

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1213 OF 2023**

DISTRICT : Mumbai

Shri Ashok Bhagwat Jadhav)
Aged 62 years, Occ. Nil, retired as)
Administrative Officer (Class II), General Hospital)
R/at Sambuddha 546 Anand Nagar,)
Sadamirya, District Ratnagiri 465612.)... **Applicant**

Versus

- 1) The Government of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
G. T. Hospital Compound, Mantralaya,)
Mumbai-400 032.)
- 2) The Director, Public Health, St. Georges Hospital)
Compound, Fort, Mumbai.)
- 3) The Joint Director, Directorate of Health)
Services, Finance and Admin., Mumbai.)
- 4) Deputy Director, Health Services, New Admin.)
Building, 3rd floor, near Pune Station, Pune City)
Pune 411 001.)
- 5) Office of Civil Surgeon, General Hospital, Satara)
467, Sadar Bazar Camp, Satara 415001.)
- 6) Accountant General (A & E)-I, 2nd floor,)
Pratishtha Bhavan, 101, Maharashi Karve Road,))
New Marine Lines, Mumbai 400 020.)
- 7) District Treasury Office, Ground floor, Old)
Collectorate Building, near Jaistambh,)
Ratnagiri.)... **Respondents**

Shri M. D. Lonkar, Advocate for the Applicant.

Smt. Archana B. K., Presenting Officer for the Respondents

CORAM : Medha Gadgil, MEMBER-A

RESERVED ON : 27th February, 2024

PRONOUNCED ON: 5th March, 2024

JUDGMENT

1. The Applicant has filed present Original Application for direction to the Respondents to release his retirement dues along with interest which were held up for a long-time invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant was serving as 'Administrative Officer' on the establishment of Respondent No.5- General Hospital, Satara. He stands retired on 31.07.2019. At the time of retirement, no Departmental Enquiry (DE) or Criminal Case was pending against him. However, the Department released Provisional Pension and also released some other benefits in contemplation of D.E. It is on the above background; the Applicant has filed present O.A. for direction to the Respondents to release 'Regular Pension' and pensionary benefits with interest.

3. Shri M. D. Lonkar, learned Counsel for the Applicant submits that Pension Order was issued on 12.03.2020 but till today there is no pension has been granted to Applicant. The Applicant therefore seeks direction to release pension payable to him. Since there was no D.E. initiated or pending at the time of retirement, the Respondents cannot withhold pension merely on speculation of initiation of D.E. in future.

4. Learned Counsel for Applicant placed reliance on the following judgments :-

- (a) ***T. A. No.3 of 2001 (W.P. No.1507/1991) in (Shri Satpal D. Chauhan V/s State of Maharashtra & Ors.)***
- (b) ***O.A.No.1009 of 2005 (Prabhakar S. More V/s The Government of Maharashtra & Ors.)***
- (c) ***O.A.No.554 of 2011 (Dr. Dilip M. Vaidya V/s Government of Maharashtra & Ors.)***

5. Learned Counsel for Applicant further referred to 'Rule 27' of 'Pension Rules 1982'.

6. Learned Counsel states that Pension Payment Order was obtained from the office of AG on 12.03.2020. He states that period of 4 years in institution of DE got over on 31.07.2023. He prays for directions to the respondents to release the pension and pensionary benefits payable to the applicant along with interest thereon at the rate of 12% per annum from the date on which the amounts were due.

7. Per contra Ld. PO opposes the submissions advanced by the Ld. Advocate for the applicant and relies on the affidavit in reply dated 9.2.2024 filed by Arif Sayyad, Chief Administrative Officer in the office of Dy. Director of Health Services, Pune. She points out that the applicant was working with Civil Surgeon, Satara from 31.8.2017 to 31.7.2019. The audit of the Civil Hospital, Satara for the period 2016-2017 and 2017-2018 was done and some serious objections were raised that the cash book and bank passbook were not presented by the applicant to the auditor who could therefore not verify the same. The applicant before his retirement on 31.7.2019 neither completed his cash book nor reconciled the same. Pursuant to the said objections a DE was proposed against the applicant and this enquiry is pending and on 20.10.2023 a fresh proposal has been

sent by the respondent no.5 to the respondent no.4. Ld. PO contended that in view of the proposed DE the pension of the applicant has been withheld. However, he has been paid all the retirement benefits like gratuity, leave encashment, GIS & GPF.

8. I have considered the submissions of both the sides. In this respect it is useful to look at Rule 27 of the MCS (Pension) Rules, 1982, which reads as under:

“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 re-employment, -
- (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 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.
- (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.”

9. It is clear from the facts that even though DE was proposed it was not initiated. The applicant retired on 31.7.2019 and the period of four years permissible for institution of DE got over on 31.7.2023 as per Rule 27 of the MCS (Pension) Rules, 1982. In view of this rule it is not open for the department to withhold pension of the applicant in absence of institution of DE. I therefore pass the following order.

ORDER

(a) The Original Application is allowed and the respondents are directed to release the pension and pensionary benefits to the applicant within a period of two months from today. The respondents are also directed to pay interest at the rate payable on General Provident Fund from the date the said amount was due and payable till realization.

(b) No order as to costs.

Sd/-

**(Medha Gadgil)
Member-A**

Place : Mumbai
Date : 5.3.2024
Dictation taken by : Vaishali Mane