

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.838 OF 2022**

**DISTRICT: PANVEL  
SUBJECT: REGULARIZATION  
OF SUSPENSION OF  
RETIREMENT BENEFITS**

Shri Chandrashekhar Manohar Sanhal, )  
Age: 62 years )  
Occupation: Retired as Deputy Engineer (Civil) )  
Residential Address: Saisvar, B 101, Sector 2, )  
Plot No.20, Kharghar, Navi Mumbai – 410 210 )  
Mobile: 91 9892104095 )  
Email ID: cmsanhal23959@gmail.com )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Principal Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai-32. )
- 2) Executive Engineer )  
Public Works Department, )  
Panvel. )
- 3) Additional Chief Secretary, )  
Employment Guarantee Scheme, )  
Planning Department, )  
Mantralaya, Mumbai-32. )
- 4) Divisional Commissioner, )  
Amravati Division, Amravati. )... **Respondents**

**Shri Madhukar B. Kadam, learned Advocate for the Applicant.**

**Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.**

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 08.09.2022.**

### **JUDGMENT**

1. The Applicant has filed present O.A. for direction to Respondent Nos.3 & 4 to regularized suspension period from 29.02.2000 to 31.07.2000 and also sought direction to Respondent Nos.1 & 2 to release regular Pension and Gratuity.

2. Briefly stated facts are as under:-

The Applicant stands retired from the post of Deputy Engineer (Civil) on 30.09.2017. While the Applicant was in service, Respondent No.4 – the Divisional Commissioner, Amravati by order dated 29.02.2000 suspended the Applicant in contemplation of D.E. Later, Government by order dated 05.11.2011 imposed punishment of recovery of Rs.53,107/- (Rupees Fifty Three Thousand One Hundred and Seven Only) in ten installments and also imposed punishment of stoppage of one increment without cumulative effect. Appeal against it was dismissed on 11.09.2014.

3. There was one more D.E. initiated against the Applicant by issuance of chargesheet dated 08.09.2003 and was pending at the time of retirement of the Applicant. Regrettably, D.E. was continued for near about two decades without taking any steps for its expeditious disposal. Indeed, in terms of Circular dated 07.04.2008, D.E. is to be completed maximum within 1 year and where it is not possible to do so, extension is required to be obtained from the competent authority. It further provides that where D.E. is pending for more than five years, Government is required to initiate departmental proceeding against the concerned for such inordinate and huge delay in concluding the D.E. Despite this, D.E. was continued for two decades which shows apathy of Respondents.

4. The perusal of record reveals that the enquiry officer had submitted report on 17.11.2020 exonerating the Applicant from charge nos.1 to 6 but holding him guilty of charge no.7. In respect of charge

no.7, show cause notice was given to the Applicant to which he submitted detail explanation which came to be accepted by the Government. Ultimately, the Government by order dated 06.10.2021 exonerated the Applicant from D.E. Thus, after final order dated 06.10.2021 in 2<sup>nd</sup> D.E. there was no legal hurdle to withhold Gratuity and regular Pension to the Applicant. However, no steps were taken by the Respondents, and therefore the Applicant has been constrained to approach this Tribunal seeking direction to the Respondents to release Gratuity and regular Pension with interest on delayed payment of retiral benefits.

5. O.A. was taken up for admission on 24.08.2022 and having noted total inaction on the part of the Respondents the Tribunal has passed an eye-opening order on 24.08.2022. One week time was granted to learned P.O. to file Affidavit-in-Reply to O.A. Then matter was taken up for hearing on 02.09.2022. On that day it was noticed that it is only after taking cognizance of the matter the Divisional Commissioner, Amravati had issued notice dated 25.07.2022 calling upon the Applicant to submit his explanation about his treatment about the suspension period. The Applicant has submitted reply on 01.09.2022. Learned P.O. submits that appropriate order about the treatment of suspension period will be passed by the Divisional Commissioner, Amravati soon. According to the learned P.O. since the period of suspension is not regularized one way or other the Pension and Gratuity papers are not processed.

6. Today, learned P.O. again sought time to file Affidavit-in-Reply. Since, the Applicant is deprived of retiral benefits for more than six years I am not inclined to grant further time and the matter is required to be disposed of expeditiously.

7. Indeed, the D.E. was completed by order dated 05.11.2011 imposing punishment, and therefore appropriate orders regarding suspension period ought to have been passed by the competent

authority namely the Divisional Commissioner, Amravati within reasonable period. However, no further order was passed though the Applicant stood retired way back on 30.09.2017. Regret to note that even till date though period of five years is over from date of completion of D.E. no order is passed about suspension period. This clearly shows sheer negligence and inaction on the part of Respondent No.4. That apart non passing of appropriate order about the suspension period could not be reason for withholding Gratuity and Pension. The worst thing is that even provisional Pension is not paid for 5 to 6 years which again shows total insensitive approach of Respondent No.4 in particular. Indeed, non-passing of appropriate order about the suspension period cannot be a ground for withholding Gratuity and Pension. Assuming for a moment that authority decide to treat the period of suspension as such, in that event also Gratuity and Pension could not have been withhold.

8. As per Section 129-A of Maharashtra Civil Services (Pension) Rules, 1982 where payment of gratuity has been delayed beyond the period of three months and it is clearly established that delay in payment is attributable to administrative lapse, an interest at the rate applicable to GPF deposits shall be paid on the amount of gratuity, in respect of the period beyond three months. In present case, the Applicant retired on 30.09.2017. Since, D.E. was pending, Gratuity was not paid in terms of Rule, 131(c) of Maharashtra Civil Services (Pension) Rules, 1982. As stated above, the Government by order dated 06.10.2021 exonerated the Applicant from the charges meaning thereby there was no such ground to withheld Gratuity and now it Deemed to have fallen due three months after retirement. In such situation the Applicant will have to be held entitled for Gratuity after three months from the date of retirement in view of exoneration from charges in D.E. Therefore, his claim for interest after three months from the date of retirement cannot be defeated.

9. Indeed, the entitlement of the Applicant for the interest from the date of retirement (after three months period) is no more *res-integra* in view of the decision in **(2018) 6 Mah. LJ Vinodkumar Narayan Dixit V/s State of Maharashtra**, decided on 03.04.2018. In that case, the Government servant was retired during the pendency of Criminal Prosecution on attaining the age of superannuation and since the Criminal Prosecution was pending, the gratuity was not paid. Later, the Government servant was acquitted in the Criminal Case and thereafter only, the gratuity was released. He claimed interest on delayed payment of gratuity on the ground that he was deprived of amount of gratuity for no valid reasons. The Hon'ble High Court held that there is delay in payment of gratuity to the Government servant beyond three months from the date of retirement for no fault on his part and the gratuity deemed to have fallen due on the date of retirement. The Hon'ble High Court also took note of G.R. dated 06.05.1991 particularly clause 2 and 3 of the G.R. which inter alia provides that where the Government servant is exonerated from all the charges and the gratuity is paid on conclusion of such proceeding, the payment of gratuity shall deem to have been fallen due on the date of retirement. Clause No.2 and 3 of G.R. dated 06.05.1991 are as under:-

*"2. It has been brought to the notice of Government that in case of retirement on superannuation the work of the assessment of the demands outstanding against the retiring Government servants commences two years in advance whereas in other cases of retirement, assessment of Government dues, etc. can begin only after the retirement of the Government servants has been approved by Government. A doubt has therefore, been raised whether the provisions of rule 129-A are also applicable to those who retired otherwise on superannuation and if so, whether the time limit of 3 months is to be observed in such cases. The position has been reviewed and the Government is now pleased to decide that if the payment of gratuity has been delayed due to administrative lapses for no fault of the retiring Government servant in cases of retirement other than superannuation, the payment of interest may be regulated by the concerned Administrative Department, in consultation with Finance Department in the following manner:-*

(i) *In case of Government servant against whom disciplinary / judicial proceedings are pending on the date of retirement and for which gratuity is withheld till the conclusion of the proceedings :-*

*(a) In such cases if the Government servant is exonerated of all charges and where the gratuity is paid on the conclusion of such proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement. If the payment of gratuity has been authorised after 3 months from the date of his retirement, interest may be allowed beyond the period of 3 months from the date of retirement.*

*(b) .....*

*(c) In cases where the Government servant is not fully exonerated on the conclusion of disciplinary / judicial proceedings, and where the competent authority decides to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have been fallen due on the date of the issue of orders by the competent authority for payment of gratuity. If the payment of gratuity is delayed in such cases, interest will be payable for the period of delay beyond 3 months from the date of issue of the above mentioned orders by the competent authority."*

*3. As far as retirement on superannuation is concerned, the existing procedure for grant of interest if the payment of gratuity is delayed due to administrative reasons / lapses for no fault of the retiring Government servant will continue to be applicable. In other words, interest will be allowed for the period of delay beyond 3 months from the date of retirement."*

10. The Hon'ble High Court has also taken note of its earlier decision of **2009 (1) Mh. LJ. 209 Prabhakar Dalai V/s State of Maharashtra** and in Para No.35 observed as under :-

"35. In Prabhakar Dalal (supra), the Division Bench of this Court, in the context of Rules 129A, 130 (1)(c) of the MCS (Pension) Rules, 1982 and GR dated 23rd June 1986 has held that paragraph 3 of the GR will have to be construed to mean that on a person against whom disciplinary or

judicial proceedings were pending, if he is discharged or the disciplinary authority comes to the conclusion that no punishment needs to be imposed and in case of judicial authority, such authority acquits such person, than in those cases, on the competent authority authorising the release of gratuity, it will be presumed that the gratuity is deemed to have been fallen due on the date immediately following the date of retirement for the purpose of interest. The Division Bench has commended harmonious construction of the statutory rules and the executive instructions in the GR, so that executive instructions would not fall foul of the rules.”

11. Suffice to say, Respondents cannot avoid their liability to pay interest on delayed payment on Gratuity. As the Applicant retired on 30.09.2017, gratuity was to be paid three months after retirement. As such, Gratuity was payable on 01.01.2018. But till date it is not paid. The Applicant is therefore entitled to interest at rate applicable to GPF from 01.01.2018 till date of payment.

12. As regard Pension also, admittedly even no provisional Pension is paid which ought to have been paid to the Applicant. Rule 129-B of Maharashtra Civil Services (Pension) Rules, 1982 provides where payment of Pension or family Pension is authorized after six months from the date when it becomes due, an interest at the rate applicable to GPF shall be paid on amount of Pension in respect of the period beyond six months were. As per *proviso* Rule 129-B of Maharashtra Civil Services (Pension) Rules, 1982 where provisional Pension is paid a Government servant is not entitled to interest on Pension. However, in present case no provisional pension is paid to the Applicant and is deprived of Pension for more than 5 years. The Applicant stands retired on 30.09.2017 and six months period for Pension expires on 01.04.2018. The Applicant is therefore entitled to interest at the rate applicable to G.P.F. on delayed payment of Pension amount from 01.04.2018 till date of actual payment.

13. Insofar as orders about suspension period is concerned, Respondent No.4 – The Divisional Commissioner, Amravati is required to pass appropriate order within reasonable time.

14. In view of the above, Original Application is allowed in term of following order:-

**ORDER**

- a) Original Application is allowed partly.
- b) Respondents are directed to pay Gratuity as per entitlement of the Applicant with interest at the rate applicable to GPF from 01.01.2018 till actual date of payment.
- c) Respondents are further directed to release Pension with interest at the rate applicable to G.P.F. from 01.04.2018 till date of actual payments.
- d) The liability of Respondents to pay interest as directed above is joint and several and direction be complied with, within a month from today.
- e) Insofar as suspension period is concerned Respondent No.4 – The Divisional Commissioner, Amravati shall pass appropriate order about the suspension period within a month from today.
- f) No order as to costs.

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

Place: Mumbai  
Date: 08.09.2022  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_



**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

M.A./R.A./C.A. No. \_\_\_\_\_ of 20 \_\_\_\_\_

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Original Application No. \_\_\_\_\_ of 20 \_\_\_\_\_

**FARAD CONTINUATION SHEET No.**

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 14.09.2022</p> <p align="center"><b>O.A. No.838 of 2022 FOR SPEAKING TO THE MINUTES</b></p> <p>C.M. Sanhal .....Applicant Versus The State of Maharashtra &amp; Ors. ....Respondents.</p> <p>1. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. This matter is taken up today on board for Speaking to the minutes to correct typographical error in the operative order.</p> <p>3. In operative order the Applicant is <sup>held</sup> entitled to interest at the rate applicable to GPF from 01.04.2018 till actual date of payment on belated payment of Gratuity. In Para 11 while giving reason the Tribunal made it clear that the Applicant stands retired on 30.09.2017, and therefore Gratuity was payable after three months i.e. 01.01.2018. Thus the Applicant is entitled to interest on Gratuity from 01.01.2018. However, inadvertently date is wrongly typed as 01.04.2018.</p> <p>4. In view of above, date mentioned as 01.04.2018 in operative order (Clause B) be corrected as "01.01.2018" in place of "01.04.2018".</p> <p>5. Necessary correction be made in the Original order.</p> <p align="right">Sd/- (A.P. Kurhekar) Member (J)</p> <p align="right">NMN <span style="float: right;">[P.T.O.]</span></p>