

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.999 OF 2021

DISTRICT : THANE

Shri Ashok Ramchandra Bhagwat.)
Age : 69 Yrs., Occu.: Retired and residing at)
Flat No.10, Pradnyaraj Angan, Rajendra)
Nagar, Anand Park, Wadgaon Sheri,)
Pune – 411 014.)...**Applicant**

Versus

1. The Principal Secretary.)
Department of Education, Annie)
Beasant Road, Mantralaya,)
Mumbai – 400 023.)
2. The Director (Education),)
Secondary & Higher Secondary)
Directorate, Pune – 411 001.)
3. The Chief Executive Officer.)
Thane Zilla Parishad, Naupada,)
Thane.)...**Respondents**

Mr. Shantanu Raktate, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 & 2.

None for Respondent No.3 though served.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.01.2022

JUDGMENT

1. The Applicant who stands retired from Government service on 31.05.2011 has been constrained to file this O.A. for direction to release his retiral benefits which are withheld due to initiation of belated departmental enquiry after retirement and yet not culminated into finality.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant stands retired as Education Officer (Secondary) w.e.f. 31.05.2011 from the establishment of Respondent No.3 – Chief Executive Officer, Zilla Parishad, Thane. At the time of retirement, neither DE nor any criminal case was initiated or pending against him. As such, there was no legal hurdle to release retiral benefits to the Applicant. He made representation on 9th June, 2011 requesting Respondents to release retiral benefits, but in vain. To his surprise, almost after 4 years after retirement, he was served with charge-sheet dated 21.05.2015 issued by Respondent No.1 – Government of Maharashtra initiating under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). The Applicant denied the charges and participated in the departmental proceedings. Though period of more than 10 years from retirement and period of more than 6 years from date of initiation of DE is over, the Applicant is deprived of regular pension and other retiral benefits. Despite his representations to release retiral benefits, no steps were taken to complete departmental proceedings and to release his legitimate dues. It is on this background, having no alternative, the Applicant has filed the present O.A. for direction to the Respondents to release retiral benefits with interest and also sought direction to the Government to take necessary action against the concerned officials for non-completion of DE within stipulated period.

3. When the matter was taken up for admission, having noticed inordinate and huge delay for non-completion of DE, the Tribunal directed Principal Secretary, Department of Education and Sports to file Affidavit to explain the delay in the matter. In pursuance to it, Smt. Vandana Krishna, Additional Chief Secretary, School Education and Sports Department, Mantralaya has filed Affidavit and an attempt has been made to justify the delay stating that procedural requirements delayed completion of DE.

4. The Respondent No.3 – Chief Executive Officer, Z.P, Thane though served did not appear. In so far as Respondent Nos.1 & 2 are concerned, except filing of Affidavit, no reply is filed on the point of relief claimed by the Applicant.

5. Shocking to note that though Applicant was entitled to have released his all retiral benefits, it is after 10 years he was granted provisions pension for one year from June, 2011 to May, 2012 and it was paid on 03.01.2022. The GPF was paid on 30.08.2012. Gratuity, Leave Encashment, GIS and regular pension has been withheld. As such, except payment of provisional pension for one year and payment of GPF, no other retiral benefits were paid. This shows total insensitiveness and indifferent approach of the Respondents. The Applicant has been deprived of his legitimate dues for a decade.

6. Shri Shantanu Raktate, learned Advocate for the Applicant submitted that withholding of gratuity, regular pension, leave encashment and GIS is totally illegal since admittedly on the date of retirement, no DE or criminal prosecution were pending or instituted against the Applicant. He has further pointed out that it is after about 4 years of retirement, the charge-sheet was served by Respondent No.1 on 21.05.2015 which is still pending thereby depriving of Applicant from his legitimate retiral dues. He has further pointed out that Affidavit filed by Additional Chief Secretary along with report of Enquiry Officer itself

shows that no efforts were made to complete the DE within stipulated period. In this behalf, he also invited to Circular issued by GAD dated 07.04.2008 whereby instructions were issued by Government for completion of DE within six months or maximum one year and where DE could not be completed within one year, specific extension is required to be sought from administrative head. On this line of submission, the learned Advocate for the Applicant submits that laxity and negligence on the part of Respondents for non-completion of DE is obvious and prayed for direction to release his retiral benefits with interest and also claimed cost of litigation.

7. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to Affidavit filed by Additional Chief Secretary sought to contend that now DE is at the fag end and same will be completed at the earliest. She has further submitted that reminders were sent to the Enquiry Officer for completion of DE, but for one or more reason, it took time.

8. At the very outset, it needs to be stated that the Tribunal has come across several instances where DE is prolonged for years together depriving of a Government servant's retiral benefits for long time and issued necessary directions, but in vain. Insofar as present matter is concerned, Applicant stands retired on 31.05.2011 and admittedly, neither DE nor criminal prosecution was pending against him on the date of retirement. In other words, there was no legal hurdle to release retiral benefits. After 4 years' huge delay, charge-sheet dated 21.05.2015 was served and Presenting Officer was appointed on 13.08.2015. Shocking to note that even till date, DE is not culminated into final order. Indeed, as per Departmental Manual as well as Circular dated 07.04.2008 issued by GAD, Government of Maharashtra, the departmental enquiry is required to be completed within 6 months and where it is not concluded within 6 months extension is required to be obtained from the Government. It further provides that where DE is pending for 5 years or more, the responsibility is required to be fixed

upon concerned person for delay in completion of DE. However, in the present case, neither extension is sought from the competent authority nor responsibility is fixed for such inordinate and huge delay in completion of DE.

9. The perusal of Affidavit of Additional Chief Secretary along with report of Enquiry Officer placed on record clearly shows DE was taken very casually giving longer dates instead of making efforts to complete DE within 6 months. Aghast to note that even for 3 years, Enquiry Officer did not get all the required documents of DE. It is further noticed that Regional Departmental Enquiry Officer, Konkan Region by his letter dated 01.08.2016 requested Principal Secretary that he has not received the documents from Government for initiating DE. All that, he had received the letter of appointment of Enquiry Officer. However, Respondent No.1 did not take any steps in the matter. The Regional Enquiry Officer against sent reminder on 01.06.2018 to Respondent No.1. It is only on 26.06.2018, the documents were supplied to Enquiry Officer and on receipt of it, Applicant's enquiry was registered as Case No.454. It is thus obvious that though charge-sheet was issued on 21.05.2015, it was in cold storage for three years for inaction on the part of disciplinary authority to ensure supply of all necessary documents to the Enquiry Officer which were indeed required to be sent along with charge-sheet itself.

10. The report of Enquiry Officer further reveals that from 20.11.2018 to March, 2020 not a single hearing had taken place for which no explanation is forthcoming. It is only in 2021, 3 witnesses were examined and enquiry has been closed on 31.11.2021 for submission of final report to the disciplinary authority. It is thus explicit that there was laxity and negligence on the part of concerned Enquiry Officer. He failed in his duties by not taking expeditious and prompt steps in completion of DE.

11. In Affidavit, Additional Chief Secretary in Para No.8 states as under :-

“I say that from the facts mentioned above it appears that the delay in completion of departmental enquiry was caused due to the procedural factors. Also the Covid pandemic induced lockdown has led to the delay as hearings could not be held during the lockdown.”

12. As such, in Affidavit, an attempt has been made to justify the delay caused in departmental enquiry, which is indeed in defiance of Circular dated 07.04.2008. Instead exhibiting preparedness to speed-up the DE and to pass final order, the delay is sought to be justified which reflects total arbitrariness and abuse of process of law. Suffice to say, huge and inordinate delay coupled with laxity and negligence on the part of concerned is writ at large. The Respondent No.1 is, therefore, under obligation to take serious note of the lapses on the part of concerned and shall take necessary action.

13. Now important question comes whether Respondents are justified in withholding gratuity, regular pension, leave encashment and GIS.

14. True, in terms of Section 130(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as ‘Pension Rules of 1982’ for brevity), the gratuity shall not be paid to a Government servant until conclusion of departmental or judicial proceedings and issue of final order therein. Whereas, in the present case, admittedly, when Applicant retired on 31.05.2011, no DE or criminal case was initiated or pending against him which is very crucial aspect of the matter. The DE was initiated belatedly on 21.05.2015 which has not still attained finality. Undoubtedly, in terms of Rule 27 of ‘Pension Rules 1982’ even if DE is not initiated during the tenure of service of Government servant, later it can be initiated subject to contains Rule 27(2)(b)(i)(ii) of ‘Pension Rules of 1982’. In the event, if pension is found guilty for grave misconduct or negligence during the period of his service, then Government is empowered to withhold or withdraw pension or any part of it

permanently or for a specific period, as it deems fit. However, in the present case, admittedly, no DE was pending or initiated at the time of retirement of the Applicant. This being the position, the scope of such DE which is initiated belatedly much after retirement is very limited and if in such DE, a Government servant is held guilty, all that, it would affect the pension.

15. At this juncture, it would be apposite to refer the Judgment of Hon'ble High Court in **2013(6) Mh.L.J. 311 (Manohar B. Patil Vs. State of Maharashtra)**. In that case, the Petitioner was relieved from the employment on 30.04.2010 in view of voluntary retirement, but the charge-sheet in D.E. was issued on 07.09.2011. The Petitioner had challenged the institution of D.E. after retirement. This authority highlights the scope of Rule 27 in the situation where the charge-sheet has been filed after retirement and to that extent important in the present matter. The Hon'ble High Court dismissed the petition in view of provisions of Rule 27 of 'Rules of 1982'. The following passage from the Judgment highlights the scope and ambit of Rule 27, which is as follows:-

“On a conjoint reading of sub-rule (1) with sub-rule (2) of Rule 27 of the said Pension Rules, we are of the view that the Pension Rules provide for initiation of departmental proceedings after retirement of a Government servant subject to constraints of sub-clauses (i) and (ii) of Clause (b) of sub-rule (2) of Rule 27 of the Pension Rules. The departmental proceedings can be instituted after retirement only for the purposes of sub-rule (1) of Rule 27 to enable the Government to recover from pension, the whole or part of any pecuniary loss caused to the Government if in the departmental proceedings, the Pensioner is found guilty of grave misconduct or negligence during the period of his service. On conjoint reading of sub-rules (1) and (2) of Rule 27 of the Pension Rules, it is obvious that in the departmental proceedings initiated after retirement, no penalty can be imposed on a Government servant in accordance with the Discipline and Appeal Rules. The departmental inquiry can be initiated after superannuation only for the purposes of withholding the whole or part of the pension.”

16. It would be also 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 also, 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.”

17. 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.

18. As regard gratuity, the Rule 130(1)(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(1)(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 in D.E. 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 on 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, the 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.

19. 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.

20. Suffice to say, there being no D.E. at the date of retirement of the Applicant, the Gratuity could not have been withheld. Indeed, this aspect is clarified by the Government in G.R. 06.10.1998 reiterating the provision of 'Pension Rules 1982' as under:-

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

21. The totality of aforesaid discussion leads me to conclude that the act of Respondents to withhold retiral benefits of the Applicant is totally bad in law. The Applicant is deprived of retiral benefits for more than 10 years. Despite various representations made by him, the Respondents did not pay any heed. After 10 years' wait from retirement, the Applicant is constrained to file this O.A. for necessary direction. The laxity and negligence on the part of concerned is writ at large. If Applicant had not filed the present O.A, perhaps DE would have continued with Snail's pace for another decade. I am, therefore, inclined to saddle cost upon the Respondents. The Respondents are at liberty to recover the same from errant concerned official who are responsible for causing such huge and inordinate delay in completion of DE. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release gratuity, regular pension, leave encashment, GIS along with cost of Rs.10,000/- as a cost of this O.A. within a month from today.

- (C) The Applicant may avail remedy for grant of interest on the delayed payment independently.
- (D) The Respondents are further directed to complete DE by passing final order therein within two months from today.
- (E) On completion of DE, the Respondents may pass further orders regarding pension in accordance to law subject to outcome of DE.
- (F) No order as to costs.

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

Mumbai

Date : 24.01.2022

Dictation taken by :

S.K. Wamanse.

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