

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1175 OF 2017

DISTRICT : THANE

Shri Kamlakar A. Shete.)
Age : 59 Yrs., Occu.: Retired Govt. Servant,)
R/o. C/o. D-1, Vaibhav Nagari, Kalyan Sheel)
Road, Dombivali (E), District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)
2. The State of Maharashtra.)
Through the Under Secretary,)
General Admn. Department, Madam)
Cama Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai – 32.)
3. The Director.)
Sainik Welfare Department, M.S,)
Raigad Building, Opp. National War)
Statue, Solapur Road, Ghorpadi,)
Pune – 411 001.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 14.03.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 12.09.2017 whereby the payment of gratuity has been denied on the ground that he being joined after 01.01.2005, not entitled to gratuity.

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

The Applicant was initially recruited in Army from 30.08.1977 to 31.05.2001. Thereafter, on 03.11.2007, he was appointed in the office of Respondent No.3 on the post of Welfare Sanghtak (Group 'C' post) and stands retired on 30.06.2016 on attaining the age of superannuation. He requested for grant of gratuity, but the same has been rejected by impugned order dated 12th September, 2017. Hence, this application.

3. The Respondent Nos.1 to 3 resisted the application by filing Affidavit-in-reply (Page Nos.35 to 41 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the gratuity. The Respondents contend that the Applicant has joined after 01.11.2005, and therefore, in view of implementation of new scheme viz. "Defined Contribution Pension Scheme" which repealed existing pension scheme, the Applicant is not entitled to gratuity.

4. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. In fact, the present O.A. has been filed on the basis of order passed by this Tribunal in ***O.A.138/2017 in the matter of Arun L. Pansare Vs. State of Maharashtra, decided on 13.04.2017***, whereby the Tribunal has directed to pay the gratuity to the Applicant in similar situation. However, being aggrieved by the order dated 13.04.2017 passed in O.A.138/2016, the State of Maharashtra has

filed Review Application No.21 of 2017 which came to be allowed by the Tribunal on 20.02.2019. Ultimately, the Tribunal dismissed the O.A.138/2016.

6. While deciding the Review Application No.21/2017 arising from O.A.138/2016, this Tribunal has observed that there is apparent error on the face of record by allowing R.A.21/2017, and consequently, O.A.138/2016 came to be dismissed.

7. Shri Kolge, learned Advocate for the Applicant, who also appeared in **Arun Pansare's** case, made similar submission which he advanced in that matter and sought to contend that there is no exclusion of gratuity. He, therefore, sought to contend that, even if M.C.S.(Pension) Rules, 1982 are repealed by virtue of implementation of "Defined Contribution Pension Scheme", the Applicant is entitled to gratuity. The submission is misconceived.

8. Shri Kolge, learned Advocate for the Applicant made a feeble attempt to contend that the pension is not specifically defined in Pension Rules 1982, and therefore, exclusion of gratuity cannot be inferred. True, the pension, gratuity is different and distinct types of retirement benefits although the basis for calculating the same is furnished by the salary or emoluments drawn by the Government employee. However, in view of repeal of Pension Rules, 1982 itself, the question of calculation of gratuity let alone entitlement of the same to the Applicant does not survive.

9. Admittedly, the Applicant had joined service after 01.11.2005 and retired in 2016.

10. At this juncture, it would be apposite to see the Government decision dated 31.10.2005.

11. Admittedly, by G.R. dated 31.10.2005, the State Government has introduced new contribution pension Scheme known as "Defined Contribution Pension Scheme" on the lines of Government of India replacing existing pension scheme i.e. by repealing M.C.S. (Pension) Rules, 1982, M.C.S. (Computation of Pension) Rules, 1984 and existing General Provident Fund Scheme. Clause No.2 of G.R. dated 31.10.2005 is important which is as follows :

"2.(a) Government has now decided that a new "Defined Contribution Pension Scheme" on the lines of Government of India, replacing the existing pension scheme, as detailed below, would be made applicable to the Government servants who are recruited on or after 1st November 2005 in State Government service;

(b) Government is also pleased to decide that for the purpose of implementation of the above new Defined Contribution Pension Scheme, this State Government would join the aforesaid, new defined contribution pension system introduced by Government of India.

(c) The Government is also pleased to decide that the provisions of, -

(i) the existing pension scheme (i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984) and

(ii) the existing General Provident Fund Scheme (GPF) would not be applicable to the Government servants, who are recruited on or after 1st November 2005 in State Government Service."

12. Rule 9(37) of 'Pension Rules 1982' defines 'Pension' as follows :

"Pension. - Pension includes gratuity."

13. Chapter X of 'Pension Rules 1982' provides for determination and authorization of the amount of pension and gratuity. Chapter XI provides for determination and authorization of the amount of family pension and death gratuity in respect of Government servant dying while in service. Whereas, Chapter XII provides for sanction of family pension and residually gratuity in respect of deceased pensioners. Thus, gratuity was payable as per these Chapters of 'Pension Rules 1982'. As such, the said Rules pertaining to gratuity

were one of the component of 'Pension Rules 1982' itself being composite Rules. There are no other Rules governing gratuity to the Government servant. Suffice to say, prior to G.R. dated 31.10.2005, the gratuity was payable as per the Chapters indicated above which were the components or part of 'Pension Rules 1982'. Perhaps, this aspect was not brought to the notice of Tribunal while deciding O.A.No.138/2016. Whereas, with effect from 01.11.2005, the 'Pension Rules 1982' are replaced by "Defined Contribution Pension Scheme" which admittedly does not have any provision for gratuity at present. This being the position, when 'Pension Rules 1982' are repealed and no more in existence, the question of entitlement of gratuity on the basis of 'Pension Rules 1982' does not survive in view of it's repeal by the Government.

14. At this juncture, it is material to note that, in pursuance of decision taken by the Government to repeal 'Pension Rules 1982', the necessary amendment has been carried out to 'Pension Rules 1982' that 'Pension Rules 1982' shall not apply to the Government servant who are recruited on or after 1st November, 2005. In this behalf, Rule No.2 has been inserted as follows :

"2. These rules shall not apply to the Government servants who are recruited on or after 1st November, 2005."

15. The learned Advocate for the Respondent referred to the Office Memorandum issued by Ministry of Personnel, Central Government of India, dated 26th August, 2016 to bolster-up his contention that the gratuity can be claimed under National Pension Scheme. The reliance on the said communication is misplaced. It speaks about Central Government employees only and not State Government employees. This communication seems to have been issued stating that, as new "Defined Contribution Pension Scheme" has been notified by the Central Government, subsequently, the orders were issued for the payment of gratuity on provisional basis in respect of employees covered

under National Pension System on their retirement from Government service. Suffice to say, it has been made applicable to Central Government employees only, which is very much clear from Para Nos.2 and 5 of communication, which is as follows :

“2. The issue of grant of gratuity in respect of government employees covered by the National Pension System has been under consideration of the Government. It has been decided that the government employees covered by National Pension System shall be eligible for benefit of ‘Retirement gratuity and Death gratuity’ on the same terms and conditions, as are applicable to employees covered by Central Civil Service (Pension) Rules, 1972.

5. These orders will be applicable to those Central Civil Government employees who joined Government service on or after 1.1.2004 and are covered by National Pension System and will take effect from the same date i.e. 1.1.2004.”

16. In so far as the State Government employees are concerned, admittedly, till date, no such decision has been taken by the State Government. This being the position, so long as no decision is taken by the State Government on the lines as of Central Government communication referred to above, the Applicants are not entitled to gratuity in view of repeal of ‘Pension Rules 1982’ and the implementation of new “Defined Contribution Pension Scheme”.

17. The necessary corollary of aforesaid discussion leads me to sum-up that in view of repeal of Pension Rules, 1982, the claim of gratuity of Applicant having joined the service after 01.11.2005, is not sustainable and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 14.03.2019

Dictation taken by :

S.K. Wamanse.

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