

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.238 OF 2023

DISTRICT : THANE
Sub.:- Non-Payment of
Gratuity

Shirishkumar V. Rajwade.)
Age : 60 Yrs, Occu.: Nil, Retired as)
Assistant Geneticist, Forest Research)
Centre, Wada, District : Palghar and)
Residing at A-15, Ekmanas CHS Ltd.,)
Sector NO.6, Shrrnagar, Wagle Estate,)
Thane (W).)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Revenue & Forest Department [Forest],)
Mantralaya, Mumbai – 400 032.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 05.06.2023

JUDGMENT

1. The Applicant who stands retired on 31.01.2021 has filed the present Original Application for direction to the Respondent to release gratuity and regular pension, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant stands retired from the post of Assistant Conservator of Forest on 31.01.2021. He was paid GPF, GIS, Leave Encashment and provisional pension is also being paid. However, gratuity is not paid. While he was in service, DE was initiated and was pending at the time of retirement. After retirement, DE was also concluded by order dated 15.11.2022 imposing punishment of deduction of 10% pension per month for one year. The punishment order has attained finality since not challenged by the Applicant. He made representation on 18.05.2022 to release gratuity and to pay regular pension. He contends that only to deprive him of gratuity, quite belatedly FIR was registered against him and 9 others on 12.10.2022 for the offences under Sections 196, 218, 406, 408, 409, 420, 467, 468, 471 and 121(b) of Indian Penal Code. It is because of registration of FIR, the Respondent has not released the gratuity. It is on this background, the Applicant has filed this O.A. for payment of gratuity and regular pension.

3. The Respondent resisted the O.A. denying the claim for gratuity and regular pension on the ground of registration of FIR. In this behalf, Respondent referred 131(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) which *inter-alia* provides that no gratuity shall be paid to the Government servant until the conclusion of departmental or judicial proceedings and issuance of final orders thereof.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that DE which was pending at the time of retirement is already concluded and subsequent registration of FIR on 12.10.2022 cannot be the ground to withhold gratuity and regular pension. He emphasized that it is only in a case where departmental enquiry or judicial proceeding (criminal case) is pending or instituted on or before retirement, in that event only, Rule 131(c) of 'Pension Rules of 1982' will attract and in the present case, there being no such initiation of judicial proceedings on the date of retirement, registration of FIR after more than

one year from retirement cannot be the ground to withhold gratuity and regular pension. He has further pointed out that in such situation, it is only in an event if Applicant is eventually convicted in criminal case, then only Government can withhold or withdraw the pension as provided under Rule 26 of 'Pension Rules of 1982'.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer submits that in view of registration of offences for the alleged act done during the period of service, the claim of gratuity is premature. In this behalf, reference is made to Rule 131(c) of 'Rules of 1982'.

6. In view of submissions, the issue posed for consideration is whether Respondent can withhold the payment of gratuity due to registration of crime after retirement.

7. Indisputably, Applicant stands retired on 31.01.2021. No such judicial proceedings/criminal case was pending against the Applicant in the Court of law. Though DE was pending, it was concluded by order dated 15.11.2022 imposing punishment of deduction of 10% pension per month for one year, which is accepted by the Applicant and it needs to be implemented by the Respondent insofar as pension is concerned. The DE in which Applicant was subjected to punishment was for different charges than the allegations made in FIR registered on 12.10.2022.

8. Now turning to the registration of FIR, the perusal of record reveals that on 12.10.2022, complainant Shashank Kadam, Assistant Conservator of Forest, Social Forestry, Thane has lodged complaint against the Applicant and 9 other Government servants alleging commission of offences by them in between 2015 to 2018 while executing certain development work. Thereon, Police registered offences against the Applicant and 9 others under Sections 196, 218, 406, 408, 409, 420, 467, 468, 471 and 121(b) of IPC. The Applicant was granted Anticipatory Bail by Sessions Judge, Thane with the observation that *prima-facie*,

except granting permission to carry out the work, there was no other specific involvement of the Applicant. In FIR, it is alleged that Applicant in conspiracy with 9 other Government servants misappropriated Government funds and several irregularities were found in the work done by them. Be that as it may, there is no denying that the offences came to be registered on 12.10.2022 i.e. after retirement of the Applicant and secondly, till date, no charge-sheet is filed in the Court of law. Therefore, the question arises whether in absence of any such pendency of criminal case on the date of retirement, mere registration of offence subsequent to retirement can be a ground to withhold the gratuity.

9. In this behalf, one need to consider Rule 27 and Rule 130 of 'Pension Rules of 1982, which are 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 reemployment,-

(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 reemployment, 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.”

“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.”

10. Whereas, we also needs to consider Rule 26 of ‘Pension Rules of 1982’ which is as under :-

“26. Pension subject to good conduct

(1) Future good conduct shall be an implied condition of every grant of pension. Government may, by order in writing, withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct :

Provided that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum pension as fixed by Government.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if Government considers that the pensioner is *prima facie* guilty of grave

misconduct, it shall, before passing an order under sub-rule (1), follow the procedure as laid down in rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for imposing a major penalty.

(4) The Maharashtra Public Service Commission shall be consulted before an order under sub-rule (1) is passed in respect of officers holding posts within their purview.”

11. Thus, as per Rule 27(6)(b)(i), the judicial proceeding/criminal case shall be deemed to be instituted on the date on which complaint or report of a Police Officer of which Magistrate takes cognizance is made. Whereas in the present case, till date, admittedly, no charge-sheet filed in the Court of law, and therefore, question of taking cognizance by the Magistrate did not arise. This being so, mere registration of offence subsequent to retirement cannot be the ground to withhold the gratuity in absence of any such specific Rules of provision to that effect. The learned P.O. could not point out any such Rule or provision to withhold gratuity on the basis of mere registration of offence, subsequent to the date of retirement. In future, if criminal case is instituted in the Court of law and Applicant found guilty, in that event only, Government can withhold or withdraw the pension, as provided under Rule 26 of 'Pension Rules of 1982'. Suffice to say, mere registration of criminal offence subsequent to retirement cannot be the ground to withhold the gratuity.

12. True, Rule 131(c) provides that no gratuity shall be paid to the Government servant until conclusion of the departmental or judicial proceeding and the 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. It leads to suggest that Rule 131(c) of 'Pension Rules of 1982' apply where DE or judicial proceedings are initiated before retirement. Once Applicant stands retired without there being any initiation of judicial proceeding/criminal case, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the possibility of initiation of criminal case in future.

13. The necessary corollary of aforesaid discussion leads me to conclude that Respondent cannot withhold gratuity as well as regular pension and it needs to be released. The act of Respondent to withhold gratuity and regular pension is totally arbitrary and unsustainable in law. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondent is directed to release regular pension subject to deduction of 10% pension per month for one year as per order dated 15.11.2022 passed in D.E. and gratuity within two months from today.
- (C) No order as to costs.

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

Mumbai

Date : 05.06.2023

Dictation taken by :

S.K. Wamanse.

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