

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.188 OF 2020**

**DISTRICT : PUNE**

Shri Vilas Ramchandra Walgude. )  
Aged 58 years, Retired as Addl. Commissioner, )  
Ahmednagar Municipal Corporation, )  
Ahmednagar. )  
Residence at : Navlai, 182, Rajas Housing )  
Society, Katraj, Pune 411 046. ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through The Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai – 400 032. )  
2. The Divisional Commissioner, )  
Nasik Region, (Municipal Corporation )  
Branch), Nasik Road, Nasik 422 101. ) **...Respondents**

Shri U.V. Bhosle, learned Advocate for Applicant.

Shri A.J. Chougule, learned Presenting Officer for Respondents.

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

**DATE : 21.07.2020**

## J U D G M E N T

1. The Applicant has challenged the communication dated 15.02.2020 issued by Respondent No.1, thereby withholding gratuity, invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 .

2. Briefly stated facts giving raise to the Original Application are as under :-

Applicant retired from the post of Additional Commissioner, Ahmednagar Municipal Corporation w.e.f. 31.03.2019. After his retirement, Respondent No.1 issued letters dated 05.04.2019 and 16.04.2019 to the effect that no Departmental Enquiry is pending or proposed against the Applicant. Thereafter, the Applicant made representation on 04.05.2018, 01.02.2020 and 26.02.2020 for release of retiral benefits in view of no enquiry certificate issued by the Government. However, in the meanwhile, Respondent No.1 by communication dated 15.02.2020 informed the Divisional Commissioner, Nashik stating that Departmental Enquiry is contemplated against the Applicant and therefore gratuity be withheld as contemplated under Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 [hereinafter referred as 'Pension Rules 1982' for brevity]. By the said communication directions were issued to release other retiral benefits and provisional pension. This communication dated 05.05.2020 is under challenge in the present O.A. *Inter alia*, on the ground that gratuity cannot be withheld after retirement on the ground of proposed D.E. The Applicant has therefore filed present O.A. for direction to release gratuity, GIS and regular pension.

3. As the Original Application is for releasing the withheld retiral benefit it was taken up for hearing at the stage of admission. At the time of admission having noticed that Respondent No.1 - Government though initially issued No D.E. certificate, the Respondent No.1 was directed to explain how the gratuity has been withheld by issuance of communication dated 15.02.2020.

4. In response to the order dated 04.03.2020 passed by this Tribunal the Principal Secretary, Urban Development Department had filed affidavit stating that after the issuance of No D.E. certificate, it was transpired that the Applicant while working as Additional Commissioner, Ahmednagar had committed illegalities in implementing resolutions dated 10.04.2017, 03.06.2017, 17.12.2016 and 16.02.2017 passed by the Standing Committee without following the due process of law contemplated in Maharashtra Municipal Corporation Act, 1949. The said issue was surfaced during the hearing of PIL No.9627/2018 filed by Shri Suhas Mulay, before the Hon'ble High Court, Aurangabad Bench. The said resolutions were suspended by the Government taking recourse of Section 451(1) of Maharashtra Municipal Corporation Act, 1949 and later it was finally rescinded with the approval of Hon'ble Chief Minister on 30.07.2019. Therefore, the Government has decided to take appropriate disciplinary action against the Applicant and the then Deputy Commissioner Municipal Corporation, Ahmednagar for alleged misconduct.

5. Material to note that except filing the affidavit of the Principal Secretary, Urban Development Department adverted to above, no reply is filed by the Respondents. When the matter is taken up for hearing at the stage of admission on 02.07.2020, last chance was granted to the Applicant to file reply with specific direction that no further time will be given and the matter will be taken up for hearing. Despite specific directions, no reply was filed. It is on this background, the matter was heard finally at the stage of admission on 16.07.2020.

6. Learned Advocate Shri U.V. Bhosle for the Applicant submits that the act of Respondent No.1/Government of withholding of gratuity, GIS and regular pension is totally illegal. He has pointed out that even till date no D.E. is initiated against the Applicant, and Applicant is deprived of gratuity, though he stands retired on 31.03.2019. He further urged that the Rule 27 and Rule 130 of 'Pension Rules of 1982' does not contemplates withholding of gratuity if no D.E.

is initiated till date of retirement. In this behalf, he referred to the decisions rendered by this Tribunal in O.A.No.577/2014, Pramod Namdevrao Singalwar V/s. State of Maharashtra, decided on 23.03.2015, O.A.No.804/2016, Shri Ajit Ramchandra Wakde V/s. The State of Maharashtra & Anr. decided on 22.11.2016 and O.A.No.401/2018, Shri Rajesham Laxmipathi Boga V/s. The Medical Superintendent, ESIS Hospital, Mumbai, decided on 09.07.2019.

7. Par contra, learned P.O. Shri A.J. Chougule all that that submits that in view of the proposed D.E. for misconduct of the Applicant during his tenure, which was surfaced after his retirement, gratuity has been withheld by impugned communication. However, he could not point out any specific provision from 'Pension Rules 1982' empowering the Government to withheld gratuity where D.E. is not initiated till the date of retirement.

8. In view of the submissions advanced at the Bar, the issue posed for consideration is whether the Government can withhold gratuity and regular pension of the Applicant in absence of issuance of charge-sheet till the date of his retirement in the light of Rule 27 and Rule 130 of 'Pension Rules 1982'.

9. Following facts are undisputed :-

- (a) Though the Applicant stands retired on 31.03.2019 no D.E. was initiated by issuance of charge-sheet to him till his retirement.
- (b) At the time of retirement, Respondent No.1 had issued communication dated 05.04.2019 and 16.04.2019 that no D.E. is pending or proposed against the Applicant.
- (c) Even till date no charge-sheet is issued to the Applicant neither any criminal proceeding are initiated against the Applicant till date.

10. At this juncture, it would be apposite to reproduce Rule 27 and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982, which are as follows :-

**“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 and 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.”*

***“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."*

11. Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of 'Rules of 1982'. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement of the Applicant, so as to have bearing of Rule 27(2)(a) of 'Pension Rules of 1982'.

12. In this context, it would be useful to refer the decision of Hon'ble High Court in The Chairman/Secretary of Institute of **Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil : 2003 (3) Mah.L.J. 602**. In that case, the D.E. was initiated during the service but was continued after retirement of the Respondent. In this authority, the Hon'ble High Court highlighted the scope, ambit as well as limitation of Rule 27 of 'Rules of 1982'. Para No.13 of the Judgment is important, which is as follows :-

*“13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub - rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re - employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.”*

13. Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of ‘Pension Rules of 1982’ and where on conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.

14. As regard gratuity, the Rule 130(c) says “no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.” Here, the legislature has not used the word “pensioner” and has specifically used the word “Government Servant”, which is significant in the present context. This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other



provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of 'Rules of 1982', in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.

15. Learned Advocate Shri U.V. Bhosle rightly referred to the decisions rendered by this Tribunal (cited supra) wherein similar situation directions were issued to release the gratuity having found that no D.E. was initiated till the date of retirement. Tribunal has consistently held that in absence of any specific rule or provision empowering the Government to withhold regular pension or gratuity where D.E. or criminal proceedings are not instituted till the date of retirement of the employee, the said benefits cannot be withheld.

16. Indeed this aspect is acknowledged by the Government of Maharashtra in G.R. dated 06.10.1998 reiterating the provisions of Rule 27 of 'Pension Rules of 1982 wherein it is stated as follows :-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार कार्यवाही होत नाही असे शासनाच्या निर्देशनास आले आहे. त्यामुळे अशा प्रकरणामध्ये सेवानिवृत्त कर्मचा-याचे महाराष्ट्र प्रशासकीय न्यायाधिकरण तसेच लोकआयुक्तांकडे निवृत्ती वेतन इत्यादि फायदे न मिळालेबाबत तक्रारी येतात. सदर प्रकरणामध्ये वित्त विभाग शासन निर्णय क्रमांक. सेनिवे-१०९४/१५५/सेवा-४, दिनांक २४ एप्रिल १९९५ अन्वये शासनाला व्याजाचा खर्च विनाकारण करावा लागतो. तेव्हा सर्व शिस्तभंग विषयक प्राधिका-यांना पुन्हा निर्देशित करण्यात येते की, वित्त विभाग शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार सेवानिवृत्त होणा-या शासकीय कर्मचा-याचे बाबतीत त्याच्या सेवानिवृत्तीपूर्वी महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील नियम २७ (६) नुसार विभागीय चौकशीची कार्यवाही सुरु करण्यात आली नसेल म्हणजेच आरोपपत्र देण्यात आले नसेल किंवा आधीच्या तारखेपासून निलंबनाधीन ठेवण्यात आले नसेल तर सेवानिवृत्तीचा दिनांकाला त्याचेविरुद्ध विभागीय चौकशी प्रलंबित आहे असे म्हणता येत नाही व त्यामुळे अशा कर्मचा-यांना सेवानिवृत्ती विषयक सर्व फायदे वेळेवर अदा करणे अपेक्षित आहे.”

17. Thus despite consistent decision rendered by this Tribunal and G.R. dated 06.10.1998 it is unfortunate to note that the Respondents particularly Respondent No.1 withheld gratuity of the Applicant. Indeed earlier Respondent No.1 issued no enquiry certificate meaning thereby there was no hurdle to grant retirement benefit but later withheld gratuity for proposed D.E. There seems to be no coordination between Respondent No.1 and the office working under it. Be that s it may, as stated above, in absence of specific Rule or provision gratuity cannot be withheld on the spacious ground that Department desires to initiate D.E. Needless to mention that gratuity cannot be withheld on such speculation or conjecture and interpretation of Rule 27 of 'Pension Rules of 1982' read with Rule 130 (c) of 'Pension Rules of 1982' leaves no doubt that the act of the Government withholding gratuity is erroneous and unsustainable in law. Apart from gratuity, GIS and regular pension is also not paid which also needs to be released immediately. Learned Advocate for the Applicant fairly concedes that other retiral benefits are already received.

18. The totality of the aforesaid discussion leads me to sum up that the impugned communication dated 15.02.2020 withholding gratuity is unsustainable in law and deserves to be quashed. Applicant is, therefore, entitled to gratuity, GIS as well as regular pension. It is only in case where D.E. is initiated fulfilling embargo of Rule 27(2)(b) of 'Pension Rules 1982' and Applicant is found guilty, in that event only, the Government can withhold or reduce the pension. The scope of punishment in such D.E. is limited and it cannot go beyond the ambit of Rule 27 of 'Pension Rules 1982'. Needless to mention, Respondent No.1 is at liberty to initiate DE, as may be permissible in law. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release gratuity, GIS and regular pension within a month from today.
- (C) The Respondents are free to initiate the D.E. as may be permissible under Rule 27 of 'Pension Rules 1982'.
- (D) No order as to costs.

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

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