

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.596 OF 2019

**SUBJECT: INTEREST ON
DELAYED PAYEMENT.**

Shri Sahebrao Bhagwant Chaudhari,)
Aged 69 yrs, retired as Senior Clerk from office of)
belownamed Respondent No.1, R/o.66/B/34,)
Vansivat C.H.S. Ltd., Vrundavan Society, Thane (W).)... **Applicant**

Versus

- 1) The District Collector and District Magistrate,)
Mumbai City, Having Office at Old Custom House,))
S.B. Road, Fort, Mumbai-1.)
- 2) The State of Maharashtra,)
Through Principal Secretary, Revenue Department))
Having Office at Mantralaya, Mumbai – 400 032.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

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

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

DATE : 28.10.2021.

JUDGMENT

1. The Applicant has challenged communication dated 17.12.2018 whereby his claim for interest on delayed payment of Gratuity and Pension has been rejected.

2. The Applicant stands retired on 31.05.2009 on attaining age of superannuation. However, his Gratuity and regular Pension was withheld on the ground that after retirement, Show Cause Notice was issued to him and initiation of Departmental proceeding was in pipeline. However, ultimately initiation of Departmental Enquiry (D.E.) was not at

all materialized and by that time limitation of four (04) years for initiation of Departmental proceeding was already over. The competent authority therefore has taken decision not to initiate D.E. As such the Applicant contends that for no reasons his Gratuity and regular Pension was withheld. He was granted provisional Pension but it was also paid belatedly. At the time of retirement neither there was any Departmental proceeding nor judicial proceeding pending against him so as to withhold Gratuity or regular Pension. Gratuity of Rs.2,56,245/- (Two Lakhs Fifty Six Thousand Two Hundred and Forty Five Only) was paid on 18.09.2017 belatedly. Apart provisional Pension was paid quite belatedly in piecemeal from time to time. It is on this background he claimed interest on delayed payment of Gratuity and Pension which has been rejected by the impugned order.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant referred to Section 129-A of Maharashtra Civil Service (Pension) Rules, 1982 which entitle the Government servant interest on Gratuity and Pension if it is belated beyond a stipulated period. He has therefore pointed out that indeed there was no reason to grant provisional Pension only and Respondents ought to have granted regular Pension, he therefore prayed for interest.

4. Per Contra, learned P.O. sought to contend that after retirement Show Cause Notice was issued on 04.06.2019 for certain misconduct / irregularities committed by him during the course of service and initiation of D.E. was in pipeline, and therefore, it was delayed.

5. Thus what transpires from the pleading and submission advanced at bar that on the date of retirement of the Applicant neither judicial proceeding nor Departmental proceedings were initiated or pending against the Applicant. Once the Government servant retires without there being D.E. or judicial proceeding pending against him, right to service Gratuity and Pension accrues and it cannot be kept in abeyance.

True, even after retirement Departmental proceeding is permissible subject to compliance of rigor of Section 27(2) and (3) of Maharashtra Civil Service (Pension) Rules, 1982. It is only in the event of holding Government servant guilty competent authority can withhold or withdraw pension as it deems fit. However, once the Government servant retires and there is no such proceeding pending against him retrial benefits cannot be kept in abeyance.

6. Now turning to the facts of present case though after retirement Show Cause Notice was given to the Applicant, the fact remains that no such Departmental proceeding was really initiated since by that time period of limitation was over. Competent authority has taken decision not to initiate D.E. being impermissible in law. This being the position it would have to be held that there was absolutely no reason for withholding Gratuity and regular Pension of the Applicant. Provisional Pension has to be granted only in case were Departmental proceeding or judicial proceeding are pending at the time of retirement. Where no such proceedings were pending at the time of the retirement there was an obligation to pay regular Pension.

7. Whereas, in present case, admittedly though the Applicant stands retired on 31.05.2009 and Gratuity was payable on 01.09.2009 as provided under Section 129-A of Maharashtra Civil Service (Pension) Rules, 1982, same was paid on 18.09.2017 after almost eight years for no justifiable reasons. In so far as interest on Pension is concerned, Section 129-B of Maharashtra Civil Service (Pension) Rules, 1982 provide that where Pension is authorized after six months from the date when its payment became due, an interest at the rate applicable to General Provided Fund (G.P.F.) shall be paid on the amount of pension, made beyond six months.

8. As stated above the Applicant was entitled to regular Pension, since there was no hurdle much less legal one to grant the same.

However, he was granted provisional Pension which was also paid belatedly in piecemeal. It is explicit from the certificate issued by Collector (page 20 of paper book) that for two spells of provisional Pension was paid belatedly. He was paid provisional Pension from June 2009 to November 2009 on 27.03.2020 which is paid quite belatedly. Then again he was paid provisional pension from period of December 2009 to November 2010 on 29.11.2020. Needles to mention that it is paid after six months from the date when its payment was due, therefore claim of interest on delayed payment of provisional Pension for the period from June 2009 to November 2010 is justifiable to the extent of period by which it is delayed.

9. At this juncture while dictating this judgment learned P.O. intervene stating that infact Department has granted full Pension of Rs.7665/- (Seven Thousand Six Hundred and Sixty Five Only) per month that is admissible in D.E. and it is not the case of grant of provisional Pension. She has also produced Pension Payment Order (P.P.O) showing fixation of monthly Pension of Rs.7665/- (Seven Thousand Six Hundred and Sixty Five Only). Thus now it transpires at this moment that the Applicant was actually paid full Pension though belatedly. Indeed, this ground which is surfaced now ought to have been clarified in Affidavit-in-Reply but unfortunately it is silent on this point and Respondents proceeded on the assumption that the Applicant was granted provisional Pension. Surprisingly, in certificate issued by none other than Collector, payment is shown made towards provisional Pension. Respondents and learned P.O. ought to have taken care of this situation while filing Affidavit-in-Reply. Be that as it may, having noticed that what they paid to the Applicant was full pension and not provisional Pension the question of grant of less Pension by way of provisional Pension does not survives. Shri A.V. Bandiwadekar, learned Advocate for the Applicant also concedes this position.

10. Learned Advocate for the Applicant however tried to contend that even if what was paid to the Applicant was final Pension but it was paid belatedly, atleast in two phases, and therefore, the Applicant is entitled to interest for such belated payment of Pension from June 2009 to November 2009 paid on 27.03.2010 and for the Pension from December 2009 to November 2010 paid on 27.11.2010. Indeed, when the Applicant was granted full Pension he should not have termed it as provisional Pension. Government servant on retirement must be aware that what was his 100% Pension and what he has received. Thus the Applicant has also not come with clean hands and tried to misrepresent the facts. I am therefore not inclined to grant interest on amount of Pension.

11. However, the claim of the Applicant for interest on delayed payment on Gratuity is certainly acceptable since he is deprived of using Gratuity amount without any valid reason for the period of about eight years. In terms of section 129-A of Maharashtra Civil Service (Pension) Rules, 1982 where the Gratuity is paid beyond period of three months from the date, it is due and delay in payment of Gratuity is attributable to the administrative lapses, interest at the rate applicable to G.P.F. shall be paid on the amount of Gratuity in respect of payment beyond three months. In present case since, there was no legal hurdle, Gratuity ought to have been paid immediately after three months. The legal position is fairly settled that even in the case where Departmental proceedings were pending on the date of retirement and after retirement it was continued but a Government servant exonerated from the charges, Gratuity will have to be considered fall due on the date of his retirement and Government servant would be entitled for interest for the delayed period.

12. The totality of the aforesaid discussion leads me to conclude that the Applicant is entitled to interest on the amount of Gratuity and

impugned order dated 17.12.2018 is liable to be quashed. Hence the following order.

ORDER

- A) O.A. is allowed partly.
- B) Impugned communication dated 17.12.2018 is quashed and set aside to the extent of interest on Gratuity.
- C) Respondents are directed to calculate the interest at the rate of G.P.F. and accordingly interest to be paid for the period for which it is delayed, within two months from today. Failing which the said amount shall carry interest of 9% from today till full payment.
- D) No Order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 28.10.2021
Dictation taken by: N.M. Naik.