

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 122 OF 2019  
(Subject:-Withholding of Pension & Pensionary Benefits)**

**DISTRICT: - JALGAON**

Shaikh Ahamad S/o. Abdul Satter Mujawar, )  
Age: 59 years, Occu: Retired )  
R/o. Haji Ahamad Nagar (Salar Nagar) )  
Jalgaon, Dist. Jalgaon. )...**APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Home Department, )  
Mantralaya, Mumbai-32. )
2. **Director General of Police,** )  
Maharashtra State Mumbai. )  
Police Head Quarter Near Old M.L.A. )  
Hostel and Regal Cinema, )  
Mumbai- 400 001. )
3. **Inspector General of Police,** )  
Nasik Region, Nasik. )
4. **Dist. Superintendent of Police,** )  
Jalgaon. )
5. **Principal Accountant General (A & E)** )  
Maharashtra, Mumbai-20. )..**RESPONDENTS**

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**APPEARANCE** : Shri P.B. Patil, learned Advocate for the  
applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,  
learned Presenting Officer for the  
respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**  
**DATE** : **09.12.2022.**  
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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking direction to the respondents to make payment of gratuity, leave encashment and pension with interest @ 18% p.a. from the date of entitlement till the date of realization.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant was appointed as a Police Constable on 16.10.1980. The applicant is sincere and hard worker. While the applicant was working as Assistant Police Sub-Inspector at Muktai Nagar Police Station, District –Jalgaon on the complaint lodged to the A.C.B. Jalgaon, Crime No.2014/2014 came to be registered against the applicant on 25.03.2014 (Exh. 'A') for demanding and acceptance of bribe. In that respect, criminal case is pending against the applicant in Sessions Court at Jalgaon for the offences punishable under

Section 7 and 13 (1) (d) r/w 13(2) of Prevention of Corruption Act, 1988 for trial. In view of the said criminal prosecution, the applicant was suspended by the respondent No.4 i.e. the Superintendent of Police, Jalgaon as per order dated 02.04.2014. Subsequently, the applicant was reinstated in service by revoking suspension vide order dated 04.03.2016 (Exh. 'A-1'). Thereafter, the applicant stood retired on superannuation w.e.f. 28.02.2018.

(ii) It is submitted that after his retirement on superannuation, the applicant received only the amount of provident fund. Amount of gratuity, leave encashment, part pension and consequential benefits are not received by the applicant though he is entitled for the same. As per the law laid down by the Hon'ble Apex Court, the amount of gratuity and other pensionary benefits cannot be withheld due to pendency of criminal case as there is no provision to withhold the same. The applicant made oral as well as written representation dated 07.06.2018 (Exh. 'A-2') for redressal of his grievances, but in vain. Hence this application.

3. The application is resisted by filing affidavit in reply on behalf of the respondent No.4 by one Dattatraya

Khushalsingh Pardeshi working as Police Inspector (Control Room) in the office of respondent No.4 i.e. the Superintendent of Police, Jalgaon, thereby he denied adverse contentions raised in the Original Application.

(i) It is submitted that admittedly criminal case under Prevention of Corruption Act is pending against the applicant arising out of Crime No. 3014/2014 dated 25.03.2014. It is also admitted that the applicant was suspended by order dated 02.04.2014 and was reinstated by order dated 04.03.2016 and the applicant has retired on superannuation on 28.02.2018. However, no decision is yet taken in respect of regularization of suspension period in view of the pendency of a criminal prosecution against the applicant. Due to the said reason, other benefits are not paid to the applicant. The applicant is not entitled for any of the reliefs.

4. I have heard at length the arguments advanced by Shri P.B. Patil, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer representing the respondents on other hand.

5. Learned Advocate for the applicant strenuously urged before me that in view of the law laid down by the Hon'ble

Apex Court in the case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** reported in (2013) 12 S.C.C. 210, which is followed in the Hon'ble Bombay High Court judgment in the matter of **Purushottam Kashinath Kulkarni & Ors. Vs. The State of Maharashtra & Ors.** reported in (2016) 3 MhLJ 300, the applicant is entitled to receive gratuity, leave encashment and part pension though criminal case is pending against the applicant.

6. In this regard, he also placed reliance on the case law of the Hon'ble High Court of Judicature at Bombay in the matter of **Vishnu Gangaram Sonawane Vs. Chief Executive Officer** reported in (2015) 3 MhLJ 41. Learned Advocate for the applicant also placed reliance on the decision of Co-Ordinate Bench of this Tribunal which is common order dated 23.12.2021 passed in O.A.Nos. 918 & 968 both of 2021.

7. On the other hand, the learned Presenting Officer submitted that in view of Rule 27 and 130 of Maharashtra Civil Services (Pension) Rules, 1982, the respondents can withhold the pension and gratuity if the criminal or departmental proceeding is pending against the applicant.

8. The basic citation relied on behalf of the applicant in this regard is the case law of the Hon'ble Apex Court in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (cited supra). In the said citation case, the Government servant retired on superannuation when disciplinary action is pending against him. Payment of General Provident Fund and Provisional Pension were released to the Government servant. However part pension was withheld. In the said citation it is held as follows:-

“Pension is hard earned benefit which accrues to an employee and is in the nature of ‘property’. This right to property cannot be taken away without the due process of law as per the provisions of Art. 300 A of the Constitution of India. It follows that attempt of the Govt. to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. It hardly to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as ‘law’ within the meaning of Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold –even a part of pension or gratuity. So far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

In the said case it was further observed that there is no provision in Bihar Pension Rules by which the Government servant therein was governed, for withholding of the

pension/gratuity when such departmental proceedings or judicial proceedings are still pending. Ultimately in paragraph No. 15 it is observed as follows:-

“15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the Appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provisions for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different”

9. In view of the ratio as above, if the facts of the present case are considered, it is seen that reading of provisions of Rule 27 (1) & (4) together with Rule 130 (c) reproduced below would show that these Rules of Maharashtra Civil Services (Pension) Rules, 1982 specifically provide the power of Government to withhold part pension and gratuity during pendency of criminal prosecution or departmental proceedings. Rules 27 (1) & (4) and Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982 is as follows:-

**“27. Right of Government to withhold or withdraw pension.**

- (1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or

any part of it whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- (2) ... ..
- (3) ... ..
- (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provision pension as provided in rule 130 shall be sanctioned.

**130. Provisional pension where departmental or judicial proceedings may be pending.**

- (1) (a) ... ..
- (b) ... ..
- (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.”



10. In view of the same, in my humble opinion, the ratio laid down in the abovesaid citations relied upon by the learned Advocate for the applicant would not be applicable. For the very said reason, in my humble opinion, the case law cited by the learned Advocate for the applicant in the matter of **Purushottam Kashinath Kulkarni & Ors. Vs. The State of Maharashtra & Ors.** reported in (2016) 3 MhLJ 300 would not be applicable. In the said case, nature of criminal case pending against the applicant is also not discussed. In the case in hand, the criminal case against the applicant arising out of discharge of duties of the applicant is pending against the applicant, which is under Prevention of Corruption Act.

11. Learned Advocate for the applicant has also placed reliance on the decision of Co-Ordinate Bench dated 23.12.2019 in O.A.No.918 & 968 both of 2019. However, in the said case, the applicants therein were acquitted in a Special Criminal Case registered under Prevention of Corruption Act, 1988. In the case in hand, the said case is still pending against the applicant. Hence, the view taken in the said decision would not be applicable.

12. In the facts and circumstances, it is seen that the applicant would not be entitled for the amount of part pension and gratuity which is rightly withheld by the applicant. However, the respondents could not have withheld the amount of leave encashment for which no specific Rule is cited on behalf of the respondents being empowered to withhold it. In the circumstances as above, the application deserves to be allowed partly in following terms:-

**ORDER**

- (A) The Original Application is partly allowed.
- (B) The prayer made by the applicant regarding release of gratuity and part pension is rejected.
- (C) The respondents are directed to release amount of leave encashment to the applicant in accordance with law with interest as admissible under Rule 129(A) on the footing of interest on delayed payment of gratuity within the period of two months from the date of this order.
- (D) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**