

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO. 25 OF 2019

DISTRICT: SATARA

Shri Raghunath Hindurao Sartape,)
Aged about 59 yrs, Retired-Sub-Divisional Agricultural)
Officer, residing at Sai-Sneh, CS No. 464/A,)
Plot No.4, Near Cooper Colony.S. Bazar, Satara.)...**Applicant**

Versus

1. Government of Maharashtra,)
Through Principal Secretary,)
Agriculture, Animal Husbandry, Dairy)
Development & Fisheries Department,)
Chamber No. 524 (Ext.), Madam Cama)
Marg, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai 400 032.)
2. Commissioner (Agriculture),)
Commissionerate of Agriculture,)
M.S., Pune.)
3. Office of Accountant General, Maharashtra,)
having its office at 2nd Floor, Pratistha)
Bhavan, New Marine Line, Maharshi)
Karve Road, Churchgate, Mumbai 400 020.)...**Respondents**

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

Ms. S. Suryawanshi, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

DATE : 08.02.2019.

J U D G M E N T

1. The Applicant has challenged the order dated 31.12.2018 whereby due to contemplated D.E, No objection certificate for grant of regular pension has been withheld. The Applicant is seeking direction to release regular pension and gratuity.

2. Shortly stated facts giving rise to the application are as follows:-

The Applicant stands retired from the post of Sub-Divisional Agriculture Officer, Chiplun, District Ratnagiri on 31.5.2018. After retirement, G.P.F. (90%), GIS, leave encashment and provisional pension upto November 2018 was released. However, regular pension and gratuity was not released. It is contended that on the date of retirement i.e. 31.5.2018, no D.E. was pending or initiated against him and, therefore, the regular pension and gratuity cannot be withheld. On this pleading, he challenged the impugned order dated 31.12.2018 whereby No Dues Certificate or grant of regular pension was refused.

3. Respondent Nos.1 to 3 resisted the application by filing Affidavit-in-reply inter-alia contending that though the Applicant stands retired w.e.f. 31.05.2018, No Dues Certificate was not issued because of proposed D.E. After his retirement, the D.E. has been initiated and charge sheet has been issued to the Applicant. Respondents, therefore, contend that D.E. has been initiated in consonance of Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982'). On this pleading, the respondents sought to justify the action of withholding the regular pension and gratuity and prayed to dismiss the application.

4. Shri M.D. Lonkar, learned Advocate for the Applicant vehemently urged that the act of respondents to withhold the regular pension and gratuity is

totally illegal, as on the date of retirement i.e. 31.05.2018, no D. E. was in existence. He, therefore, contends that subsequent initiation of D.E. could not bar the applicant from claiming pension and gratuity. On this line of submission, he urged that the pension is not bounty but it is the right of the Government employee and the same cannot be taken away unless rules provide so. He has further pointed out that, looking to the nature of charges now levelled against the Applicant in D.E, the same cannot be said of grievous nature, so as to warrant major punishment.

5. Per contra, the learned P.O. for the Respondents tried to contend that in view of initiation of D.E. though after retirement, the action on the part of respondents to withhold the regular pension and gratuity cannot be faulted with.

6. The crux of the matter is whether the regular pension and gratuity can be withheld on the ground of initiation of D.E. after superannuation of the applicant.

7. At the very outset, it needs to be stated that in the retirement order dated 30.5.2018 (page No.11 of Paper-Book), there is no whisper about any proposed D.E. As such, admittedly, on the date of retirement, D.E. was not initiated. The Respondents have filed the copy of charge sheet issued in D.E, which shows that D.E. was initiated on 28.01.2019. This being the position, it is quite clear that on attaining the age of superannuation, the applicant was allowed to retire honourably.

8. Learned Advocate for the Applicant referred to **2004 (1) Mh. L. J. 581 (Madanlal Sharma V/s. State of Maharashtra)** wherein Para 21, the Hon'ble Bombay high Court held as follows:-

“21. As per the provisions of rule 10(1) of the Pension Rules, the petitioner attained the age of superannuation on 11th October, 1984 and he stood retired on superannuation on 31st October, 1984 (on attaining the age of 58 years). This retirement on reaching the age of superannuation is automatic unless an order of extension is passed by the competent authority. The retention of the petitioner in the Government service was never ordered by the competent authority by invoking the powers under rule 12 of the Pension Rules. It is also well known that, in case, the Government servant has been charged of causing loss to the exchequer, misappropriation of funds, falsification of record or any such serious misconduct, the disciplinary enquiry could be continued or initiated even after reaching the age of superannuation. In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the enquiry proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably. On reaching the age of superannuation, the retirement is automatic unless the reaching the age of superannuation, the retirement is automatic unless the competent authority passes an order otherwise. This is one more reason of the order of dismissal dated 6-1-1987 being illegal and void ab initio.”

9. The learned Advocate for the Applicant made a fair statement that he is not running away from the liability to face the D.E. in accordance to law but initiation of D.E. at any rate, cannot be the ground to withhold the pension and gratuity. I find merit in his submission, particularly in view of charges levelled against the Applicant in D.E, which does not seems to be of such a nature to warrant major punishment. The perusal of charge-sheet reveals that the charge framed in D.E. was on account of relieving Driver without getting approval from superior authority and secondly, the failure on the part of Applicant to take steps to propose the D.E. against the Driver. It appears that the Driver Shri R.R. Awale was indulging in misconduct, and therefore, the D.E. was required to be initiated against him. For that purpose, the Applicant was supposed to forward proposal to initiate D.E. Despite the instructions from superiors, the Applicant did not submit proposal and relieved Shri Awale Driver unilaterally. These are the charges levelled against the Applicant in the D.E. initiated after the retirement. As such, having regard to the nature of

charges, in my considered opinion, it does not call for any such major punishment. This aspect tilt the matter in favour of Applicant for grant of relief claimed.

10. At this juncture, it would be apposite to refer Sections 26(1) and 27(1) of 'Pension Rules 1982' which are as follows :

“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.”

27. Right of Government to withhold or withdraw pension.- (1) Government 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.”

11. As such, the conjoint reading of Sections 26(1) and 27(1) of 'Pension Rules 1982' makes it quite clear that, if the Government employee is found guilty for grave misconduct or negligence, then the Government is empowered to withhold the pension or part of it. In other words, such action is subject to the finding in D.E. or in judicial proceeding against the Government servant. This being the position, when no D.E. was initiated at the time of retirement, the question of withholding retiral benefits on the basis of D.E. initiated after retirement does not survive. Therefore, the action taken by the Respondents of withholding regular pension and gratuity is premature, more particularly, looking to the nature of charges levelled against the Applicant, which does not call for major punishment.

12. The learned Advocate for the Applicant referred to Judgment passed by this Tribunal in *T.A.No.3/2001 (Writ Petition No.1507 of 1991) Satpal D. Chauhan Vs. The State of Maharashtra & Ors.) decided on 25.10.2001*. The principal enunciated in this authority is that, if no judicial proceeding or D.E. proceeding is pending on the date of retirement of the Government employee, then pension or gratuity cannot be withheld. In this Judgment, the Tribunal has considered the effect of Sections 26, 27 read with 130 of 'Pension Rules 1985' and concluded that, pensionary benefits cannot be withheld.

13. In the present case, the learned P.O. could not point out any provision of law or Rules empowering the Government to withhold pension and gratuity due to initiation of D.E. after retirement of a Government employee. Therefore, the action taken by the Respondents being premature, cannot be said justified in law. Such action can be taken if in D.E, the Applicant is held guilty and needless to mention punishment, if any, should be proportionate to the alleged misconduct.

14. It is well settled that the pension is recognized as a right in property and consequently, such right cannot be taken away in absence of statutory Rules to that effect.

15. The totality of the aforesaid discussion leads me to sum-up that, in the present facts and circumstances, the Applicant is entitled to the claim and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (i) The Original Application is allowed.

- (ii) The communication dated 31.12.2018 is hereby quashed and set aside. The Applicant is declared entitled to regular pension as well as gratuity and remaining 10% GPF amount.
- (iii) The Respondents are directed to release the aforesaid retiral benefits within two months from today, failing which it shall carry interest at the rate of 8% till actual payment.
- (iv) No order as to costs.

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

Place : Mumbai
Date : 08.02.2019
Dictation taken by : S.K. Wamanse
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