

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.474 OF 2020**

**DISTRICT: NASHIK**

Shri Subhash Maruti Kadam, )  
Aged 60 years, Retired as Principal, I.T.I., )  
Kalwan, Dist. Nashik, R/o. Flat No.10, )  
Nivara Sankul, Dr. Homi Bhabha Nagar, )  
Mumbai Naka, Nashik. ) ... **Applicant**

**Versus**

- 1) The Joint Director of Vocational Education )  
and Training, Regional Office at R.P. Marg, )  
P.B. No.456, Nashik-2. )
- 2) The Director, )  
Vocational Education and Training, (M.S.), )  
Mumbai, 3, Mahanagar Palika Marg, )  
Mumbai-400 001. )
- 3) The State of Maharashtra, )  
Through Principal Secretary, Skilled )  
Development and Entrepreneurship Department,)  
Having Office at Mantralaya, Mumbai – 400032. )...**Respondents**

Shri Arvind V. Bandiwadekar, Advocate for the Applicant.

Smt. Archana B. K., Presenting Officer for the Respondents

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.11.2021.

**JUDGMENT**

1. The present Original Application is filed by retired Government servant to release withheld leave encashment amount with interest and also claimed interest on other belated payments of retiral benefits

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly facts giving rise to Original Application are as under :-

The Applicant stands retired on 30.11.2018 from the post of Principal, ITI, Kalval, Dist. Nashik. At the time of retirement, admittedly neither any departmental proceeding nor judicial proceedings were either instituted or pending against him. He made various representations to release retirement benefits and in response to it, some of the retiral benefits were released belatedly. It is only after retirement on 29.03.2019, the show cause notice was issued to the Applicant alleging that he had committed certain irregularities while purchasing stationary and other equipments and thereby caused loss of Rs.13,06,214/- to Government exchequer. He was called upon to submit his explanation within eight days else departmental proceedings will be initiated against him. However, thereafter no further steps were taken to initiate departmental enquiry for one year and it is only on 24.09.2020, the D.E. was initiated by issuance of charge sheet. It is on this background, the Applicant has filed this present O.A. for direction to release leave encashment with interest and also claimed interest on other belated payment of retiral benefits.

3. As regard, payment of leave encashment, the Applicant contends that since on the date of retirement, there was no initiation of D.E.. withholding of leave encashment is totally impermissible in law, and therefore, sought direction to release the same with interest.

4. Insofar as the gratuity is concerned, sum of Rs.6,67,040/- was paid belatedly, and therefore, he claimed interest on belated payment. Apart, he also sought direction to recalculate gratuity in terms of recommendations of 7<sup>th</sup> Pay Commission and consequent payment of difference.

5. The Applicant was paid GIS amount of Rs.2,68,744/- belatedly by cheque dated 27.11.2020 which was required to be paid immediately after retirement, and therefore, claiming interest on belated payment of GIS.

6. After retirement, the Applicant was paid provisional pension belatedly instead of regular pension, and therefore, also claimed interest on belated payment of provisional pension.

7. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant urged that since on the date of retirement admittedly, there was no initiation of departmental proceeding or judicial proceeding, the Applicant was entitled to receive all retiral benefits immediately after retirement but the same were paid belatedly, and therefore, the Respondents cannot avoid liability of interest on belated payment. As regard withholding of leave encashment, he submits that the benefit of leave encashment cannot be kept in abeyance on the ground of initiation of departmental proceeding after retirement since on the date of retirement, there was no such legal hurdle for payment of leave encashment and once right to receive retiral benefits were accrued, it cannot be kept in abeyance, and therefore, necessary directions are required to be issued in terms of prayer.

8. Smt. Archana B.K., learned Presenting Officer fairly concedes that on the date of retirement, there was no such initiation of D.E. proceeding or judicial proceeding against the Applicant but sought to contend that after retirement, enquiry committee noticed various irregularities in the purchase of material by the Applicant during tenure of his services and belatedly charge sheet has been issued on 24.09.2020. She, therefore, submits that since now D.E. is initiated remaining retiral benefits of the Applicant namely benefit of leave encashment will be paid after conclusion of D.E. As regard interest,

she sought to contend that since D.E. was contemplated the claim of interest is not maintainable.

9. In view of pleadings and submissions advance at a bar following are the remaining dues claimed by the Applicant :-

- (A) Interest on belated payment of gratuity as well as difference of gratuity in terms of 7<sup>th</sup> Pay Commissioner.
- (B) Interest on belated payment of GIS.
- (C) Interest on belated payment of provisional pension.
- (D) Leave encashment with interest.
- (E) Remuneration / additional pay for holding additional charge of the post of Principle, ITI, Satpur from 14.10.2017 to 30.11.2018 for the period of thirteen months.

10. Needless to mention that once a Government servant retires on attaining the age of superannuation without there being any initiation of departmental proceeding or judicial proceeding right to receive pension, gratuity and other retiral benefits accrued to a Government servant and such retiral benefits cannot be withheld or kept in abeyance for initiation of departmental proceeding in future. Undoubtedly, in terms of Rule 27 of 'Pension Rules' even if D.E. is not initiated during the tenure of a Government servant later it can be initiated but it should be subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of 'Pension Rules' which inter-alia provides that where D.E. if not instituted before retirement, it shall not be instituted save with the sanction of appointing authority and shall not be in respect of any event which took place more than four years before such institution. If any such D.E. is initiated after retirement, it is only in the event where pensioner is found guilty for grave misconduct or negligence allegedly committed during the period of his service the Government is empowered to withhold or withdraw pension or any part of it permanently or for a specific period as it deems fit. Suffice to say, the ambit and scope and nature of punishment to be imposed

in such D.E. which is instituted after retirement is very limited and it's scope cannot go beyond ambit of Rule 27 of 'Pension Rules'. This being so, initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Rule 27 provides only for withholding of pension if found guilty in D.E.

11. At this juncture, it would be apposite to highlight the G.R. dated 06.10.1998 whereby Government of Maharashtra has clarified the situation in respect of payment of retiral benefits to Government servant. In the said G.R., Government had reiterated the scope of Rule 27 of 'Pension Rules 1982'. The G.R. states as under:-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शासन 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 क्रमांक. सेनिवे-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.”

12. Shri A. V. Bandiwadekar, learned Counsel for the Applicant referred to the decision of Hon'ble High Court reported in **2018 MLG 697 (Vinodkumar N. Dixit v/s State of Maharashtra)**. In that case, gratuity was withheld because of pendency of criminal prosecution. The petitioner therein retired on 01.04.1997 and came to be acquitted in criminal case on 26.06.2009. The Hon'ble High Court construed Rule 129 (A) of 'Pension Rules 1982' and held where Government servant is exonerated from all charges, the payment of gratuity will be

deemed to have fallen due on the date of retirement and accordingly granted interest for the period of delay beyond three months from the date of retirement in terms of Rule 129(A) of 'Pension Rules'.

13. **Interest on gratuity:-**

Admittedly, the Applicant was paid gratuity of Rs.6,67,040/- on 15.05.2019 belatedly, and therefore, he claimed interest thereon as well as also claimed difference in terms of recommendation of 7<sup>th</sup> Pay Commission. Interest on delayed payment of gratuity is governed by Rule 129(A) of Maharashtra Civil Services (Pension) Rules 1982 which *inter-alia* provides that where the payment of retirement gratuity on death gratuity has been delayed beyond the period of three months from the date of retirement and it is clearly established that the delay in payment was attributable to administrative lapses an interest at the rate applicable to GPF deposits shall be paid on amount of gratuity in respect of the period beyond three months. Thus, in terms of the said rule, the amount of gratuity had fallen due on 01.03.2019. However, admittedly it has been paid belatedly on 15.05.2019. As stated above since there was no initiation of D.E. or judicial proceeding on the date of retirement there was absolutely no hurdle in releasing gratuity but payment of gratuity has been made belatedly obviously due to administrative lapses, and therefore, respondents cannot avoid liability to pay interest for the period beyond three months. Apart, the Respondents are also required to recalculate the gratuity in terms of 7<sup>th</sup> Pay Commissioner and required to pay difference if any.

14. **Interest on GIS :-**

Admittedly, GIS was paid only after filing of this O.A. by cheque dated 27.11.2020. In this behalf, reference of G.R. issued by Finance Department, Government of Maharashtra dated 27.5.1992 is relevant which *inter-alia* states that even in case departmental proceeding is pending against the Government servant amount of GIS should not be

withheld and same is required to be paid within three months from the date of superannuation. In present case, therefore, GIS ought to have been paid within three months from the date of superannuation and was required to be paid on or before 01.03.2019. However, it is paid belatedly by cheque dated 27.11.2020 due to sheer administrative lapses. The Respondents, therefore, cannot avoid liability to pay interest on belated payment of GIS in respect of period beyond 01.03.2019.

15. **Interest on Provisional Pension:-**

Though, there was no initiation of D.E. or judicial proceeding on the date of retirement, the Applicant was not paid regular pension. He was granted provisional pension that too with belated payment. Since the Applicant retired on 30.11.2018, he was entitled to regular pension from 01.12.2018. However, no steps were taken well in advance for disbursement and sanction of provisional pension so that Applicant ought to have received provisional pension regularly. He was paid provisional pension for the period from 01.12.2018 to 31.05.2019 by cheque of Rs.3,10,176 on 30.08.2019. Whereas, for subsequent period provisional pension from 01.06.2019 to 30.11.2019 was paid by cheque of Rs.3,16,426/- on 07.11.2020 and provisional pension for the period from 01.12.2019 to 30.11.2020 was paid by cheque of Rs.6,60,372/- on 31.07.2021. Thus, obviously even provisional pension was not paid regularly. Indeed since there was no initiation of D.E. or judicial proceeding on the date of retirement, the Respondents were under obligation to release full pension regularly.

16. Interest on delayed payment of pension is governed by Rule 129(B) of Maharashtra Civil Services (Pension) Rules 1982 which inter-alia provides that where the payment of pension or family pension authorized after six months from the date when it becomes

due, an interest at the rate applicable to GPF deposits shall be paid on beyond six months.

Thus, this is a case where provisional pension itself is paid quite belatedly. The Respondents, therefore, cannot deny liability to pay interest on belated payment of provisional pension in respect of period beyond six months.

17. **Leave Encashment:-**

Though the Applicant stands retired on 30.11.2018, he was not paid leave encashment and the same were withheld in contemplation initiation of D.E. in future. It is only after retirement, belatedly after two years D.E. has been initiated against the Applicant on 24.09.2020. AS such, on the date of retirement, there was no initiation of D.E. or judicial proceeding for which leave encashment could have been withheld but in absence of it there was no justification for withholding leave encashment. In this behalf, reference of Rule 68 of Maharashtra Civil Services (Leave) Rules 1981(hereinafter referred to as 'Leave Rules' ) is relevant which inter-alia provides that the authority competent to grant leave shall *suo moto* sanction to a Government servant who retires on attaining the age of superannuation, the cash equivalent of leave salary in respect of period of earned leave at his credit on the date of his superannuation subject to maximum 300 days. True, in terms of Rule 68(6)(a) of 'Leave Rules', the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires while under suspension or while disciplinary or criminal proceeding pending against him if in the view of such authority, there is possibility of some money becoming recoverable from him on conclusion of proceeding against him.

18. Now, turning to the facts of the case, there was no such legal hurdle or justification for withholding of leave encashment nor any such specific order has been passed by the competent authority. This



being the position, withholding of leave encashment is totally impermissible and subsequent initiation of D.E. by charge sheet dated 24.09.2020 is hardly of any assistance to the Respondents to withhold leave encashment benefits.

19. **Special Pay for holding additional charge :**

The Applicant has also claimed special pay for holding additional charge of Principal, ITI, Satpur from the period 14.10.2018 to 30.11.2018 . Insofar as this aspect is concerned, the Respondents shall ascertain the position and shall grant special pay to the Applicant if he found entitled to the same in rules.

20 The totality of the aforesaid discussion leads me to sum up that the Applicant has established his entitlement to certain reliefs and O.A. deserves to be allowed partly. Hence the following order:-

**ORDER**

- (A) O.A. is allowed partly with no order as to costs.
- (B) The Respondents are directed to pay interest on the belated payment of gratuity in respect of period beyond three months from the date of retirement at the rate applicable to GPF.
- (C) The Respondents are further directed to examine whether Applicant is entitled for enhance gratuity in terms of 7<sup>th</sup> Pay Commission and shall pay difference to the Applicant if found entitled to the same.
- (D) The Respondents are further directed to pay leave encashment amount to the Applicant along with interest at the rate applicable to GPF in respect of period beyond three months and it shall be paid accordingly.
- (E) The Respondents are further directed to calculate interest on provisional pension for belated period i.e. in respect of the period beyond six months at the rate applicable to GPF and it should be paid accordingly.

- (F) The Respondents are further directed to examine entitlement of the Applicant to special pay for holding the charge of Principal, ITI, Satpur and if found entitled for the same, it shall be paid to him.
- (G) The Respondents are further directed to take necessary steps for grant of regular pension and it be paid regularly.
- (H) Three months period is granted for compliance of directions given above.

**Sd/-**

**(A.P. KURHEKAR)**  
**Member-J**

Place : Mumbai  
Date : 15.11.2021  
Dictation taken by : Vaishali Mane  
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