

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.182 OF 2015

DISTRICT : MUMBAI

Shri Ramesh Vamanrao Deshpande,)
 Joint Director of Sericulture (Retd.),)
 B-702, Papiion Co-op. Housing Society Ltd.,)
 Jankalyan Nagar, Malad (W),)
 Mumbai 400 095)

.... APPLICANT

VERSUS

1. The State of Maharashtra,)
 Through, the Principal Secretary)
 (Textiles), Co-operatives, Textiles)
 and Marketing Department,)
 3rd floor, Mantralaya Annexe Building,)
 Mumbai 400 032)
2. Director (Sericulture),)
 Directorate of Sericulture,)
 Administrative Building No.2,)
 6th floor, "B", Wing,)
 Old Secretariate Complex,)
 Civil Lines, Nagpur 440 001)

....RESPONDENTS

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Shri M.D. Lonkar, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 04.04.2016.

J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking interest on delayed payment of provisional pension from 01.07.1999 till 24.10.2008 and also for the delayed payment of pension from 15.12.1999 to 31.12.2009.

3. Learned Counsel for the Applicant argued that the Applicant was working as Joint Director of Sericulture when he was allowed to retire voluntarily by order of the Respondent No.1 dated 15.12.1998. The Applicant was, however, not granted pension. A department enquiry was started against him in 2005 and a criminal case was filed against the Applicant. By order dated 28.03.2012, the Applicant was acquitted of criminal charges. The department enquiry was quashed by the order of this Tribunal in 2007. Learned Counsel of the Applicant argued that the criminal case against the Applicant was filed sometime in 2006, while he retired voluntarily in 1998. His pension should have been sanctioned

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in 1998 itself. He was, however, neither paid pension nor provisional pension till 2005. On 15.06.2005 a departmental enquiry was started against the Applicant who filed the O.A.No.308 of 2007 challenging the department enquiry. This O.A. was decided on 11.09.2007 and D.E. was quashed. The order to pay provisional pension to the Applicant was issued by the Respondent No.1 on 20.10.2007, which was cancelled by another order dated 27.03.2008. The Applicant filed C.A.No.9 of 2008 in O.A.No.308 of 2007. The State Government then passed another order dated 04.04.2008 cancelling earlier orders dated 12.03.2008 and 27.03.2008. The Contempt Application was, thereafter dismissed. The Applicant was sanctioned provisional pension for six months from 15.12.1998 to 31.05.1999 by order dated 03.10.2008. The Applicant had made a number of representations that he may be paid interest on delayed provisional pension. However, the Respondents have rejected the claim of the Applicant for interest on the ground that there is no provision of interest on delayed payment of provisional pension. The Applicant was acquitted of criminal case by order dated 28.03.2012 by the competent authority. He once again made a representation for payment of interest on delayed payment of provisional pension. His representation was rejected by communication dated 13.10.2014.

4. Learned Counsel for the Applicant argued that the Applicant was eligible to get regular promotion after he was



allowed to retire voluntarily by order dated 15.12.1998. He was, however, neither paid regular pension, nor provisional pension. In fact, by order dated 27.03.2008, it was held that he was not eligible to get pension as he has not completed 20 years of qualifying service. When the Applicant filed Contempt Application No.9 of 2008 in O.A.No.308 of 2007, the order dated 27.03.2008 was cancelled and by order dated 04.04.2008, the Applicant was held to have completed 20 years of qualifying service when his notice of voluntarily retirement was accepted on 15.12.1998. The Applicant was sanctioned provisional pension by order dated 03.10.2008 for the period from 15.12.1998 to 31.05.1999. There was almost 10 years delay in sanctioning pension/ provisional pension to the Applicant. Learned Counsel for the Applicant argued that there was no justification in not sanctioning pension to the Applicant in 1998/1999, after acceptance of his notice of voluntary retirement on 18.12.1998. A departmental enquiry came to be instituted against him on 15.06.2005, long after his retirement and it was quashed by order dated 11.09.2007 passed by this Tribunal in O.A.No.308 of 2007. By that time, a criminal case was filed against him, which was disposed of by Learned Judicial Magistrate, First Class in R.C.C.No.4197 / 2006 by judgment dated 28.03.2012 resulting in acquittal of the Applicant. In the normal course, if criminal case was filed against the Applicant, 7-8 years after his retirement, his pension could not have been stopped, unless and until he was convicted. The Respondents are, therefore, liable to pay



interest on provisional pension, which was delayed by almost 10 years in terms of G.R. dated 14.05.1987.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant was allowed to retire voluntarily by order dated 15.12.1998, erroneously, though he had not completed 20 years of qualifying service. He was absorbed in the service of Maharashtra State Khadi & Village Industries Board on 19.02.1984 and he was allowed to retire on 15.12.1998. He worked from 01.03.1995 till his retirement in private sector. His qualifying service was, therefore, 11 years and 12 days only. Learned P.O. argued that there is provision in Rules 126 and 130 of the Maharashtra Civil Service (Pension) Rules, 1982 regarding provisional pension. However, the Applicant was not paid provisional pension, as he had not put in qualifying service of 20 years. In the order dated 11.09.2007, in O.A.No.308 of 2007, this Tribunal has not directed the Respondents to grant him pension, only the departmental enquiry proceeding against him by memorandum dated 15.06.2005 was quashed. Learned P.O. argued that Government issued a G.R. dated 04.04.2008, granting pensionary benefits to the Applicant him 15.12.1998. He is, therefore, not eligible to get any interest on delayed payment of provisional pension.

6. The letter dated 15.12.1998, accepting the notice of voluntary retirement of the Applicant dated 12.09.1998 is at Exhibit 'B' (page 20 of the paper book). There are only two

rules dealing with the subject of voluntarily retirement under M.C.S. (Pension) Rules, 1982 viz Rule 65 and Rule 66. Rule 66 deals with voluntary retirement on completion of 20 years of qualifying service (Rule 65 is regarding retirement on completion of 30 years qualifying service). The fact that the Applicant's request for voluntary retirement was accepted on 15.12.1998 is a prima-facie evidence that he had put in 20 years of qualifying service. The judgment of this Tribunal dated 11.09.2007 in O.A.No.308/2007, filed by the Applicant is quoted by the Respondent No.1 in para 8 of his affidavit-in-reply dated 08.09.2015. It reads :-

"12. For the reasons stated above, the Original Application is allowed and the memorandum dated 15/06/2005 is quashed and set aside. So far as granting of pensionary benefits etc. we have not touched that question. It is for the competent authority to consider and release the pension to the applicant as the initiation of enquiry is quashed by this Tribunal. In the facts of this case, there shall be no orders to costs."

7. It is true that this Tribunal quashed the memorandum starting D.E. against the Applicant, as he was allowed to retire by order dated 15.12.1998, on the ground that no D.E. can be initiated against a retired Government servant in respect of a cause of action which arose more than four years before such institution as per Rule 27(2) of the M.C.S. (Pension) Rules. It is, thus clear that this Tribunal has held that order dated 15.12.1998 was valid, as far as retirement of the Applicant was concerned. As regards his entitlement of pension, the Government order dated 04.04.2008 was placed on record by

the Respondents in C.A.No.9 of 2008 in O.A.No.308 of 2007. Note of this order was taken by this Tribunal and the C.A. was disposed of. Para 2 of the order reads :

“२. श्री. आर.व्ही. देशपांडे, सेवानिवृत्त सहसंचालक यांची २० वर्षां एवढी सेवा लक्षात घेऊन त्यांचा सेवा निवृत्ती विषयक सर्व लाभ देण्यात यावेत.”

After this order was issued by the Respondent No.1, it is not open to him to claim that the Applicant did not have 20 years of qualifying service to his credit when he was allowed to retire voluntarily by order dated 15.12.1998. Evidently, the Applicant was eligible to get pension from 15.12.1998. A person is given provisional pension if a D.E./ or a criminal case is pending against him. In the present case, D.E. was instituted by issuing memorandum dated 15.06.2005, which was quashed by this Tribunal on 11.09.2007 as it was issued in violation of Rule 27(2) of the M.C.S. (Pension) Rules. In the normal course, the Applicant would have got regular pension on his retirement, and on institution of a D.E./ criminal case, the pension, already sanctioned could not be withdrawn, till finalization of D.E./ criminal case. Only if the pension was not sanctioned before or immediately after retirement, and a D.E./ criminal case is either pending or instituted immediately thereafter, provisional pension is paid and regular pension is withheld. The claim of the Respondents is that the provision pension was sanctioned to the Applicant after a final decision was taken about his qualifying service on 04.04.2008. On that date, a criminal case was pending against him, and therefore, only provisional pension could be

paid to him. As per G.R.'s dated 14.05.1987 and 24.04.1995, no interest is payable on provisional pension. The claim of the Respondents that there was no delay in sanctioning pension to the Applicant has to be firmly rejected. The Applicant was allowed to retire voluntarily by order dated 15.12.1998. The Respondents have withdrawn their objection that he did not have 20 years of qualifying service by issuing Government order dated 04.04.2008. Without going into further details, it is clear that by order dated 04.04.2008, the Respondents clearly admitted that the Applicant was eligible for pension from 15.12.1998 itself. Only impediment ^{to} ~~to~~ grant ^{-ing} him regular pension was the criminal case pending against him, which was filed sometimes in 2006. For the delay in sanctioning pension from 1998 to 2006 the Respondents are responsible. As per para 2 of G.R. dated 14.05.1987, the Applicant is eligible to get interest on delayed payment of provisional pension. This reads

“२. निवृत्त शासकीय कर्मचा-यांला निवृत्तिनंतर ताबडतोब निवृत्तिवेतन देणे शक्य नसेल तर कार्यालय प्रमुखाने अशा कर्मचा-याला महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम, १९८२ च्या नियम १२६ प्रमाणे निवृत्तिच्या तारखेपासून सहा महिन्यांपर्यंत १०० टक्के तात्पुरते निवृत्तिवेतन मंजूर करणे आवश्यक आहे. शासन निर्णय, वित्त विभाग क्र.सेनिवे-१०८५/२०३७-ब/८५/सेवा-४, दिनांक २९ जुलै १९८६ प्रमाणे हा अवधि लेखापरीक्षकांच्या सल्ल्याने कार्यालय प्रमुखस आणखी सहा महिन्यांपर्यंत वाढविता येतो. म्हणून त्यानुसार ज्या कालावधी-करिता सेवानिवृत्ति कर्मचा-यास तात्पुरते देण्यात आले असेल त्या कालावधीकरिता ब्याज दिले जाणार नाही. मात्र अशा प्रकरणी जेथे तात्पुरते निवृत्तिवेतन देणे बंद करण्यात आले असेल, परंतु अंतिम निवृत्तिवेतन मात्र चालू करण्यात आले नसेल अशा अपवादात्मक प्रकरणी तात्पुरत्या निवृत्तिवेतनाचा कालावधी ज्या महिन्यात संपला, त्यानंतर सहा महिन्यांचा कालावधी संपल्यानंतर येणा-या महिन्याच्या एक तारखेपासून ब्याज देण्यात यावे.”

In fact, the Applicant was eligible to get pension on his voluntary retirement by order dated 15.12.1998. Institution of D.E. in 2005 (which came to be quashed) and criminal case in 2006, would not have resulted in stoppage of his regular pension, if it was sanctioned in time. As the Respondents failed to sanction pension to him till 2008, when they sanctioned provisional pension, the Applicant is entitled to get interest on delayed payment of provisional pension in terms of G.R. dated 14.05.1987. He retired from service on 15.12.1998. He is entitled to interest on delayed payment of provisional pension six months after that date at the admissible rate. This may be completed within a period of three months from the date of this order.

This O.A. is allowed accordingly with no order as to costs.

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 04.04.2016
Typed by : PRK