

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.267 OF 2021

DISTRICT : SOLAPUR

Shri Gajanan N. Tate.)
Age : 62 Yrs., Occu.: Retired as District)
Agriculture Officer with last posting in)
Zilla Parishad, Solapur and residing at)
Flat No.7, Sagar Apartment, South Sadar)
Bazar, Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Agriculture Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner for Agriculture.)
M.S, Central Building, Pune.)
3. The Chief Executive Officer.)
Zilla Parishad, Solapur.)...**Respondents**

Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents 1 & 2.

Mr. A.M. Misal, Advocate for Respondent No.3.

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

DATE : 27.07.2021

JUDGMENT

1. The Applicant has challenged the communication dated 10.03.2021 by the Office of Lokayukta, State of Maharashtra whereby he

was informed that in view of pendency of departmental enquiry, he cannot be said entitled to gratuity and regular pension, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant stands retired as District Agriculture Officer (Class-II), Zilla Parishad, Solapur. When Applicant stands retired, neither there was any criminal proceedings instituted against him nor D.E. was initiated. Despite this position, he was not granted retiral benefits. He approached the Office of Lokayukta, State of Maharashtra where Government comes with a defence that D.E. is being initiated against the Applicant, and therefore, he is not entitled to gratuity and regular pension, as contemplated under Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity).

3. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant, Shri A.J. Chougule, learned Presenting Officer for Respondent Nos.1 & 2 and Shri A.M. Misal, learned Advocate for Respondent No.3.

4. In view of submission advanced at the Bar, small issue posed for consideration is whether Applicant's gratuity and regular pension can be withheld since, admittedly, there was no initiation of D.E. or criminal proceedings against the Applicant on the date of retirement. The answer is in emphatic negative.

5. The perusal of record reveals that while Applicant was serving as Taluka Agriculture Officer, Mangalvedha, District Solapur Show Cause Notice was issued to him on 28.09.2016 calling an explanation as to why regular D.E. under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) should not be initiated against him for misconduct during his tenure as Taluka Agriculture Officer at Mangalvedha, District Solapur. However,

admittedly, till date of retirement, no D.E. was initiated against the Applicant by issuance of charge-sheet to him. Furthermore, admittedly, on the date of retirement, no criminal proceedings were either instituted or pending against him.

6. Indeed, as pointed out by learned Presenting Officer that the Government had already communicated to Respondent No.2 – The Commissioner for Agriculture by letter dated 15.10.2018 [Page No.79 of P.B.] that since Applicant retired on 30.09.2016, no D.E. could be initiated against him in view of embargo of Rule 27(2)(b) of 'Pension Rules of 1979'. However, Respondent No.2 was further directed that if there is any misappropriation or financial irregularity during the tenure of Applicant, then criminal prosecution should be initiated against him and others. It is on this background only, F.I.R. was registered against the Applicant and others on 01.04.2019 for the offence under Section 403, 409 read with 34 of Indian Penal Code on the complaint filed by Shri Ravindranath Kamble, Taluka Agriculture Officer, Pandharpur. However, admittedly, till date, no charge-sheet is filed in the Court of law and offence seems to be still under investigation with Police.

7. Thus, what transpired from the record that on the date of retirement of the Applicant, neither there was initiation of D.E. nor any criminal proceedings were pending against him in the Court of law. Needless to mention that judicial proceedings shall be deemed to be instituted in case of criminal proceeding on the date on which the complaint or report of a Police Officer of which the learned Magistrate takes cognizance is made. In other words, if there is cognizance of the alleged offence by learned Magistrate on or before the date of retirement, in that event only, the judicial proceedings can be said deemed to be instituted against a Government servant in terms of Rule 27(6)(b)(i) of 'Pension Rules of 1982'. Whereas, in so far as departmental proceedings are concerned, as per Section 130(1)(c) "no gratuity shall be paid to a Government servant until the conclusion of the departmental or judicial

proceedings and issue of final orders thereon". In the present case, admittedly, no D.E. was initiated against the Applicant on the date of retirement. Apart, though Show Cause Notice was issued on 28.09.2016 for initiation of departmental proceedings, the Government in its wisdom has already clarified that since Applicant retired on 30.09.2016 and the period of alleged misconduct pertains to 2010-2011, the initiation of D.E. is not permissible as provided in Rule 27(2)(b) of 'Pension Rules of 1982'. This being the position, the question of withholding gratuity and regular pension on the premises of proposed initiation of D.E. is totally unsustainable.

8. As regard initiation of criminal proceedings, admittedly, except registration of offence, nothing happened thereafter and matter seems to be still under investigation. Therefore, mere registration of offence after three years from the retirement of the Applicant could not be a ground to withhold the gratuity.

9. True, future good conduct shall be an implied condition for grant of pension in terms of Rule 26 of 'Pension Rules of 1982'. Here, it may be noted that where a pensioner is convicted of a serious crime by a Court of law, in that event only, the Government is empowered to withhold pension, as specifically provided under Rule 26(2) of 'Pension Rules of 1982'. Suffice to say, mere registration of offence cannot be the ground to withhold the pension or gratuity.

10. Indeed, the Government by G.R. dated 06.10.1998 had reiterated and clarified the provision of 'Pension Rules of 1982' informing all the Departments that, if there is no D.E. on the date of retirement, the gratuity could not be withheld. G.R. dated 06.10.1998 reads as under :-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शाससन 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 क्रमांकसेनिवे-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 सेवानिवृत्तीपुर्वी 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.”

11. Shri Bandiwadekar, learned Advocate for the Applicant has referred to the decision rendered by this Tribunal in **O.A.No.768/2018 (K.R. Nannaware Vs. The Commissioner, Dairy Development & Anr.) decided on 24.04.2019** and **O.A.No.748/2020 (Avinash Patil Vs. The Commissioner, E.S.I.S. Mumbai & Anr.) decided on 25.06.2021** arising from similar situation wherein this Tribunal held that if there is no D.E. or initiation of criminal prosecution against a Government servant on the date of retirement, in that event, gratuity and regular pension cannot be withheld on the speculation of initiation of D.E. in future. Despite this settled legal position, it is very unfortunate to note that Respondents have not paid gratuity and regular pension. Only provisional pension is granted. Other retiral benefits are admittedly received.

12. No specific provision or Rule has been pointed out to substantiate that gratuity can be withheld where D.E. is initiated or criminal prosecutions are initiated after the date of retirement. Indeed, the perusal of Rule 27 read with Rule 130 of ‘Pension Rules 1982’ makes it clear that gratuity or regular pension cannot be withheld if there is no such initiation of D.E. or criminal prosecution against a Government servant on the date of his retirement. It is only the event of positive findings in D.E. or conviction in criminal case, the Government is empowered to withhold pension as it deems fit. Once a Government servant retired, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance or speculation or possibility of initiation of D.E. or conviction in criminal case. In case, D.E. is instituted after retirement, its outcome indeed cannot go beyond the scope of Rule 27(1) of ‘Pension Rules of 1982’. In the present case, now

initiation of D.E. against the Applicant is out of question in view of specific stand taken by the Government that no D.E. is permissible.

13. The totality of aforesaid discussion leads me to conclude that withholding of gratuity and regular pension is totally impermissible in law. The O.A, therefore, deserved to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release the gratuity and regular pension to the Applicant within a month from today.
- (C) The Applicant may avail remedy for grant of interest on delayed payment independently, as permissible in law.
- (D) No order as to costs.

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

Mumbai
Date : 27.07.2021
Dictation taken by :
S.K. Wamanse.

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