

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.937 OF 2021**

**DISTRICT : SANGLI**

Shri Bhupal Shamrao Salunkhe. )  
Age : 61 Yrs., Occu.: Retired Govt. Officer, )  
Residing at A/P : Ankalkhop, )  
Tal.: Palus, District : Sangli – 416 316. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Special Director General & )  
Inspector General of Police, )  
Kolhapur Zone, Kolhapur, )  
Having Office at P69R + Q 29, )  
Police Head Quarters, )  
Kolhapur – 416 006. )
3. The Superintendent of Police, )  
District Sangli, Having Office at )  
204, National Highway, Sangli- )  
Miraj Road, Saraswati Nagar, )  
Vishrambag, Sangli – 416 416. )
4. The Accountant General (A & E)-1, )  
Maharashtra State, 101, Maharshi )  
Karve Road, Mumbai – 400 020. ) ...**Respondents**

**Mr. S.D. Patil, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 01.02.2022**

**JUDGMENT**

1. The Applicant has filed the present O.A. challenging communication dated 13.10.2021 and for direction to the Respondents to release his withheld retiral benefits, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

(i) The Applicant stands retired on 31.05.2018 from the post of Police Sub-Inspector, Palus Police Station, District Sangli. At the time of retirement, neither departmental enquiry nor criminal prosecution was initiated or pending against him. Despite this position, the Respondents have withheld gratuity and regular pension. He was paid provisions pension. He made various representations to the Respondents to release the same. It is only after retirement on 01.09.2021, offence under Section 409 read with 34 of Indian Penal Code came to be registered against the Applicant and other Police Personnel on the allegation that they have not maintained property deposited in the Police Station in criminal cases and misappropriated the same. However, till date, no charge-sheet is filed in the Court of law. The Respondent NO.2 – Special Director General and Inspector General of Police, Kolhapur Range issued notice dated 09.07.2020 to the Applicant on the ground that he failed to give accounts on the property deposited in Islampur Police Station during his tenure from 2006 to 2013 and in preliminary enquiry, he was found guilty for negligence and dereliction in duties and he was called upon to show cause as to why his 5% pension for six months should not be withheld. The Applicant submitted his reply denying charges and again requested to release gratuity and regular pension. However, by communication dated 13.10.2021, he was informed that till the

decision of criminal case, he will not be entitled to gratuity and regular pension.

(ii) It is on the above background, the Applicant has filed this O.A. for direction to the Respondents to release gratuity, regular pension with interest on belated payment. He also claimed for difference of these benefits in terms of 7<sup>th</sup> Pay Commission recommendation.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that in preliminary enquiry, the Applicant was found guilty for negligence and criminal case is also pending. With this defence, the Respondents prayed to dismiss the O.A.

4. Heard Shri S.D. Patil, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

5. Indisputably, the Applicant stands retired on 31.05.2018 from the post of Police Sub-Inspector, Palus Police Station, District Sangli and on the date of retirement, neither DE nor any criminal prosecution was pending or instituted against him. In other words, there was no legal hurdle to release his all retiral benefits on the date of retirement.

6. True, after retirement on 01.09.2019, FIR under Section 409 of Indian penal Code came to be registered against the Applicant and other Police Personnel for not maintaining the property deposited in the Police Station in various crimes and thereby allegedly misappropriated the Government property. Insofar as Applicant is concerned, it is alleged that he was Head Constable and Incharge of property from 2013 to 2017 at Islampur Police Station. The perusal of FIR reveals that offence came to be registered against 3 Police Personnel including Applicant who worked as property custodian from 2006 to 2017. Whereas, Applicant's tenure at Islampur as custodian of property is 2013 to 2017. However, mere registration of offence subsequent to retirement cannot be the

ground to withheld gratuity and regular pension. It is only in event of conviction in criminal case, the pension can be withheld or withdrawn whether permanently or for a specific period as competent authority deems fit, as contemplated under Section 26 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity). This being the legal position, withholding of gratuity and regular pension because of registration of crime subsequent to retirement is totally untenable. It is only in situation where criminal prosecution is instituted or pending on the date of retirement, the gratuity can be withheld in terms of Section 130(1)(c) of 'Pension Rules of 1982'. Whereas, in the present case, on the date of retirement, neither there was any criminal prosecution instituted or pending nor any DE was initiated on the date of retirement.

7. 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 of 1982' even if DE 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 of 1982' 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 of 1982'. This being so, initiation of DE 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.

8. 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, the Government had reiterated the scope of Rule 27 of 'Pension Rules of 1982'. The G.R. states as under:-

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

9. Now turning to the aspect of DE, all that preliminary enquiry seems to have been held and Show Cause Notice dated 09.07.2020 as to why punishment of withholding of 5% pension for six months should not be imposed has been issued. The Applicant has submitted his reply denying the charges. Thereafter, no final order in DE has been passed and matter is kept in cold storage. Suffice to say, it is only after retirement, preliminary enquiry was conducted and show cause notice dated 09.07.2020 has been issued which has not yet still attained finality.

10. The learned Presenting Officer could not point out any provision from Pension Rules empowering Respondents to withhold gratuity or regular pension on the basis of registration of crime or initiation of DE

subsequent to the date of retirement. In absence of any such specific provision in Rules, the act of withholding gratuity and regular pension is totally impermissible in law.

11. The Applicant has claimed gratuity with interest and also claimed regular pension with interest. Insofar as interest on regular pension is concerned, since admittedly, the Applicant is paid provisional pension in view of 2<sup>nd</sup> proviso to Section 129-B of 'Pension Rules of 1982' which *inter-alia* provides that no interest shall be payable the period for which provisional pension is paid. Therefore, the claim of interest on pension is untenable.

12. As regard interest on gratuity, Section 129-A of 'Pension Rules of 1982' provides that gratuity has to be paid within three months from the date of retirement. The Applicant stands retired on 31.05.2018, and therefore, gratuity had fallen due on 01.09.2018. However, till date, no gratuity is paid. Since there was no DE or criminal prosecution pending on the date of retirement, in law, gratuity was required to be paid on 01.09.2018, but the same is not paid. Therefore, Applicant's claim for interest on the belated payment on gratuity deserves to be accepted. He is entitled to interest at the rate payable on GPF for the belated period.

13. As regard difference in the retiral benefits in terms of recommendation of 7<sup>th</sup> Pay Commission all that stated in Affidavit-in-reply that pay fixation is not done for want of verification from pay unit. Since Applicant stands retired on 31.05.2018, he is entitled to recommendation of 7<sup>th</sup> Pay Commission, which is made applicable from 01.01.2016. He is, therefore, entitled for difference in retiral benefits.

14. The totality of aforesaid discussion leads me to sum-up that impugned communication dated 13.10.2021 is totally unsustainable in law and O.A. deserves to be allowed. It is hereby made it clear that Respondents are at liberty to take further steps in pursuance of show

cause notice dated 09.07.2020 and may pass further order, as may be permissible in law. Hence, the order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communication dated 13.10.2021 is quashed and set aside.
- (C) The Respondents are directed to pay gratuity along with interest at the rate applicable to GPF for a period beyond three months from the date of retirement within two months from today.
- (D) The Respondents are directed to pay difference in the retiral benefits in terms of 7<sup>th</sup> Pay Commission to the Applicant within two months from today.
- (E) The Respondents are further directed to release regular pension and arrears/difference be paid within two months from today.
- (F) No order as to costs.

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

Mumbai  
Date : 01.02.2022  
Dictation taken by :  
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2022\February, 2022\O.A.937.21.w.2.2022.Retiral Benefits.doc

Uploaded on