

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.517 OF 2016

DISTRICT : RAIGAD

Shri Bhaskarrao S. Suryavanshi.)
Aged : 59 Yrs., Retired Administrative)
Officer, Municipal Council, Education)
Board, Khopoli, Taluka : Khalapur,)
District : Raigad and residing at Vijayshri)
Coop. Hsg. Soc., Plot No.27, Sector No.16,))
New Panvel, Dist : Raigad.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
School Education & Sports Dept.,)
(Admn.-5), Mantralaya,)
Mumbai - 400 032.)
2. Commissioner (Education).)
Maharashtra State, Bal Bharati)
Compound, Senapati Bapat Marg,)
M.S, Pune - 411 004.)
3. Deputy Director of Education.)
Mumbai Division, Mumbai, Netaji)
Subhash Road, Jawahar Bal Mandir,))
Charni Road (W), Mumbai 400 004.)...**Respondents**



Shri M.D. Lonkar, Advocate for Applicant.

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

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 21.09.2016

JUDGMENT

1. The Original Application (OA) is admitted and by consent taken up for disposal forthwith.

2. The Applicant having retired on superannuation while under suspension facing prosecution under the provisions of the Prevention of Corruption Act, 1988 hereby seeks to get released all statutory payments due and payable to him which are under five heads.

3. I have perused the record and proceedings and heard Shri M.D. Lonkar, the learned Advocate for the Applicant and Smt. A.B. Kololgi, the learned Presenting Officer for the Respondents.


4. The Applicant claims under those five heads, provisional pension from August, 2015 till date. I am informed at the Bar that the said provisional pension for the month of January, 2016 has now been paid and for the



subsequent period also, it will be paid without any hassle. In so far as Group Insurance Scheme is concerned, that matter is also sorted out and no dispute remains thereabout. In so far as the heads 4 & 5 are concerned, they are for transport and packaging allowances and pay and allowances for additional charge that the Applicant held. I am informed at the Bar that it has been agreed between the parties that these two claims shall be sorted out once the Applicant makes applications in proper format.

5. This now leaves only one disputed item being leave encashment. The Respondents resist this payment and their resistance is summarized in Para 4 of the Affidavit-in-reply filed by Shri Bhausahab B. Chavan, Deputy Director of Education in the Office of the Deputy Director of Education, Bombay Region, Bombay. Reliance is inter-alia placed on Rule 68 of Maharashtra Civil Services (Leave) Rules, 1981 and in fact also on a governmental guidance as they put it. The relevant provisions are Rule 68(5) and 68(6) of Leave Rules.

6. The issue, therefore, is as to whether the pendency of the prosecution is per-se and ipso-facto sufficient ground to withhold the leave encashment dues of

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the Applicant. Rule 68 of Leave Rules pertains to cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation. Rule 68(5) to the extent relevant for my present purpose reads as follows :

“68(5): Subject to the provision of sub-rule (6), a Government servant who retires from service on attaining the age of compulsory retirement while under suspension shall be paid cash equivalent of leave salary under sub-rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the Government servant has been fully exonerated and the suspension was wholly unjustified.”

(emphasis supplied)

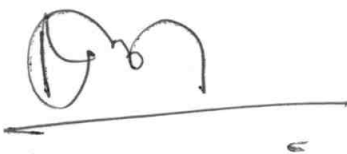
7. Sub-rule 6(A) of Rule 68 reads as follows :

“6(A): The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in case of a Government servant who retires from service on attaining the age of



retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any.”

8. It becomes quite clear that Sub-rule 6 will have primacy in the facts and circumstances such as they obtain herein. The Sub-rules have already been quoted above and no further paraphrasing is really necessary. It is very clear from the facts that in the worst case scenario for the Applicant even if he was to be convicted and sentenced, it would be a conviction and sentence for an offence which is entirely personal and that by itself would entail no payment to the Government in the sense these Sub-rules envisage. In my opinion, therefore, the opinion of the Government given by way of guidance to the Regional Deputy Director of Bombay Division by the communication of 23rd August, 2016 and the revised order dated 22nd July, 2016 are not exactly accurate (They are at Pages 33 and 35 of the Paper Book). I tend to agree with

A handwritten signature in black ink, consisting of a stylized 'M' or similar character, followed by a horizontal line extending to the right.

Mr. Lonkar, the learned Advocate for the Applicant that they proceed in ignorance of the basics enshrined in the above discussed Sub-rules 5 and 6. I am, therefore, of the view and I do hold accordingly that the Applicant is entitled to the cash equivalent of the earned leave under the head of leave encashment.

9. It is recorded that the claims towards provisional pension, group insurance, transport and packaging allowances, pay and allowances for additional charge are sorted out and the parties shall act in accordance with what has been observed in the body hereof. In so far as leave encashment is concerned, the Applicant despite the pendency of the prosecution against him is held entitled thereto and the Respondents shall clear those dues within four weeks from today. The Original Application is disposed of in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
21.09.2016

21.09.16

Mumbai

Date : 21.09.2016

Dictation taken by :

S.K. Wamanse.