

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1311 OF 2022

**DISTRICT : PUNE
SUBJECT : PENSIONARY
BENEFITS**

Mr. Vinod Ramchandra Ghandankush,)
Age : 60 years, Occ. Service)
R/at. Blacksmith Park.2, Flat No.701,)
Plot No.14, Sector-16, Opp. Pillay College,)
New Panvel – 410 206.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Secretary, Home Department,)
Mantralaya, Mumbai.)
- 2) The Commissioner of Police,)
Pune City, Sadhu Vaswani Rd.,)
Near GPO Camp, Pune 411 001.)
- 3) The Assistant Commissioner of Police,)
(Admn), Camp, Sadhu Vaswani Road,)
Near GPO, Pune 411 001.)...**Respondents**

Ms. Pooja Mankoji, learned Advocate holding for Shri Sandeep S. Dere, learned Advocate for the Applicant.

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

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

DATE : 23.01.2023.

JUDGMENT

1. The Applicant, who stood retired on 31.05.2021, raised grievance of delay in releasing retiral benefits and sought direction to the Respondents to pay the same with interest. The Applicant is claiming Gratuity with interest, interest on Leave Encashment and Group

Insurance Scheme (GIS). Undisputedly, at the time of retirement there was neither any criminal prosecution nor D.E. initiated against the Applicant and there was no legal hurdle to release his legitimate dues. The perusal of record reveals that the service book was sent to pay verification unit in the month of October 2022 i.e. after retirement of the Applicant. Whereas, Maharashtra Civil Services (Pension) Rules, 1982 mandates to undertake work of preparation of Pension papers well in advance in time limit so that retiral benefits are released without undue delay.

2. At this juncture, it would be apposite to refer Rule 120, 121 and 122 of Maharashtra Civil Services (Pension) Rules, 1982 which are as under :-

“120. Preparation of pension papers

- (1) Every Head of Office shall undertake the work of preparation of pension papers in Form 6 in respect of Non-gazetted Government servant as well as Gazetted Government servant, whose pay and allowances are drawn by him on establishment bills, two years before the date on which they are due to retire on superannuation ; or on the date on which they proceed on leave preparatory to retirement whichever is earlier.*
- (2) The Audit Officer shall undertake the work of preparation of pension papers in Form 6, two years before the date on which a Gazetted Government servant, other than mentioned in sub-rule (1) above who is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.*
- (3) The time schedule and procedure prescribed in these rules shall be followed by the Audit Officer on whom the responsibility for preparation of pension papers in respect of Gazetted Government servants under sub-rule (2) has been entrusted.*
- (4) In the case of a Government servant holding a lien, or a suspended lien on a Non-gazetted post and holding a Gazetted post in a temporary or officiating capacity at the time of retirement and whose pay and allowances are not drawn by the Head of Office on establishment bills, the Head of Office shall send the service book of the Government servant concerned to the Audit Officer two years in advance of the date of retirement of such Government servant or as soon as possible if such Government servant is promoted to*

officiate in a Gazetted post only during the last year of his service after verifying that the certificate of verification relating to non-gazetted service has been recorded and that the service book is complete in all respects.

121. Stages for the completion of pension papers

(1) *The Head of Office shall divide the period of preparatory work of two years referred to in rule 120 in the following three stages:-*

(a) First Stage - Verification of service :- *(i) The Head of Office shall go through the service book of the Government servant and satisfy himself as to whether the certificates of verification for the entire service are recorded therein.*

(ii) In respect of the unverified portion or portions of service, he shall arrange to verify the portion or portions of such service, as the case may be, with reference to pay bills, a quittance rolls or other relevant records, and record the necessary certificates in the service book.

(iii) If the service for any period is not capable of being verified in the manner specified in sub-clause (i) and sub-clause (ii), that period of service having been rendered by the Government servant in another Office or Department, a reference shall be made to the Head of Office in which the Government servant is shown to have served during that period for the purpose of verification.

(iv) If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-clause (i) , or sub-clause (ii), or sub-clause (iii), the Government servant shall be asked to file a written – statement on plain paper stating that he had in fact rendered that period of service, and shall , at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall, in support of such declaration, produce all documentary evidence and furnish all information which is in his power to produce or furnish.

(v) The Head of Office shall, after taking into consideration the facts in the written-statement and the evidence produced and the information furnished by that Government servant in support of the said period of service, admit that portion of service as having been rendered for the purpose of calculating the pension of that Government servant.

(b) Second Stage – Making good omission in the service book :- *(i) The Head of Office while scrutinizing the certificates of verification of service, shall also identify if there are any other omissions, imperfections or deficiencies*

which have a direct bearing on the determination of 'Pensionable Pay' and the service qualifying for pension.

(ii) Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i) of this clause. Any omissions, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the service book.

(iii) Calculation of Pensionable Pay :- For the purpose of calculation of pensionable pay, the Head of Office shall verify from the service book the correctness of the pay drawn or to be drawn during the last ten months of service. In order to ensure that the pay during the last ten months of service has been correctly shown in the service book, the Head of Office may verify the correctness of pay for the period of twenty-four months only, preceding the date of retirement of a Government servant, and not for any period prior to that date.

(C) Third Stage – Obtaining Form 5 by the Head of Office :- *Eight months prior to the date of retirement of the Government servant, the Head of Office shall obtain Form 5 from the Government servant, duly completed.*

(2) Action under clauses (a), (b) and (c) of sub-rule (1) shall be completed eight month prior to the date of retirement of the Government servant.

122. Completion of pension papers

The Head of Office shall complete Part I 1(and Part-III) of Form 6 not later than six months before the date of retirement of the Government servant.”

3. As such, the responsibility has been fixed upon the Head of Office to undertake the work of completion of pension papers well in advance as to submit the same to the concerned Authority so that pension and other retiral benefits are paid to a Government servant within prescribed period. However, in the present case, no such steps are taken. It clearly exhibits lapses and negligence on the part of concerned which deprived the Applicants from utilizing their retiral benefits.

4. All that learned P.O. tried to contend that because of COVID-19 Pandemic situation and insufficiency of staff in pay verification unit service book was not verified within reasonable time and it caused delay. This is the only ground raised by learned P.O. to contest the O.A.

5. In terms of M.C.S. (Pension) Rules, 1982 referred above, steps for preparation of Pension papers and service book ought to have been initiated before two years of retirement. Thus, in terms of Rules the process ought to have been initiated on or before 31.05.2019. That time there was no COVID-19 Pandemic situation in State. Had respondents initiated it within time as mandated under M.C.S. (Pension) Rules, 1982 the Applicant would have received his legitimate dues within reasonable time after retirement. However, due to sheer negligence and inaction on the part of concerned, no such steps were taken well in advance. Therefore the ground of COVID-19 Pandemic situation is not at all relevant in the present matter. *Ex-facie* there are lapses and negligence on the part of concerned. Resultantly the Applicant is deprived of his retiral dues. Worst part is that till date the Gratuity is not paid. Only after filing of O.A. some steps were taken by the Respondents and Leave Encashment is paid belatedly.

6. Insofar as Gratuity is concerned it is payable after three months after retirement in terms of Rule 129 (A) of M.C.S. (Pension) Rules, 1982 which *inter-alia* provides that where payments of Gratuity is delayed and delay in payment is attributable to administrative lapses, interest at the rate applicable to GPF shall be paid on Gratuity in respect of payment of three months. It further provides that no interest shall be applicable in case if provisional Gratuity is paid. Admittedly, in the present case no such provisional Gratuity is paid. Gratuity was payable on 01.09.2021 but till date it is not paid. Respondents therefore cannot avoid liability to pay Gratuity along with interest at the rate payable to GPF since payment is delayed due to sheer Administrative lapses.

7. As regard, Leave Encashment it was payable in terms of G.R. dated 20.06.1996 within one month from the date of retirement. It further provides if not paid within one month Government servant is entitled for interest. There was no legal hurdle to withheld Gratuity as discussed above. Thus, Leave Encashment was payable on 01.07.2021 but paid on 13.01.2023. Respondents are therefore liable to pay interest for the period by which it is delayed.

8. Lastly, it comes to G.I.S. which was payable within three months in terms of G.R. dated 27.05.1992, however, it is paid on 13.01.2022 though payable on 01.09.2021. Respondents are thus liable to pay interest for belated period.

9. Insofar as Pension is concerned, Department has already granted provisional Pension, and therefore interest on provisional Pension does not survives in terms of Section 129(B) of M.C.S. (Pension) Rules, 1982.

10. The totality of the aforesaid discussion leads me to sum up that the Applicant is deprived of retrial benefits discussed above due to sheer administrative lapses and negligence on the part of Respondents. Respondents therefore cannot avoid liability to pay interest on Gratuity, Leave Encashment, G.I.S. Hence, the order.

ORDER

- A) The Original Application is allowed.
- B) Respondents are directed to pay Gratuity along with interest for the period from 01.09.2021 till date of actual payment at rate applicable to GPF and payment shall be made within one month from today.
- C) Respondents are further directed to pay interest on belated payment of Leave Encashment from 01.07.2021 to 13.01.2023 at the rate applicable to GPF deposit and it be paid within a month from today.

- D) Respondents are further directed to pay interest on belated payment of G.I.S. for the period from 01.09.2021 to 13.01.2022 at the rate applicable to GPF deposit and payment be made within a month from today.
- E) All the Respondents are jointly and separately liable to comply the order.
- F) Respondents are at liberty to fix responsibility of the same lapses and may recover the same from the concerned.
- G) No order as to costs.

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

Place: Mumbai
Date: 23.01.2023
Dictation taken by: N.M. Naik.

Uploaded on: _____