

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.13 OF 2021**

**DISTRICT : NASHIK**

Shri Chandrakant N. Desale. )  
Age : 59 Yrs, Occu. : Nil, )  
Retired as Group Instructor from I.T.I., )  
Dindori, District : Nashik and R/o. Flat )  
No.11, Sushil Aashish Apartments, )  
Tidke Colony, Nashik. )...**Applicant**

**Versus**

The Joint Director. )  
Vocational Education and Training, )  
Regional Office at R.P. Marg, P.B.No.456, )  
District : Nashik. )...**Respondent**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondent.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 01.04.2021**

**JUDGMENT**

1. The Applicant has challenged the communication dated 26.11.2020 whereby payment of gratuity was withheld on the ground that as per Rule 130(i)(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity), he is not entitled to the same till the decision of criminal prosecution invoking

jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts are as under :-

The Applicant was Group Instructor in I.T.I, Dindori, District Nashik. He was also Chairman of Government employees Credit Co-operative Society, Dhule. The FIR No.214/2018 for the offence under Section 420, 465, 467, 471 and 477A read with 34 of Indian Penal Code was registered against the Applicant and 45 others. In view of registration of Crime and detention in custody, he was suspended on 24.10.2018. Later, he was reinstated in service on 26.12.2019. Apart, by order dated 16.09.2020, the Respondent regularized the period of suspension from 11.01.2019 to 26.12.2019 as a duty period (excluding initial three months' suspension period) invoking Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981. The Applicant accordingly continued in service and stands retired on 31.05.2020 on attaining the age of superannuation. Simultaneously, the D.E. was also initiated against the Applicant on the ground of his involvement in criminal offence referred to above and by order dated 28.05.2020, the punishment of reduction to lower stage in time scale by three stages with cumulative effect was imposed by order dated 28.05.2020. The Applicant has challenged the punishment by filing appeal and it is *sub judice* before the appellate authority. The Applicant made representation to release the gratuity. His remaining retiral benefits except regular pension and gratuity are paid. However, the Respondent by communication dated 26.11.2020 rejected the claim of gratuity with reference to Rule No.130 of 'Rules of 1982', which is under challenge in the present O.A.

3. The Respondent resisted the O.A. contending that in view of registration of crime in terms of Rule 130 of 'Rules of 1982', the gratuity cannot be released.

4. Shri Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication contending that it is only in case where judicial proceedings are pending on the date of retirement, in that event only, the gratuity can be withheld as contemplated under Rule 130(c) of 'Rules of 1982'. He has pointed out that though criminal offence has been registered in 2018, till date, charge-sheet is not filed so as to attract Rule 130(1)(c) of 'Rules of 1982'. He further submits that criminal offence registered against the Applicant was not pertaining to discharging of public duties, but it was in respect of alleged involvement in his personal capacity. He referred to the decision rendered by this Tribunal in **O.A.No.883/2014 (Shri Mohammed G. Shaikh Vs. The Director of Vocational Education and Training) decided on 03.11.2015** where on interpretation of Rule 13(c) of 'Rules of 1982', the Tribunal directed to release gratuity on furnishing Undertaking.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the impugned communication stating that even if no charge-sheet was filed till the date of retirement of the Applicant in view of registration of serious crime against him, Rule 130(1)(c) of 'Rules of 1982' is attracted. As regard decision in **O.A.883/2014** (referred to above), he in alternative submission submits that on Undertaking, gratuity may be released.

6. In view of submissions advanced at the Bar, the small issue posed for consideration is whether Applicant's gratuity can be withheld invoking Rule 130(1)(c) of 'Rules of 1982'.

7. At this juncture, it would be apposite to reproduce Rule No.130 of 'Rules of 1982', which is as under :-

**“130. Provisional 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 authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto 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 authorised 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 of 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.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].

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

8. It is thus explicit that as per Rule 130(1)(c) of ‘Rules of 1982’, the gratuity can be withheld if on the date of retirement, the judicial proceedings or D.E. is pending. Whereas, in the present case, admittedly, even till date, no charge-sheet is filed in criminal offence registered against the Applicant in 2018. As such, the position emerges from the record that only FIR was registered against the Applicant and it has not translated into filing of charge-sheet in Court of law. The judicial proceedings can be said deemed to have been instituted where report of Police Officer (charge-sheet) has been filed and Magistrate has taken cognizance of the same. When the FIR is still under investigation and no charge-sheet is filed in the Court of law, it cannot be said that judicial

proceedings are instituted. The Registration of FIR and pendency of investigation cannot be equated with the judicial proceedings. Suffice to say, the judicial proceeding commences only when the Magistrate applies his mind to the allegation made in the charge-sheet under the provisions of Section 190 of Criminal Procedure Code.

9. At the cost of repetition, it is necessary to point out that as per Rule 131(1)(c) of 'Rules of 1982', no gratuity is payable until the conclusion of departmental or judicial proceedings against a Government servant. In other words, there has to be initiation of departmental proceedings or institution of charge-sheet, so as to term it judicial proceeding on the date of retirement of a Government servant. The Respondent, therefore, cannot withhold gratuity since there is no judicial proceedings pending against the Applicant even till date. The Applicant, therefore, cannot be deprived of gratuity for indefinite period and his right to gratuity cannot be kept in abeyance.

10. The totality of aforesaid discussion leads me to sum-up that since no judicial proceedings were instituted against the Applicant, his gratuity cannot be withheld. However, at the same time, to safeguard the interest of Respondent, it would be appropriate to take Undertaking from the Applicant that he would refund the amount of gratuity, in the event, in future, some amount is found payable by him to the Government. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communication dated 26.11.2020 is quashed and set aside.
- (C) The Respondent is directed to release the amount of gratuity to the Applicant on furnishing Undertaking on Bond that in the event in future, if particular amount is found payable by

him to the Government, then he would refund the same within a month, subject to his right to challenge the same in accordance to law.

- (D) On furnishing Undertaking, the Respondent shall release the amount of gratuity within a month from the date of furnishing Undertaking.
- (E) No order as to costs.

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

Mumbai

Date : 01.04.2021

Dictation taken by :

S.K. Wamanse.

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