

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.31 OF 2021

DISTRICT : PUNE

Shri Pandurang Baburao Borate.)
Age : 67 Yrs., Occu.: Retired as Block)
Education Officer and residing at)
Yashodeep Ganesh Colony No.2,)
Patil Nagar, Chikhali, Pune – 411 062.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Schooling Education & Sports Dept.,)
Mantralaya, Mumbai – 400 032.)
2. The Education Commissioner.)
Central Building, 1st Floor,)
Dr. Annie Besant Road, Agarkar)
Nagar, Pune – 411 001.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

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

DATE : 28.10.2021

JUDGMENT

1. The Applicant has filed the present Original Application for direction to the Respondents to release retiral benefits with interest at the rate of 18% p.a. and to treat suspension period from 14.02.2011 to

30.09.2012 as duty period for all purposes invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this O.A. are as under :-

The Applicant was serving as Block Education Officer, Panchayat Samiti, Mulshi and came to be suspended by order dated 14.02.2011 consequent to registration of offence punishable under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'Act of 1988' for brevity) invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). He attained the age of superannuation on 30.09.2012 while undergoing suspension and accordingly, retirement order was passed. He was served with the charge-sheet in departmental enquiry initiated under Rule 8 of 'Rules of 1979' read with Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity) on 22.04.2013 after retirement. He was prosecuted in Special ACB Case No.04/2012 by Additional Session Judge, Pune and was acquitted from the charges leveled against him by Judgment dated 17.05.2014. After acquittal, he made representation for releasing retiral dues, but in vain. In the meantime, the Enquiry Officer completed enquiry and submitted report to the disciplinary authority with his finding that Charge No.1 is partly proved and Charge No.2 is fully proved. However, no final order was passed in D.E. and Applicant's retiral dues remained unpaid on the ground that the Government has filed appeal against acquittal before Hon'ble High Court which is subjudice, and therefore, the decision in respect of retiral benefits will be taken only after decision in appeal.

3. It is on the above background, after waiting for a long time being no option, the Applicant has filed the present O.A. seeking directions to release the retiral benefits viz. regular pension, gratuity and leave encashment with interest at the rate of 18% p.a.

4. Shri K.R. Jagdale, learned Advocate for the Applicant vehemently urged that once the Applicant the Applicant is acquitted in criminal case, the judicial proceedings terminates and mere filing of appeal against the Judgment of acquittal cannot be the ground to deprive the Applicant from gratuity, regular pension and leave encashment. He has further pointed out that though departmental enquiry is completed long back, the Respondents chose not to take final decision in D.E, and therefore, retiral benefits of the Applicant cannot be kept in abeyance for such long time. He has placed reliance upon various Judgments to substantiate his contention that pendency of appeal cannot be the ground to withhold the retiral benefits, which will be dealt with during the course of discussion.

5. Per contra, learned Presenting Officer tried to contend that in view of pendency of appeal against the Judgment of acquittal, the Applicant is not entitled to the relief claimed. The learned P.O. as regard to communication of Government dated 16.11.2016 whereby Applicant was informed that he need to wait till decision of criminal appeal.

6. In view of submissions advanced at the Bar, the issue posed for consideration whether pendency of criminal appeal against the acquittal could be the ground to defer regular pension, leave encashment and gratuity.

7. Indisputably, the offence under Prevention of Corruption Act came to be registered while he was in service and consequent to it, he was suspended. He retired on 30.09.2012 while he was under suspension. It is only after retirement, charge-sheet in D.E. was issued on 22.04.2013, which is admittedly completed, but no final order is passed by the Department for the reasons known to it. In so far as criminal case is concerned, the Applicant is acquitted by Judgment dated 17.05.2014.

8. At this juncture, it would be apposite to reproduce Rule 27 and Rule 130 of 'Rules of 1982' which are material in this behalf, it is as under :-

"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.:

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 the Government,
 - (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.”

9. Thus, in terms of Rule 27 as quoted above, even if D.E. is not initiated during the tenure of service of a Government servant, later it can be initiated subject to compliance of Rule 27(2)(b)(i) and (ii) of 'Rules of 1982'. In that event, if a Government servant/pensioner is found guilty for grave misconduct or negligence allegedly committed by him during the period of his service, then Government is empowered to withhold or withdraw pension or any part of it permanently or for a specific period, as it deems fit. As such, the scope of D.E. initiated after retirement is very limited. All that permissible is to withhold pension, if found guilty in D.E. This being the position, even if in D.E, the Applicant is held guilty that does not empower Government to hold gratuity in absence of any Rule to that effect.

10. 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.”

11. In so far as Rule 130(c) of 'Rules of 1982' is concerned, it provides no gratuity shall be paid to the Government servant until conclusion of departmental or disciplinary proceeding and issuance of final order thereon. In the present case, as mentioned above, the D.E. is initiated much after retirement, and therefore, as stated above, the scope of such enquiry is limited. In so far as judicial proceedings are concerned, the Applicant is already acquitted by Trial Court. The "judicial proceeding" as defined under Section 2(1)(i) of Code of Criminal Procedure includes any proceedings in the course of which evidence is or may be legally taken on oath. Therefore, here the question would be whether filing of appeal could be said continuation of judicial proceedings, so as to withhold retiral benefits of the Applicant.

12. On retirement, right to receive gratuity and pension accrues to a Government servant. However, where judicial proceedings or departmental enquiry is pending at the time of retirement, the payment of gratuity is to be deferred till the decision of judicial proceedings or departmental enquiry. In the present case, admittedly, no departmental proceedings were instituted or pending on the date of retirement of the

Applicant. However, the criminal case was pending in which he was later acquitted on 17.05.2014. He retired on 30.09.2012 and till date, the period of more than 9 years is over but his gratuity, leave encashment and regular pension is withheld. Only provisional pension is being paid. Thus, once judicial proceeding has terminated in the acquittal exonerating the Applicant from the charges levelled against him and there was no initiation of DE on the date of retirement, it is very difficult to accept the theory that so long as appeal filed against the acquittal is not decided, a Government servant is not entitled to the retiral benefits. If such contention is accepted, the payment of retiral benefits would be in abeyance for decades together and there would be no certainty to the same since it would be unending. On this point, there is no direct Judgment of Hon'ble Bombay High Court or Supreme Court. However, this issue has been dealt with by other High Courts which have persuasive value and can be followed as the guiding factors, which are as follows :-

(a) In **1985(3) SLR 254 (Surinder Kumar Vs. State of Himachal Pradesh)**, a Government servant was convicted for the offence under Section 409 of IPC, but in appeal, the Judgment of conviction was set aside. After acquittal, he made representations for revision in pay and allowances. While considering the effect of acquittal, Hon'ble High Court of Himachal Pradesh held as under :-

“The preferment of acquittal appeals cannot however, be regarded as the continuance of the trial. The trials have concluded with judgment of acquittal. (See State V. B.C. Dwivedi, 1983 (2) XXIV GLR 1315). The initial presumption of innocence must, therefore, be regarded as having been doubly reinforced by orders of acquittal passed in favour of the petitioner. Under such circumstances, the continued operation of the order of suspension as from the date of acquittal cannot be regarded as reasonable, fair and just If the acquittal appears are allowed and the petitioner is convicted, there is nothing to prevent the competent authority from dealing with the petitioner in accordance with law. If, on the other hand, the acquittal appears fail and a departmental inquiry, if any, is ordered to be instituted on the same charges, it would not be fair and just reasonable to suspend the petitioner once against in view of the initial presumption of innocence having been reinforced twice over.”

(b) In **2002(3) LLN 638 (State of West Bengal Vs. Hari Ramalu)**, a Government servant was placed under suspension on account of registration of criminal offence. While consider the scope of definition of “enquiry” and “investigation” under Section 2(9) and 2(4) of Code of Criminal Procedure and Sub-rule 3 of Rule 3 of All India Services (Discipline and Appeal) Rules, 1969, following observations were made :-

“Continuation of the proceedings must relate to investigation, enquiry or trial and such investigation, enquiry or trial, if any, have come to an end with the judgment of acquittal. The same being continuing in the instant case is misconceived, only on the ground that an appeal there against is pending. If respondent is convicted by the appeal Court for commission of a criminal offence, sub-rule (4) of rule 3 of the said Rules would be attracted. Keeping in view the fact that different sub-rules of rule 3 operate in different fields, we are of the opinion that sub-rule (3) of rule 3 be held to be operative only in case namely, when an investigation, enquiry or trial remains pending and not or when the employee person is acquitted. The situations obtaining under different sub-rule being absolutely different, in our opinion, sub-rule (3) of rule 3 must be given a restrictive interpretation.”

(c) In **2009 SCC Online HP1303 (Chandu Ram Vs. State of H.P.)**, a Government servant was acquitted from the charges under the Prevention of Corruption Act and later retired. Even after acquittal, he was not given gratuity. The Petitioner, therefore, claimed gratuity with interest and also pleaded that he was eligible to be promoted as Deputy Ranger w.e.f. the date his juniors were promoted. The Hon’ble High Court directed to release gratuity with interest.

(d) In **2010 SCC Online P & H 183 (State of H.P. Vs. Banwarilal)** while dealing with the issue of keeping departmental proceedings in abeyance and withholding of gratuity, it was noticed that the Petitioner was already acquitted in criminal case, but DE

was kept in abeyance. The Hon'ble High Court held that State had enough opportunity to conclude departmental proceedings instead of keeping the same in abeyance and the provision to withhold gratuity during the pendency of proceedings implies that the concerned authorities takes steps expeditiously to finalize the same. It has been further held that if proceedings are kept pending for indefinite period withholding of pensionary benefits cannot be justified.

(e) In **2010 (2) ALD 773 (Chief Commissioner of Land Administration, A.P., Hyderabad Vs. R.S. Ramakrishna Rao)**, the Hon'ble A.P. High Court considered a case as to whether Government can withhold payment of retiral benefits after acquittal on the ground of pendency of criminal appeal. The Central Administrative Tribunal allowed the Original Application directing the Government to release retiral benefits holding that the pendency of criminal appeal against the order of acquittal is of no consequences. However, State challenged the decision of CAT before Hon'ble High Court wherein on consideration of A.P. Revised Pension Rules, 1980, it has been held that though Department has right to file appeal, but it cannot be said that judicial proceedings have not been concluded. It has been specifically held that once the Criminal Court acquits the accused, it must amount to be the conclusion of judicial proceedings in the first instance, and therefore, the appeal filed against the Applicant cannot be treated as continuation of criminal proceedings.

(f) In **2013 SCC Online MP 1004 (R.C. Dubey Vs. M.P. State Electricity Board)**, the Petitioner was not granted the benefit of second higher pay scale because of criminal prosecution launched against him under the provisions of Prevention of Corruption Act in which he was acquitted. However, his request for higher pay scale was not considered and his claim was rejected on the ground that

the State has filed appeal against the order of acquittal. The Hon'ble M.P. High Court held as follows :-

“The preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceeding as the initial presumption of innocence gets re-enforced by the orders of acquittal. The contention, therefore, put forth by the respondents that the filing of revision against the judgment dated 12.12.2000 would tantamount to the pendency of judicial proceeding does not reason with the provisions as they stand under law. In the considered opinion of this Court, after acquittal, which lead to an affirmation of the innocence of the accused, an appeal or revision, as the case may be, being not a continuation of trial, will not amount to a pendency of judicial proceedings.”

(g) In **2014 SCC Online MP 1036 (Balak Singh Thakur Vs. State of Madhya Pradesh)**, the issue was about wages of suspension period of a Government servant which was rejected by the Government on the ground that against the order of acquittal under the provisions of Prevention of Corruption Act, an appeal has been preferred. However, Hon'ble High Court rejected the contention of Government that since an appeal was preferred, the Petitioner therein was still under cloud, and therefore, not entitled to finalization of suspension period. The Hon'ble High Court finally turned down the objections stating that they were unjustified.

13. The issue again came up before the Hon'ble High Court of Madras in **Writ Petition No.18853/2015 and MP No.1/2015 (Bharat Sanchar Nigam Ltd. Vs. S. Rajagopal & Ors.) decided on 26.08.2015** though it context of different service conditions, but ultimately, the conclusion boiled down to the determination of scope of the word “judicial proceedings”. The Petitioner therein was not given promotion though he was acquitted in criminal case. The Hon'ble Madras High Court held that the pendency of criminal appeal cannot be termed an extension of judicial proceedings and in Para No.19 summarized the position as under :-

“19. The final orders, as indicated in Sub-rules (b) and (c) of Rule 52 (1) of the Pension Rules, are the orders to be passed by the Department upon conclusion of the departmental or judicial proceedings. Once the departmental proceedings end in favour of delinquent employee, there is no question of agitating the orders of the disciplinary authority by the Department itself. Therefore, the final orders are required to be passed for the purpose of payment of retirement benefits.”

14. In this behalf, learned Advocate for the Applicant also referred to the decision rendered by this Tribunal in **O.A.No.843/2016 (Mr. Baban Y. Ghuge Vs. State of Maharashtra & Ors.) decided on 04.07.2017** where in similar situation, retiral benefits were withheld on account of filing of appeal against the Applicant. The Tribunal referred to the decisions referred to above and relying upon these Judicial pronouncements held that the Government cannot deny regular pension and gratuity on the ground of pendency of criminal appeal and directions were given to release the same. As such, this decision is of coordinate Bench of this Tribunal, and I see no reason to deviate from it.

15. Thus, the conspectus of these judicial pronouncements is that the filing of revision or appeal against the acquittal cannot be said continuance of the trial and it cannot be treated as pendency of judicial proceedings. Once a person was acquitted from the charges stand at par with a person who is not being charged and was not subjected to criminal proceedings.

16. In view of above, the claim of Applicant for regular pension, gratuity and leave encashment is indefeasible. However, at the same time, the interest of Government also needs to be protected by taking bond or undertaking from the Applicant that if in future, criminal appeal is allowed and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted, or by deduction from monthly pension payable to him. In my considered opinion, such direction would suffice the purpose to balance the rights of the Applicant as well as Government.

17. The Applicant has also prayed to treat the suspension period from 14.02.2011 to 30.09.2012 as duty period. He was suspended by order dated 14.02.2011 consequent to registration of Criminal Case against him. However, in Criminal Case, he is acquitted. Thus, registration of offence was the only reason for suspension and not initiation of DE, which was instituted after his retirement. This being the position, in view of catena of decisions referred to above, the pendency of appeal against acquittal cannot be the reason for not regularizing the suspension period. Since he is exonerated in Criminal Case, the period undergone in suspension is required to be treated as duty period.

18. The totality aforesaid discussion thus leads me to sum-up that the Applicant is entitled to regular pension, gratuity and leave encashment and O.A. deserves to be allowed. Hence, the order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to release regular pension, gratuity and leave encashment to the Applicant as per his entitlement within two months from today on furnishing bond/undertaking that if criminal appeal is allowed, and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted or by deduction from monthly pension payable to him.
- (C) The Respondents are further directed to treat the suspension period from 14.02.2011 to 30.09.2012 as duty period and shall pass necessary orders.
- (D) The Applicant is at liberty to redress his grievance about interest by independent action, as permissible in law.

(E) No order as to costs.

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

Mumbai

Date : 27.10.2021

Dictation taken by :

S.K. Wamanse.

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