

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.232 OF 2023

**DISTRICT: Mumbai
SUBJECT : Retiral Benefits**

Shri Nayan G. Kabadi,)
Occ.: Retired Clerk, R/at 9, Pitruchhaya)
Chendani, Thane.)... **Applicant**

Versus

1. The State of Maharashtra through)
the CS, GAD, Mantralaya, Mumbai.)
2. The ADG, ATS, Mumbai.)
3. The ACS, Home Dept., Mantralaya,)
Mumbai.)... **Respondents**

Shri Nayan G. Kabadi, the Applicant in person.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

CORAM : A.P. Kurhekar, Member (J)

DATE : 15.03.2023.

ORDER

1. The Applicant stands retired on 28.02.2022 from the post of Junior Clerk but he is not paid gratuity and regular pension, therefore, he has filed the present Original Application.

2. Today, learned P.O. has filed short Affidavit in Reply on behalf of Respondent No.2. It is taken on record.

3. Insofar as GPF and GIS is concerned, it is already paid and provisional pension is also being paid. The payment of leave encashment is in process as seen from Affidavit in Reply. However, gratuity is

withheld in view of pendency of criminal case instituted against him while in service.

4. The Applicant in person submits that pension and gratuity is his statutory right but he is deprived of the same and, therefore, the Respondents be directed to release gratuity and regular pension. He also sought interest on gratuity as well as on delayed payment of leave encashment.

5. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents submits that gratuity cannot be paid in view of pendency of criminal prosecution as contemplated under Rule 131 (c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules, 1982'. As regard leave encashment, she submits that now steps are being taken to finalize the same and will be paid soon.

6. The perusal of record reveals that suspension of the Applicant was already regularized by order dated 07.07.2021. Apart, the D.E. was also concluded by imposing censure punishment on 31.03.2021. He retired on 28.02.2022. This being the position, there was no legal hurdle in payment of leave encashment which is still not paid. In terms of G.R. dated 20.06.1996, in normal course, a Government servant is entitled to interest, if amount of leave encashment is paid after the period of one month from the date of retirement. In the present case, there is no such order of withholding payment of leave encashment by the department. This being so, the leave encashment was required to be paid within the period of 1 month from the date of retirement but it is still not paid. Thus, apparently it is being delayed on account of administrative lapses on the part of Respondents. No fault can be attributed to the Applicant for such delay in payment of leave encashment. The Respondents, therefore, cannot avoid liability to pay interest on leave encashment which was due on 01.04.2022 for the period it is delayed.

7. Insofar as gratuity is concerned, Rule 130(1)(c) of 'Pension Rules, 1982' specifically provides that no gratuity shall be paid to the

Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. In view of this specific Rule, the Applicant cannot claim gratuity until the conclusion of judicial proceeding i.e. Criminal Case RCC No.196/2005 for offences under Section 460, 420, 120(B) of IPC which is subjudice.

8. The submission advanced by the Applicant in person that there would no occasion to withhold gratuity since there is no loss to the Government exchequer is premature. It is only after conclusion of Criminal Case, the Applicant would be entitled for gratuity. Suffice to say, the claim of the Applicant for gratuity is premature.

9. The reliance placed by the Applicant in person on the decision of the Hon'ble Supreme Court in **Civil Appeal No.6670/2013 (State of Jharkhand V/s Jitendra Kumar Srivastava & Anr.)** is totally misplaced. In that case, the issue was as to whether in absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental or criminal proceeding. The Hon'ble Supreme Court confirmed the decision of the Hon'ble High Court that in absence of any provision to that effect in the Pension Rules, gratuity cannot be withheld. Whereas in our State, the situation is governed by Rule 130(1)(c) of 'Pension Rules 1982' which specifically provides that gratuity shall not be paid until the conclusion of departmental or judicial proceeding.

10. In terms of Maharashtra Civil Services (Pensions) Rules, 1982, only provisional pension is required to be paid during the pendency of judicial or departmental proceeding and admittedly, the Applicant is being paid provisional pension.

11. In view of above, the O.A. deserves to be allowed partly to the extent of claim of the Applicant about leave encashment and interest thereon. Hence, the following order:-

ORDER

- (A) Original Application is allowed partly.
- (B) The Respondents are directed to ensure payment of leave encashment within a month with interest at the rate applicable to GPF from 01.04.2022 till actual date of payment.
- (C) The Respondents are further directed to continue the payment of provisional pension till the decision of judicial proceeding.
- (D) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 15.03.2023

Dictation taken by: Vaishali Santosh Mane

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