

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.401 OF 2018

DISTRICT : THANE

Shri Rajesham Laxmipathi Boga.)
Compounder in the Office of Medical)
Superintendent, E.S.I.S. Hospital, Mulund (W),)
Mumbai – 400 080 and residing at Pragati)
C.H.S, Plot No.28, Room No.B/10,)
Sawarkar Nagar, Thane (W).)...**Applicant**

Versus

1. The Medical Superintendent.)
E.S.I.S. Hospital, Mulund (W),)
Mumbai 400 080.)

2. The Commissioner / Director)
(Administration), E.S.I.S, having office at)
Panchdeep Bhawan, 6th Floor,)
N.M. Joshi Marg, Lower Parel,)
Mumbai – 400 013.)

3. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.07.2019

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for issuance of direction to the Respondents to grant regular pension and gratuity in view of his retirement on 31.12.2017.

2. Factual matrix is as follows :-

The Applicant was serving as Compounder (Class-III post) with Respondent No.1. He stands retired on 31.12.2017. By order dated 31.12.2017, he was allowed to retire on attaining age of superannuation subject to decision of enquiry of alleged misconduct. In view of said order, the provisional pension was granted but gratuity has been withheld. However, the Respondents did not take any steps for initiation of Departmental Enquiry (D.E.) against the Applicant for the period of more than one and half year. Besides, the amount of G.P.F, G.I.S, Leave Encashment was paid belatedly. The Applicant, therefore, contends that he is deprived of regular pension and gratuity without taking any steps for initiation of D.E. within reasonable time. The Applicant, therefore, filed the present O.A. for grant of interest on delayed payment on GPF, GIS, Leave Encashment, etc. and also seeks direction for grant of regular pension and gratuity with interest.

3. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents contend that while Applicant was serving as Compounder, he was found involved of tampering with the medical prescriptions issued to the patients by increasing the quantity of medicines (injection, insulin, etc.) and thereby committed misconduct. The Respondents in this behalf contend that the explanation of the Applicant was called by letters dated 01.11.2017, 07.11.2017 and 09.11.2017 which was replied by the Applicant on 06.11.2017 pleading

innocence. The Respondent No.2 – Commissioner, E.S.I.S. by letter dated 17.11.2017 formed Committee to make preliminary enquiry about the alleged misappropriation in distribution of medicines and tampering of the prescriptions. Later, in view of report of Committee, a proposal has been sent to the Government for issuance of charge-sheet against 11 delinquent including the Applicant and further orders are awaited from the Government. The Respondents further contend that on 11.08.2018, FIR has been also lodged with Mulund Police Station. With these pleadings, the Respondents prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant urged that admittedly, no charge-sheet was issued to the Applicant till his retirement and even thereafter also, till date, no charge-sheet is issued, and therefore, the Respondents cannot withhold regular pension and gratuity only on assumption or conjuncture that in future, charge-sheet will be served. He, therefore, urged that the Respondents' action of withholding regular and gratuity is illegal in absence of any such provisions and Rules empowering the Respondents to do so.

5. Whereas, Smt. A.B. Kololgi, learned P.O. sought to contend that the matter is under process and after approval of the Government, charge-sheet will be issued to the Applicant. She has further pointed out that now FIR is filed against the Applicant and other delinquent for the offences under Section 465, 468, 471 and 420 of Indian Penal Code. However, she was not able to point out any Rule or provision of law empowering the Respondents to withhold pension or gratuity where D.E. or criminal proceeding are not instituted till the retirement of an employee.

6. In view of submissions advanced by both the Counsels, the issue posed for consideration is whether the Respondents can withhold regular pension and

gratuity of the Applicant in absence of issuance of charge-sheet to the Applicant till date of his retirement.

7. At the very outset, certain admitted facts are required to be stated, which are as follows :-

- (a) No D.E. was initiated by issuance of charge-sheet to the Applicant till his retirement.
- (b) Even till date, no charge-sheet is issued to the Applicant.
- (c) No criminal proceedings were instituted against the Applicant till the date of his retirement.

8. Here, it would be apposite to reproduce the retirement order dated 31.12.2017, which is as follows :-

“विषय : सेवानिवृत्तीबाबत.

श्री. राजेशम लक्ष्मीपती बोगा, मिश्रक

संदर्भ : 1. आयुक्त कार्यालयाचे कार्यालयीन आदेश क.आयुक्त/राकावियो/ रालबो / मिश्रक / गट-क / सेवानिवृत्ती / का.क.२/ २२३४२-४५/२०१७ दिनांक ३० डिसेंबर २०१७.

2. क.आयुक्त/ राकावियो/ रालबो /मिश्रक/नादेनाविवौ/ गट-क/का.क.२/ २२३४६/२०१७ दिनांक ३० डिसेंबर २०१७.

उपरोक्त विषयावरील मा. आयुक्त रा.का.वि.योजना मुंबई यांचे संदर्भाकित पत्रान्वये (प्रत संलग्न) या रुग्णलयातील श्री.राजेशम लक्ष्मीपती बोगा, मिश्रक यांची जन्मतारीख दिनांक १८/१२/१९५९ अशी असून दिनांक १७/१२/२०१७ रोजी वयाची ५८ वर्षे पुर्ण होत असल्यामुळे ते महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील उपनियम १०(१) मधील तरतुदीनुसार दिनांक ३१/१२/२०१७ (म.नं.) पासून नियतवयोमानाने शासन सेवेतून सेवानिवृत्त होत आहेत.

तथापी ते कार्यरत असलेल्या लघु औषधी भांडारातील (प्रिस्कीप्शन) औषध अंतिम निर्णय पत्रिकेतील खाडाखेडीबाबतचे चालू असलेल्या प्रकरणाच्या चौकशीच्या अंतिम निर्णयाच्या अधिन राहून श्री. राजेशम लक्ष्मीपती बोगा, मिश्रक यांना दिनांक ३१/१२/२०१७ (म.नं.) पासून शासकीय सेवेतून नियत वयोमानानुसार सेवानिवृत्त करण्यात येत आहे. आपण आपल्याकडे असलेला कार्यभार श्री. घारे, मिश्रक यांच्याकडे सोपवून तसा कार्यपालन अहवाल या विभागास सादर करावा.

सही/-
वैद्यकीय अधिक्षक
रा.का.वि.यो.रुग्णालय, मुलुंड, मुंबई ८०”

9. It cannot be disputed that, where the Government servant has been charged for misconduct and charge-sheet has been issued against him during his tenure, then such disciplinary enquiry could be continued even after retirement. Where any such D.E. is initiated during the tenure of service, it is necessary that an order is passed intimating the delinquent that the enquiry proceeding shall be continued after attaining the age of superannuation in view of Section 27(2)(a) of 'Rules of 1982'. As such, in the light of deeming provision contained in Rule 27(2)(a) of 'Rules of 1982', if D.E. is instituted while Government servant is in service, then it deemed to be continued even after his retirement. However, in the present case, admittedly, no such D.E. was initiated against the Applicant till his retirement and what was held was only preliminary enquiry which cannot be equated with D.E. within the meaning of Rule 27(2)(a) of 'Rules of 1982'.

10. At this stage, it would be appropriate to reproduce Rules 27 and 130 of Maharashtra Civil Services (Pension) Rules, 1982 which are as follows :-

"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 re-employment, -
 - (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 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.”

11. Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of 'Rules of 1982'. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement of the Applicant, so as to have bearing of Rule 27(2)(a) of 'Rules of 1982'.

12. 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."

13. Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of 'Rules of 1982' and where on conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.

14. As regard gratuity, the Rule 130(c) says "no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and 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. This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of 'Rules of 1982', in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found

guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.

15. The learned P.O. except Rule 130(c) could not point out any provision to substantiate that the gratuity can be withheld where charge-sheet in D.E. has been issued after retirement. Needless to mention, the pension as well as gratuity are the statutory rights of the Government servants, which cannot be taken away in absence of express provision to that effect.

16. It is no more *res-integra* that the pension is recognized as a right in property enshrined in Article 300-A of the Constitution of India, which reads as under :-

“300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.”

As such, once the right to receive pension and gratuity is recognized as a statutory right, a person cannot be deprived of it without statutory provision to that effect.

17. Now turning to the facts of the present case, the Applicant stands retired on 31.12.2017 and admittedly, no charge-sheet was issued to him till the date of retirement. Needless to mention that, as per Rule 27 (6)(a) of 'Pension Rules 1982', the departmental proceedings shall be deemed to be instituted on the

date on which the statement of charges is issued to the Government servants or pensioner. Therefore, mere reference that the retirement of the Applicant will be subject to enquiry proceedings (then preliminary enquiry) cannot be construed that the D.E. was initiated against the Applicant.

18. In so far as registration of FIR is concerned, it is true that on 11.08.2018 i.e. after filing of O.A, F.I.R. seems to have been registered against the Applicant and 10 other officials alleging misappropriation of medicines in the period from 2011 to 2017. When specific query was made about the filing of charge-sheet in criminal case, the learned P.O. fairly stated, on instructions, that no charge-sheet is filed in criminal case. Whereas, as per Rule 27 (6)(b) of 'Pension Rules 1982', the judicial proceedings shall be deemed to be instituted in case of criminal proceedings from the date on which the complaint or report of Police Officer of which the Magistrate takes cognizance is made. This being the legal position, mere registration of FIR after filing of O.A. cannot be the ground to withhold gratuity as Rule 130(1)(c) of 'Pension Rules 1982' is not attracted.

19. Indeed, the lethargy or negligence on the part of disciplinary authority for initiating appropriate departmental proceedings against the concerned is fairly visible from the record. Even after retirement, though the period of 18 months is over, no charge-sheet in D.E. is issued. This being the factual aspects, the Government servant cannot be deprived of regular pension and gratuity on the speculation or possibility of initiation of D.E. in future.

20. The necessary corollary of aforesaid discussion leads me to conclude that in absence of an expression provision, the Respondents cannot withhold regular pension and gratuity. The Applicant, is therefore, entitled to get regular pension and gratuity. It is only in case where D.E. is initiated fulfilling embargo of Rule 27(2)(b) of 'Pension Rules 1982' and Applicant is found guilty, in that event only, the Government can withhold or reduce the pension amount. The scope of

punishment in such D.E. is limited and it cannot go beyond the scope of Rule 27 of 'Pension Rules 1982' as adverted to above. The Respondents are always at liberty to initiate DE, as may be permissible in law. In so far as interest on delayed payment of GPF, GIS, Leave Encashment is concerned, the Applicant may approach the Department first and then to avail legal remedy if permissible in law. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release regular pension and gratuity within two months from today.
- (C) The Respondents are free to initiate the D.E. against the Applicant, as may be permissible in law.
- (D) No order as to costs.

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

Mumbai
Date : 09.07.2019
Dictation taken by :
S.K. Wamanse.