

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.313 OF 2020

**DISTRICT: PUNE
SUBJECT: RECOVERY**

Mr. Nitin Laxmikant Thade,)
Aged: 59 years, (dob: 24.08.1960),)
Occu.: Retired as Project Director District Rural)
Development Agency, Satara.)
R/at. 34, Father Michael Society, Nr. Sawant Petrol,)
Vishrantwadi, Pune 411015.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
The Additional Chief Secretary,)
Rural Development & Panchayat Raj Department)
Murzban Rd. Opposite CST, Azad Maidan, Fort)
Mumbai, Maharashtra - 400001.)
- 2) The Divisional Commissioner,)
Poona Club Amphitheatre, Council, Camp,)
Pune, Maharashtra – 411001.)
- 3) The Chief Executive Officer, ZP, Satara)
SH 58, Ajinkya Colony, Powai Naka, Satara.)... **Respondents**

Shri Sushant Prabhune, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 11.10.2021.

JUDGMENT

1. The Applicant has filed this O.A. for direction to Respondents to release his withheld retiral benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant stands retired on 31.08.2018 as Project Director, Zilla Parishad, Satara and after retirement provisional Pension, General Provident Fund (G.P.F.) and Group Insurance Scheme (G.I.S.) was granted. However, regular Pension, Leave Encashment and Gratuity have been withheld. Since the Applicant is deprived of getting these benefits for more than three years period and yet not released despite representations made by him ultimately he has filed the present O.A. for direction to the Respondents to release regular Pension, Gratuity and Leave Encashment.

3. Learned Advocate for the Applicant has pointed out that admittedly on the date of retirement i.e. on 31.08.2018, neither there was Departmental Enquiry (D.E.) nor criminal prosecution instituted or pending against the Applicant. He has further pointed out that indeed the Government by communication dated 06.07.2018 has certified that no D.E. is pending against the Applicant. He therefore submits that since on the date of retirement neither D.E. nor criminal prosecution was instituted or pending against the Applicant, the action of withholding Gratuity, Leave Encashment, and regular Pension is *ex-facie* illegal. He further submits that it is only in event of pendency of D.E. or criminal prosecution on the date of retirement only under Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982, Gratuity can be withheld.

4. Learned Advocate for the Applicant has further pointed out that it is only after three years recently charge-sheet dated 14.06.2021 is served upon the Applicant for regular D.E. under Rule 8 of MCS (Discipline & Appeal) Rules, 1979. Adverting to these aspects he submits that the retiral benefits of the Applicant could not have been withheld on the speculation of initiation of D.E. and its result in future.

5. Whereas, Shri A.J. Chougule, learned P.O. submits that even if there was no initiation of D.E. against the Applicant on the date of retirement, after retirement department noticed several financial irregularities in the tenure of the Applicant in between 23.06.2015 to 21.08.2018 were noticed, and therefore, D.E. initiated by order dated 14.06.2021 is well within limitation of four years as contemplated under Rule 27(2)(b)(i) of MCS (Pension) Rules, 1982. However, he fairly admits that on the date of retirement there was no such initiation of D.E. or criminal prosecution against him.

6. In view of submissions advanced at bar, issue posed for consideration is whether withholding regular Pension, Gratuity and Leave Encashment is permissible in law, since admittedly no D.E. or criminal prosecution was initiated or pending against the Applicant on the date of retirement.

7. Rule 130 of MCS (Pension) Rules, 1982 provides for withholding of Gratuity until the conclusion of Departmental or judicial proceeding and issuance of final order therein. Whereas Rule 27 of MCS (Pension) Rules, 1982 provides about the right of Government servant to withheld or withdraw Pension and further provides for initiation of D.E. after retirement provided it shall not be in respect of any event which took place more than four years before such initiation and secondly it should be with the sanction of appointing authority.

8. At this juncture, it would be apposite to reproduce Rule 27 and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982, which are as follows :-

“27. Right of Government to withhold or withdraw pension.-

(1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of

grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

2(a) The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment, -

(i) shall not be instituted save with the sanction of (Appointing Authority),

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment, shall be instituted in respect of a cause of action which arose or in respect of and event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

(5) Where Government decided not to withhold or withdrawn pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at the rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

“130. Provisional pension where departmental or judicial proceedings may be pending.

(1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date of which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. [Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

9. Thus undoubtedly, in terms of Rule 27, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of MCS (Pension) Rules, 1982. If in such enquiry, Pensioner is found guilty for grave misconduct & negligence committed during the period of his service for which he is charged then the Government is empowered to withhold or withdraw pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement nor criminal proceedings were instituted against the Applicant till retirement. It is only after three years of retirement by order dated 14.06.2021, D.E. was initiated for alleged mis-conduct under Rules 8 of MCS (Discipline & Appeal) Rules, 1979.

10. As regards Gratuity, Rule 130 (1)(c) provides that no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Here the legislature has not used the word "Pensioner" and has specifically used the word "Government Servant", which is significant in the present context. Thus it is explicit that for withholding of Gratuity or other retiral benefits, there has to be initiation of D.E. against the Government servant before or on the date of retirement. Once the Government servant stands retired, right to receive regular Pension and Gratuity accrues to him and it cannot be kept in abeyance or withheld only on the speculation of initiation of D.E. in future.

11. Learned P.O. could not point out any such provision or Rule empowering the Government to withheld Gratuity and regular Pension for initiation of D.E. in future. In absence of any such Rules empowering the Government to withheld retiral benefits on speculation of initiation of D.E. in future, action of withholding retiral benefits would be totally impermissible in law. In case where D.E. is initiated after retirement all that permissible is to withheld pension or to withdraw

pension as Government deems fit. In other words scope and outcome of D.E. initiated after retirement is very limited and it is only in event of positive findings in D.E. orders of withholding or deduction of Pension as Government deem fit can be passed. Suffice to say, Gratuity, Leave Encashment and regular Pension cannot be withheld where no D.E. or criminal prosecution is instituted before retirement. The right to receive Pension of public servant has been held to be covered under the “right to property” under Article 31(1) of the Constitution of India by **Hon’ble Supreme Court in (2020) 4 Sec. 346 Dr. Hira lal v/s. State of Bihar.**

12. Indeed this aspect is acknowledged by the Government of Maharashtra in G.R. dated 06.10.1998 reiterating the provisions of Rule 27 of MCS (Pension) Rules, 1982 wherein it is stated as under:-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार कार्यवाही होत नाही असे शासनाच्या निर्देशनास आले आहे. त्यामुळे अशा प्रकरणामध्ये सेवानिवृत्त कर्मचा-याचे महाराष्ट्र प्रशासकीय न्यायाधिकरण तसेच लोकआयुक्तांकडे निवृत्ती वेतन इत्यादि फायदे न मिळालेबाबत तक्रारी येतात. सदर प्रकरणामध्ये वित्त विभाग शासन निर्णय क्रमांकसेनिवे-१०९४/१५५/सेवा-४, दिनांक २४ एप्रिल १९९५ अन्वये शासनाला व्याजाचा खर्च विनाकारण करावा लागतो. तेव्हा सर्व शिस्तभंग विषयक प्राधिका-यांना पुन्हा निर्देशित करण्यात येते की, वित्त विभाग शासन परिपत्रक क्रमांक. सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार सेवानिवृत्त होणा-या शासकीय कर्मचा-याचे बाबतीत त्याच्या सेवानिवृत्तीपुर्वी महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील नियम २७ (६) नुसार विभागीय चौकशीची कार्यवाही सुरु करण्यात आली नसेल म्हणजेच आरोपपत्र देण्यात आले नसेल किंवा आधीच्या तारखेपासून निलंबनाधीन ठेवण्यात आले नसेल तर सेवानिवृत्तीचा दिनांकाला त्याचेविरुद्ध विभागीय चौकशी प्रलंबित आहे असे म्हणता येत नाही व त्यामुळे अशा कर्मचा-यांना सेवानिवृत्ती विषयक सर्व फायदे वेळेवर अदा करणे अपेक्षित आहे.”

13. Despite G.R. dated 06.10.1998 and settled legal position unfortunately Respondents withheld Gratuity, Leave Encashment and regular Pension of the Applicant which is totally erroneous and unsustainable in law.

14. The totality of aforesaid discussion leads me to sum-up that withholding of Gratuity, Leave Encashment and regular Pension is totally unsustainable in law. Respondents could not have withheld these benefits on the ground of initiation of D.E. in future. D.E. initiated by order dated 14.06.2021 will take its own course as may be

permissible in law but that can't be the ground to withhold retiral benefits. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release Gratuity, Leave Encashment and regular Pension within a month from today.
- (C) D.E. initiated by order dated 14.06.2021 shall be completed expeditiously in accordance to law within six months from today including passing final order therein. The decision in D.E. shall be accordingly communicated to the Applicant within a week thereafter.
- (D) No order as to costs.

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

Place: Mumbai
Date: 11.10.2021
Dictation taken by: N.M. Naik.