. It further provides that no interest shall be paid where provisional gratuity is paid. In present case admittedly provisional gratuity was not paid. Since, the Applicant stands retired on 31.08.2017, gratuity was payable and due on 01.12.2017. However, admittedly it is paid on 13.12.2022. The Administrative lapses, inaction and negligence on the part of concerned for not taking appropriate steps is obvious from the record.

8. As regard, Leave Encashment it was to be paid within one month from the date of retirement. However it is paid on 09.12.2022. In this

behalf G.R. dated 20.06.1996 provides that if amount of Leave Encashment is not paid within one month from the date of retirement, Government servant will be entitle for interest. In present case, there was absolutely no hurdle to grant leave encashment and no fault is attributable to the Applicant. The Respondents therefore cannot avoid the liability to pay interest on the belated payment on leave encashment which was due on 01.09.2017 but paid on 09.12.2022.

9. As regard Pension, Rule 129-B of M.C.S. (Pension) Rules provides, where the payment of pension is authorized after six months from the date of his payment became due, an interest at the rate applicable to G.P.F. shall be paid in respect of period of beyond six months. In present case provisional pension for six months only i.e. from Sept. 2017 to Feb. 2018 was also paid quite belatedly on 14.11.2022 i.e. during pendency of O.A. It is only after filing of O.A. recently regular pension is sanctioned on 29.11.2022. Here is also not a case of the Respondent that process of the pension papers were delayed because of noncompliance on the part of the Applicant. Pension proposal has been forwarded quite belatedly and administrative lapses, inaction and negligence on the part of Respondents is clearly spelt out.

10. In view of above, liability to pay interest on the belated payment on the part of Respondent is joint and several. Respondent No.1 may hold enquiry to fix responsibility and may take further action for recovery of the same from the concerned in accordance to law.

11. Totality of the aforesaid discussion leads me to conclude that the Applicant is entitled to interest on belated payment at the rate of G.P.F. and Respondents are liable to pay the same jointly or severally. Hence, the order.

ORDER

- A) The Original Application is allowed partly.
- B) Respondents are directed to pay interest on belated payment of Gratuity, Leave Encashment and Pension in respect of the period beyond stipulated period as discussed above at the rate applicable to G.P.F. It should be calculated accordingly and paid to the Applicant within a month from today.
- C) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 21.12.2022
Dictation taken by: N.M. Naik.

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