

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.49 OF 2020

DISTRICT : THANE

Shri Ramdas Kalu Mali.)
Age : 65 Yrs, Occu.: Retired as Head Clerk)
from the office of belownamed Respondent)
and R/o.201, Sai Samruddhi Apartment,)
Lal Chakki Road, Ulhasnagar,)
District : Thane.) **...Applicant**

Versus

The Deputy Director of Education,)
Mumbai Region, Mumbai and having)
Office at Jawahar Bal Bhawan, Netaji)
Subhash Road, Mumbai – 4.) **...Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 12.04.2021

JUDGMENT

1. The Applicant has challenged the communication dated 11.10.2019 issued by Respondent whereby Applicant's gratuity and final pension has been withheld till the conclusion of criminal prosecution pending against him before Special Court, Thane invoking jurisdiction of

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

2. In nutshell, facts giving rise to this O.A. are as under :-

The Applicant was working as Head Clerk in Education Officer [Secondary], Pay and Provident Fund Unit, Thane. On 20.07.2009, he was arrested while allegedly accepting bribe of Rs.1,000/- by Anti-corruption Bureau (ACB). Consequently, offence under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 was registered against him. He was in custody for more than 48 hours and consequently, came to be suspended under Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. However, later he was reinstated in service and accordingly joined on 19.06.2012. The ACB had filed charge-sheet against him before Special Judge, Thane in 2010 which was registered as Special Case No.6/2010. Simultaneously, the D.E. was also initiated by serving charge-sheet on 30.01.2012. The Applicant continued in service and stands retired on 31.08.2012 on attaining age of superannuation. In DE, the Enquiry Officer has submitted enquiry report, but the same is kept pending in view of pendency of criminal prosecution against the Applicant. Except gratuity, all other retiral benefits including provisional pension was released. The Applicant, therefore, made representations to release gratuity in view of delay in decision in criminal case as well as completion of DE. However, by communication dated 11.10.2019, the Applicant was informed that till the decision of criminal case as well as departmental enquiry, the gratuity cannot be paid. The Applicant has challenged this communication dated 11.10.2019 by filing the present O.A. and prayed for direction to Respondent to release gratuity with interest thereon.

3. The Respondent resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that since criminal proceedings as well as departmental proceedings are pending against the Applicant, the gratuity cannot be

released as provided under Section 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity).

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of impugned communication contending that gratuity of the Applicant cannot be withheld for such an undue delay and Applicant's claim for gratuity cannot be kept in abeyance for an indefinite period. In this behalf, he submits that in Special Case No.6/2010, though it was instituted by ACB in the Court in 2010 the charge under Prevention of Corruption Act was framed only on 10.06.2014 that is after retirement of the Applicant on 31.08.2012. Adverting to this aspect, he sought to contend that in law, criminal proceedings cannot be said to have been instituted against the Applicant before his retirement, so as to attract Section 130(1)(c) of 'Pension Rules of 1982'. In other words, according to him, there was no criminal proceedings pending against the Applicant on the date of retirement, and therefore, gratuity cannot be withheld relying upon Rule 130(1)(c) of 'Pension Rules of 1982'. In second limb of submission, he contends that there are no allegations of financial loss to the Government, and therefore, there is no propriety to withhold the gratuity, so as to compensate the loss cause to the Government, even if Applicant found guilty in criminal prosecution or in D.E. pending against him.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer submits that criminal case as well as departmental enquiry has been already initiated / instituted against the Applicant before his retirement, and therefore, till conclusion of these proceedings, gratuity cannot be released as specifically provided under Rule 130(1)(c) of 'Pension Rules of 1982'.

6. In view of submissions advanced at the Bar, the issue posed for consideration whether impugned communication dated 11.10.2019 suffers from any legal infirmity and the answer is in emphatic negative.

7. Before proceeding ahead, it would be apposite to reproduce Rule 130 of 'Pension Rules of 1982', which is as under :-

“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.”

8. It is thus explicit from Rule 130(1)(c) that no gratuity shall be paid until the conclusion of departmental or judicial proceedings and issue of final orders thereon. In the present case, admittedly, charge-sheet was filed by ACB before Special Judge in 2010, which was registered as

Special Case No.6/2010. Furthermore, admittedly, the DE was initiated by serving charge-sheet on 30.01.2012. The Applicant retired on 31.08.2012. It is, therefore, obvious that criminal case was already instituted in the Court of law as well as charge-sheet in DE was served upon the Applicant much before his retirement.

9. Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that judicial proceedings shall be deemed to be instituted on the date on which the charge was framed by the Court against a Government servant. He has pointed out that, admittedly, in Special Case No.6/2010, the charge was framed against the Applicant on 10.06.2014. He, therefore, sought to contend that judicial proceedings can be said instituted against the Applicant only on date of framing of charge i.e. 10.06.2014 and the Applicant being already retired much before it (on 31.08.2012), Section 131(c) is not attracted. This submission is totally misconceived and fallacious.

10. Here we need to consider the provisions of Cr.P.C, particularly Section 190 of the Code and Section 5 of Prevention of Corruption Act, 1988. The procedure contemplated is that Magistrate can take ignorance of offence under Rule 190 of Cr.P.C. on the basis of (a) upon receiving a complaint of facts, which constitutes such offence; (b) upon a Police Report of such facts; and (c) upon information received from any person other than a Police Officer or upon his knowledge that such offence has been committed. Whereas, under Prevention of Corruption Act, 1988, a Special Judge takes the cognizance of offence under Section 5 of the said Act which provides that a Special Judge may take cognizance of an offence without accused being committed to him or trial and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Proceeding, 1973 for the trial of warrant by the Magistrate. In other words, the Special Judge takes cognizance of the offence when the report along with sanction to prosecute the accused is submitted under Section 173 of Cr.P.C. by the Investigating Officer before Special Judge

and it is at that point of time, Special Judge applies his mind to the allegations made against the accused persons for the purpose of taking cognizance and when the cognizance is taken by the Court, the prosecution commences. Suffice to say, when Magistrate/Sessions Judge takes notice of the accusation and applies his mind to the allegation made in the charge-sheet and on being satisfied that the allegation if proved, put constitute an offence, decides to initiate the judicial proceeding against the offender, he is said to have taken cognizance of the offence.

11. In the present case, admittedly, the charge-sheet was filed against the Applicant in 2010 i.e. two years before his retirement and this being the position, it will have to be held that the Special Judge has already taken cognizance of charge-sheet in 2010 itself. The framing of charge is another stage in the criminal trial, which comes after the stage of cognizance of the offence complained of against the accused. Suffice to say, the submission advanced by the learned Advocate for the Applicant that the date of framing of charge is the date of initiation of judicial proceeding is totally fallacious and untenable in law.

12. Shri Bandiwadekar, learned Advocate for the Applicant sought to refer certain decisions rendered in O.A. which are totally distinguishable and have no application to the present situation. He referred to the decision given by this Tribunal in **O.A.1072/2017 (Raosaheb C. Mane Vs. The Commissioner of Police, Mumbai) decided on 07.09.2018**. In that matter, the Applicant retired on 31.07.2017, but his gratuity was withheld on the ground of pendency of criminal case. The perusal of Judgment reveals that the offence complained of was not relating to the official duties or performance of public duties of the Applicant and secondly, the criminal prosecution was stayed by Hon'ble High Court in the Criminal Writ Petition filed by the Applicant to quash the same under Section 482 of Cr.P.C. Besides, no DE was initiated against the Applicant. It is in that fact situation, the Tribunal held that criminal

case was filed on private complaint, may be due to rivalry between the Applicant and complainant and allegations made in the said criminal case are not related to discharge as his duties as a public servant. It is in that context, the O.A. was allowed and gratuity was released.

13. He further referred to the decision in **O.A.No.401/2018 (Rajesham L. Boga Vs. Medical Superintendent, ESIS Hospital) decided on 09.07.2019**. In that case, the Applicant retired on 31.12.2017 and till the date of retirement, neither DE was initiated nor criminal case was instituted in the Court, but gratuity was withheld on the possibility of filing charge-sheet in future. It is in that context, in fact situation, having found that there was no initiation of criminal prosecution or D.E. till the date of retirement, the O.A. was allowed giving direction to release gratuity.

14. Reference was also made to the decision in **O.A.No.883/2014 (Mohd. Gaus Shaikh Vs. Director of Vocational Education & Training) decided on 03.22.2015**. In that case, the Applicant retired on 30.09.2012. There was no criminal prosecution or initiation of D.E. till the date of retirement. It is only after retirement, the FIR was filed and criminal case was instituted under Section 409 of I.P.C. after retirement. Therefore, the Tribunal held that there was no initiation of judicial proceeding or departmental proceeding till the date of retirement and gratuity was released on furnishing Undertaking to refund the same, if in future directed to do so.

15. Lastly, he referred to the decision in **O.A.No.1109/2010 (Vasant A. Kadam Vs. The State of Maharashtra) decided on 04.10.2011**. In that case, the Applicant retired in 2002, but charge-sheet was filed in criminal case in 2006 which was after four years from retirement and the alleged misconduct was pertaining to incident of 1986 to 1988. Therefore, the Tribunal held that Rule 27 of 'Pension Rules of 1982' is attracted and gratuity cannot be withheld. Suffice to say, all the

decisions are clearly distinguishable and none of them is applicable to the present situation.

16. In view of above, there is no escape from the conclusion that on the date of retirement of the Applicant, the judicial proceedings (criminal case) was already pending on the date of retirement of the Applicant, and therefore, the Applicant cannot be said entitled to the gratuity, as specifically provided under Rule 130 (1)(c) of 'Pension Rules of 1982'.

17. Apart, the DE was also already initiated on 30.01.2012 much before retirement of the Applicant and on that count also, Rule 130(1)(c) is attracted. The impugned communication, therefore, cannot be faulted with.

18. Needless to mention that pension includes gratuity, as per definition of pension in Rule 9(37) of 'Pension Rules of 1982'. True, in terms of Section 27 of 'Pension Rules of 1982', if DE is continued after retirement, the punishment imposed therein would be restricted to withhold or withdraw the pension or any part of it permanently or for a specific period, as the competent authority deems fit, since the question of dismissal from service, even if the charges held proved would be out of question. However, here the question may come about the entitlement of gratuity to the Applicant in case he is convicted in special case subjudice against him. As stated above, the pension includes gratuity, and therefore, it would be for the competent authority to decide the entitlement of the Applicant to gratuity or its part, in case he is convicted in criminal case. Thus viewed from this angle also, so long as criminal case as well as DE is not concluded, the claim of the Applicant for gratuity is certainly premature. Only because there is no charge of financial loss to the Government, that cannot be ground to release the gratuity in view of aforesaid discussion.

19. No doubt, it is quite disturbing that criminal case though instituted in 2010 and charge is framed in 2014, still it is not concluded. It being the matter of more than 10 years' old, the priority ought to have been given for the expeditious disposal of criminal case. Therefore, all that, the Applicant can request the concerned special Court to expedite the decision in criminal case, so that it is taken to the logical conclusion and thereafter appropriate decision can be taken to release the gratuity.

20. The necessary corollary of aforesaid discussion leads me to sum-up that the O.A. is premature and impugned communication needs no interference in the teeth of Section 130(1)(c) 'Pension Rules of 1982'. The O.A. is, therefore, liable to be dismissed. Hence, I pass the following order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai
Date : 12.04.2021
Dictation taken by :
S.K. Wamanse.

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