

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

Original Application No.1072 of 2017

Shri Raosaheb Channappa Mane)
Aged 58 Yrs, Occ. Nil, Retired as)
Assistant Sub Inspector from)
Nagpada Police Station, Mumbai,)
R/o. B/58, Bandra Police Line,)
Bandra, Mumbai-50)Applicant

Versus

1. The Commissioner of Police,)
Mumbai, Having Office at)
Mumbai Police Commissionarate)
L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai – 400 001.)
2. The Additional Commissioner of Police,)
Central Region, Bawala Compound,)
Byculla (E), Mumbai – 27.)
3. The State of Maharashtra,)
Through Principal Secretary,)
Home Department,)
Having Office at Mantralaya,)
Mumbai – 400 032.)....Respondent s

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

Ms. S. Suryawanshi, the learned P.O. for the Respondents.

CORAM : **Shri J.D. Kulkarni, Vice-Chairman**

RESERVED ON : **05.09.2018.**

PRONOUNCED ON : **07.09.2018.**

ORDER

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents.

2. The Applicant in this O.A. is claiming that the order dated 5.10.2017 which is at page no.no.14, Exh. 'A' of the O.A. issued by Respondent No.2 whereby the Petitioner is declined to release pensionary benefits on account of criminal case is pending against him be quashed and set aside and he be granted of consequential service benefits presuming of the said order.
3. The Petitioner joined government service as Police Constable on 14.8.1980. In 2001, C.R.no.4 of 2001 was registered on the basis of report given by the Applicant at Jogeshwari Police Station against one Smt. Shobha P. Jounjal and Mr. P.S. Jounjal.
4. After due investigation, the charge sheet was filed vide C.C.No.416/P/2002 before the Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai. In 2007, i.e. on 13.09.2007 both the accused were acquitted.
5. Being aggrieved by the order of acquittal, the Petitioner preferred Criminal Writ Petition No.2507 of 2009 before the Hon'ble High Court and the same was admitted and the matter is still pending in the Hon'ble High court.
6. Criminal Case No.2387/PW/2002 was filed against the Applicant on the report of Smt. Shobha P. Jounjal and the same was investigated by M.I.D.C. Police Station, Andheri. Against the said investigation, the Petitioner preferred Criminal Application No.169 of 2011 under section 482 and 463 of Criminal Procedure Code for quashing the said proceedings. On 4.8.2011, the Hon'ble High Court admitted the Criminal Writ Petition and granted stay to the proceedings. The matter is still pending before the Hon'ble High Court. In the meantime on 31.7.2017, the petitioner got retired on superannuation.
7. On 5.10.2017, the Respondent No.2 declined to release regular pensionary benefits to the Applicant on the ground that criminal matter is pending against the Applicant and therefore this Original Application.
8. The Respondent Nos.1 and 2 have filed reply affidavit and submitted that FIR vide no.440 of 2001 has been filed against the Applicant at MIDC Police Station, Andheri under Section 420 read with 34 of IPC by one Mrs. Shobha Jaunjal and thus Criminal Case No.2387 /W/2002 is pending against the Applicant and thereafter the charge sheet was filed against the Applicant before the Metropolitan Magistrate's Court at Andheri.
9. The Respondents have relied on the Rule 27(6) (b) (i) of M.C.S. (Pension) Rules, 1982 and submitted that as per this rule only provisional pension is to be paid to the Applicant.

10. Learned Advocate for the Applicant Shri A.B. Bandiwadekar submits that the criminal case pending against the Applicant is on the basis of private complaint filed by Smt. Shobha P. Jounjal. In fact the Applicant earlier filed criminal case against Smt. Shobha P. Jounjal and Mr. Jounjal in which they were acquitted and to counter said litigation Mrs. & Mr. Jounjal file a criminal case against the Applicant.

11. Learned Advocate for the applicant placed on record a documents showing that the FIR on the basis of which criminal case was registered against the Applicant on the complaint of Mr. & Mrs. Jounjal was challenged before the Hon'ble High Court. The copy of the Criminal Application No.169 of 2011 is placed on record which is at page nos.26 to 28 of the paper book of O.A. (both inclusive).

12. From the said documents it seems that the proceedings of criminal case no.2387 of 2002 before Metropolitan Magistrate's Court at Andheri against the Applicant was challenged under Section 482 and 483 of criminal procedure code and the Hon'ble High Court was pleased to issue ad interim relief as per the prayer clause (c) which reads as under:-

“(c) Pending the hearing and final disposal of the present criminal application, criminal proceedings being Criminal Case No.2387/PW/2002 pending in the 22nd Court of Metropolitan Magistrate, Andheri, Mubai as against the Applicant be stayed.”

(quoted from page no.27 of the paper book)

Thus, admittedly the proceedings against the Applicant have been stayed by the Hon'ble High court.

13. Learned Advocate for the Applicant submits that though the criminal proceedings against the Applicant have been filed on the basis of report of Mrs. Jounjal with whom Applicant had a grudge, the said litigant was a private complainant and it was not at all concerned with official duty of the Applicant and therefore in this circumstance, the Respondent ought to have released regular pensionary benefits to the Applicant and should be granted consequential financial benefits.

14. Learned Advocate for the Applicant has invited my attention to the reported judgment in 2017 (3) Mh.L.J., page no.251 in case of Nanuram s/o Dagdu Beldar Vs. State of Maharashtra and Others. In the said case the petitioner therein was kept under suspension on account of incident which did not relate to anything done by him in discharge of his official duties and it was held that order of suspension cannot sustain in law. Similar view has been taken in Writ Petition No.191 of 2016, judgment delivered by the Hon'ble High Court in case of **Hrishikesh**

Vasantao Kumbhar Vs. The Zilla Parishad, Sangli & Ors on 25.07.2016. It was also regarding suspension. In that case also it was held that the nature of complaint do not relate to anything done by him in discharge of his duties and the grievance of the complainant is fully private issue in-between complainant and Petitioner and therefore order of suspension was quashed.

15. In the present case issue is as regards pension and not against the suspension but still the question remains as to whether the criminal case was pending against the Applicant.

16. Learned P.O. for the Respondents has placed reliance rule 130 of M.C.S. (Pension) rule. Which read as under:-

“130. Privisional 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 authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upon 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 authorized 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 on 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.

(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 provisional pension or the pension is reduced or withheld either permanently or for a specified period.

17. Learned P.O. for the Respondents states that the rule 130 aforesaid is clear that the Government has every right to pay only provisional pension where departmental or judicial proceeding is pending against the delinquent and no gratuity should be paid till the final order of departmental or judicial proceedings is passed.

18. In the present case, admittedly no departmental enquiry is pending against the Applicant and only one criminal case is pending which is instituted on private complaint of Mrs. Jounjal. Admittedly the Applicant has also filed criminal case against Mr. and Mrs. Jounjal and in that case they were acquitted. Therefore in such circumstances it is necessary to consider as

to whether it will be proper to decline release of regular pensionary benefits to the Applicant and particularly when said proceedings are stayed by the Hon'ble High Court.

19. Learned Advocate for the Applicant relied on Rule 27 of sub –Rule 3 and 6(b) of the MCS (Pension) Rule 1980. The said relevant rule reads as under:-

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

(1) Government 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 pension 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 re-employment,-

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

(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 re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(6) For the purpose of this rule,-

(a)

(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.”

20. In the present case, even though the FIR was registered against the Applicant, no cognizance has been taken by the Magistrate and in fact the proceedings were stayed by the Hon'ble High Court vide order dated 4.8.2011. It is stayed that till today, no charges have been framed against the Applicant by the Magistrate.

21. Learned Advocate for the Applicant also placed reliance on the judgment delivered by this Tribunal in O.A.No.883 of 2014 in case of Shri Mohd. Gaus Shaikh Vs. The Director of Vocational Education and Training on 3.11.2015. In para nos.9, 17 to 19 this Tribunal has observed as under:-

“9. As far as the issue of gratuity is concerned, in circumstances such as this one, the issue is squarely covered by a judgment of this Tribunal (Single Bench of the Hon'ble then Chairman) in **OA1109/2010 (Shri Vasant A. Kadam Vs. State of Maharashtra, dated 4.10.2011)**. I have perused it. That was a matter where the Applicant was embroiled in a criminal case for which he was also under arrest for about 3/4 days, and hence, under deemed suspension. In the meanwhile, he was made to stand as an accused before the Special Court. No charge was framed against him in that matter and in the meanwhile, he retired on 28th February, 2002. In that context, reliance was placed before this Tribunal on Rule 27 (2) (3) of Maharashtra Civil Services (Pension) Rules, 1982 and case law was also cited and discussed. That was **Moreshwar Vs. State of Maharashtra, 1998 (1) MLJ 490**. The issue was as to when it can be held that the criminal proceedings have commenced in the context of enabling the Respondent to withhold the post retiral benefits. It was apparently that the crucial date would be the date on which the cognizance was taken, which would be when the judicial mind was applied and framing the charge was considered. Merely lodging of the matter before the said court cannot be said to be commencement of criminal proceedings.

17. In so far as the criminal proceedings are concerned, as already discussed above, the said matter has not even commenced in the sense, it should become limiting or disabling event for the Applicant to be denied what is legitimately due to him. Most significantly, the very nature of the said proceedings is such that it would determine the guilt of the Applicant and his co-accused, but going by the record such as it is and the Penal provisions invoked, in the first place, the said Court of competent criminal jurisdiction will not be in judicial duty bound to determine the exact quantum of the amount that the Applicant committed defalcation, etc. One cannot lose sight of the fact that there are other co-accused, and therefore, even the conviction of the Applicant as indeed

any accused for that matter is in the realm of uncertainty. The fact that even at the highest, the basic ambit of the prosecution is such that apart from the fact that it may not be possible for that Court to quantify the amount, it will not be in a position to enforce the payment of that amount to the Respondent by the Applicant. Although, it may be possible for that Court to even see to it that the accused before that Court were marched to the prison were they to be convicted and sentenced. No proceeding either judicial or administrative is pending as on date, which could ensure in the first place the exact quantification of the amount and secondly, the enforcement of the payment of that amount. I must repeat that it is not for nothing that this aspect of the matter that is being emphasized. I have already indicated above that it was open to the Respondent to, apart from initiating prosecution proceedings against the Applicant to proceed against him departmentally, if not under any other provision, at least under Rule 27 of the M.C.S (Pension) Rules. The Respondent has not been able to demonstrate as to in what way in whichever manner, the criminal prosecution culminates in future, they would be able to recover any amount from the Applicant. The Rules relevant hereto, including the one that has been reproduced above, in my view, proceed on the basis that there is an amount determined or at least determinable which is surely something more than high sounding allegations and a mere chance withholding of the amount of gratuity and encashment of leave.

18. The above discussion would, therefore, make it very clear that it is not at all possible for the Tribunal to uphold the impugned orders, and therefore, the Applicant would be entitled to get back the held-up gratuity and leave encashment amount. But still in my view, it will be in the interest of justice to direct the Applicant to submit an undertaking as indicated hereinbelow, so that he will be able to get his dues immediately and in the event, he was to be found liable to pay a certain amount, there would be surety for the Respondents to get the same for, after-all it is a public money.

19. In view of the foregoing, the orders herein impugned stand hereby quashed and set aside subject to the Applicant filing an undertaking in this OA before this Tribunal, even after this order within three weeks from today that in the event in future, a particular amount would be found payable by him to the Respondent, he shall subject to his rights to challenge the same in accordance with law, pay the same to the Respondent within eight weeks of the final determination thereof."

22. The criminal case is on the basis of private complaint against Applicant may be due to rivalry between Applicant and complainant and admittedly allegations in said criminal case are not at all related to discharge of any duties of the Applicant as public servant.

23. Admittedly there is no allegation that some financial loss has been caused by the Applicant or anything is to be recovered from him and therefore there is no point in declining pension and gratuity to the Applicant only because some criminal case has been filed against him.

24. There is nothing on the record to show that the cognizance has been taken by the Metropolitan Magistrate or charge has been framed in the criminal case against the Applicant.

25. Learned P.O. for the Respondents submitted that the grant of pension is always subject to good conduct and therefore since the criminal case is pending, regular pension cannot be granted. In this regard it is material to note that if in case the Applicant is convicted, the Competent Authority will always be at liberty to take action as per the rules. Criminal case against the Applicant is pending since 2002 and till today the competent court has not been taken cognizance and on the contrary the proceedings are stayed by the Hon'ble High Court. Rule 27 of MCS (Pension) rule clearly shows that the Government may withhold or withdraw the pension which means that Government has discretion whether to withhold or withdraw the pension or not. Therefore these circumstances as already stated should have been considered.

26. Learned Advocate for the Applicant also placed reliance on the judgment in O.A.No.343 of 2015 in case of **Shri Shrikant Shankar Rahate Vs. The Deputy Commissioner of Sales Tax** delivered by this Tribunal on 11.3.2016. Against this, the learned P.O. for the Respondents relied on the judgment in case of **Lakhminder Singh Brar Vs. Union of India & Ors.** delivered by the Hon'ble Delhi High Court on 16.9.52010. The points raised in both the judgments are already discussed in above mentioned paragraphs.

27. Considering the discussion as already stated, I am of the opinion that the Applicant should be granted regular pensionary benefits and gratuity and other consequential benefits since he has been allowed to retire honourably. Hence the following order:-

- (a) Original Application is allowed in terms of prayer clause 9(a).
- (b) Necessary directions be issued by the Competent Authority granting regular pensionary benefits to the Applicant within three months from the date of this order.
- (c) No order as to costs.

Sd/-

(J.D. Kulkarni)

Vice Chairman