

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 237 OF 2021
(Subject:-Pension)**

DISTRICT: - AURANGABAD

Shri Kakasaheb Keshavrao Thote,)
Age: 61 Years, Occ: Retired,)
R/o: Plot no.4, Sai Ambika Society,)
First Floor, Walmi Naka,)
Old Waluj Road, Nakshtrawadi,)
Aurangabad.)
Mob. No. 9423390446)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary,)
Industries, Energy and Labour Dept.,)
Mantralaya, Mumbai -32.)
 2. **The Development Commissioner**)
(Industries),)
Directorate of Industries,)
New Administrative Building/Bhavan,)
Opposite Mantralaya, Mumbai -32.)
 3. **The Joint Director of Industries,**)
Aurangabad Division, Vikas Bhuvan,)
2nd Floor, Adalat Road, Aurangabad.)
 4. **The General Manager,**)
District Industries Centre, Aurangabad)
Opp. Holiday Camp, Railway Station)
Road, Aurangabad.)
 5. **The Accountant General -II,**)
Civil Lines, Nagpur.)..**RESPONDENTS**
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APPEARANCE : Shri K.B. Jadhav, learned Advocate for
the applicant.
: Smt. Sanjivani K. Deshmukh-Ghate,
learned Presenting Officer for the
respondents.

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

DATE : **15.12.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985, this Original Application is filed seeking direction against the respondents to pay regular pension, gratuity and commutation value of pension to the applicant and also to pay revised pension as per 7th pay commission recommendations and arrears thereof.

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

(i) The applicant was initially appointed in the year, 1991 as a Clerk Typist with the respondents. In the year 2006, he was promoted to the post of Senior Clerk and in the year

2012, he was promoted to the post of Industries Inspector. He retired on superannuation from the said post w.e.f. 31.03.2018 from the office of the respondent No.4 i.e. the General Manager, District Industries Centre, Aurangabad as per order dated 31.03.2018 (Annex. 'A-1').

(ii) During his service tenure at Chandrapur, criminal case was registered against the applicant and others at Durgapur Police Station under Section 420, 467, 468, 471, 409, 120-B of the Indian Penal Code on the allegations that the accused persons therein loaded Coal illegally and sold the same in black market. According to the applicant, he was falsely implicated in the said criminal case. He has every hope to succeed in the criminal case. The said criminal case is still pending.

(iii) It is submitted that during his service tenure, his work was appreciated from time to time till his retirement. The applicant made applications dated 12.02.2018 and 02.05.2018 (Annex. 'A-2' collectively) to the respondent No.4 for granting of pension. However, only provisional pension was granted to the applicant for first six months of his retirement as per communication dated 02.07.2018 (Annex. 'A-3'). He made representations/applications dated

19.11.2018 and 14.06.2019 (Annex. 'A-4' collectively) seeking revised provisional pension. The respondent No.5 i.e. the Accountant General-II, Nagpur by letter dated 02.07.2019 (Annex. 'A-5') granted provisional pension till finalization of criminal case.

(iv) The applicant was facing difficulties on account of getting meager provisional pension and was unable to maintain his family. He, therefore, made application dated 28.01.2021 (Annex. 'A-6') to the respondent No.4 for getting regular pension. The applicant, however, was not granted it, but he received the amount of G.P.F., G.I.S. and leave encashment.

(v) It is further submitted that the respondent No.4 vide communication dated 15.03.2021 (Annex. 'A-7') informed the applicant that due to pendency of criminal case against the applicant in the Sessions Court, Chandrapur, the regular pension and pensionary benefits cannot be granted. But revised pensionary benefits will be granted to him. No departmental enquiry is initiated against the applicant. Only criminal case is pending against him. As per the decision of the Hon'ble Apex Court in the matter of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** reported in

AIR 2013 S.C. 3383, the pensionary benefits to the Government servants cannot be withheld for long period on the ground that there is departmental enquiry or criminal case pending against him. The retired employee has legal right to receive the pensionary benefits as per benefit of Constitution of India and more particularly Article 300A. Hence this application.

3. Affidavit in reply is filed on behalf of the respondent Nos. 2 to 4 by one Balasaheb Trimbak yashwante working as the Joint Director of Industries, Aurangabad Region, Aurangabad i.e. the respondent No.3. He thereby denied all the adverse contentions raised in the Original Application.

(i) It is specifically contended that after retirement of the applicant on superannuation on 31.03.2018, the applicant has been paid following amounts as per letter dated 01.09.2021 (Annex. 'R-1'):-

G.P.F.	Rs.1,44,052/-
Earn Leave	Rs. 4,02,480/-
G.I.S.	Rs.46,314/-
Provisional Pension	Rs.10,060/- (01.04.2018)
Provisional Pension	Rs.10,188/- (02.07.2019)

(ii) The applicant is facing criminal case, which is pending against him since before retirement. In view of that pensionary benefits are withheld by the respondent, which is legal and proper. Hence, the Original Application is devoid of merit and is liable to be dismissed.

4. Separate affidavit in reply is filed on behalf of the respondent No.5. Thereby it is submitted that the in view of pendency of criminal case against the applicant at the time of retirement on superannuation, only the provisional pension is granted which provisional pension is being continued to be paid to the applicant. He has been paid revised pension as well as arrears thereof. The claim of the applicant for authorization of pension can be considered by this respondent office only on receipt of pension proposal from the Pension Sanctioning Authority i.e. the respondent No.4. In view of the same, the application is liable to be dismissed.

5. The affidavit in rejoinder is filed by the applicant thereby denying the adverse contentions raised in the affidavit in reply filed on behalf of the respondent Nos.2 to 4 and respondent No.5 and reiterating the contentions raised by him in the Original Application.

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

7. Upon perusal of the facts and documents on record it is evident that the criminal case pending against the applicant is connected with discharge of duties of the applicant during his service period. In such situation, the provisions of Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982, which deals with right of Government to withhold or withdraw the pension and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982, which deals with provisional pension where the departmental enquiry of judicial proceedings may be pending would come into play. Accordingly, this case will have to be considered within the parameters of Rules 27 (1) & (4) and Rule 130 (c) of Maharashtra Civil Services (Pension) Rules, 1982.

8. Learned Advocate for the applicant, however, has placed reliance on the citation of the Hon'ble Apex Court in the matter of **State of Jharkhand & Ors. Vs. Jitendra Kumar**

Srivastava & Anr. reported in AIR 2013 S.C. 3383. In the said citation case, the Government servant retired on superannuation when disciplinary action was pending against him. Payments 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 above and more particularly in view of observations made in paragraph No.15 of above said citation

of the Hon'ble Apex Court, this case requires consideration in view of the statutory provisions of Rule 27 (1) & (4) together with Rule 130 (c) reproduced below, which 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.”*

These Rules make it clear that the Government has right to withhold or withdraw the pension and pensionary benefit like gratuity during pendency of the criminal case or

departmental enquiry. In view of this position, in my humble opinion, the ratio laid down in the abovesaid citation will not be applicable. In such circumstances it is necessary to be held that the respondents rightly withheld the pension and gratuity amount.

10. Learned Advocate for the applicant has further placed reliance on various citations as follows:-

(i) **2015 (3) Mh.L.J. 41 in the matter of Vishnu Gangaram Sonawane Vs. Chief Executive Officer, Zilla Parishad, Nashik & Ors.**

In the said citation case, however, the facts were different to the effect that the petitioner therein was acquitted in criminal case and criminal appeal was pending against him. In such a situation pension and pensionary benefits were directed to be released. The case in hand is, however different as a criminal case against the applicant arising out of discharge of his duties while working as Government servant is pending.

(ii) The decision of the Hon'ble High court of Judicature at Bombay dated 16.0.2.2016 in Writ Petition No. 2630/2014 in

the matter of **Purushottam Kashinath Kulkarni & Ors. Vs. the State of Maharashtra & Ors.**

In the case the amount of pension and gratuity payable to the petitioner were withheld on the ground of pendency of criminal case. However, from the said citation it is not clear that as to whether criminal case arising out of discharge of duties of the Government servant was pending or as to whether the said criminal case was totally unconnected with his discharge of duties is not clear. It is true that there is reference to citation of the Hon'ble Apex Court in case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (cited supra). However, the aspect of the Hon'ble Apex Court citation that the position will be different in case there is specific provision for withholding pensionary benefit and gratuity was not dealt with. In the circumstances, in my humble opinion, the said citation also will not help the applicant for getting released the pension and gratuity.

(iii) W.P.No. 6650 of 2020 decided by the Hon'ble Apex Court dated 25.10.2021 in the matter of **Ashfakali Khan Abdulali Khan Vs. the State of Maharashtra & Ors.**

(iv) O.A.No. 346/2021 decided by this Tribunal by order dated 17.07.2022 in the matter of **Dilip Parbat Patil Vs. the State of Maharashtra & Ors.** ; AND

(v) O.A.No. 826/2021 decided by Learned Division Bench of this Tribunal by order dated 30.03.2022 in the matter of **Baliram Sapkale & Ors. Vs. the State of Maharashtra & ors.**

However, in all these abovesaid matters, the respective Government servants were acquitted of criminal case and only criminal appeal was pending against them. In such situation, penation benefits were released. That is not the case in the case in hand. In view of the same, in my humble opinion, the ratio laid down therein or view taken therein would not be applicable.

11. It is a fact that the amount of G.P.F., Leave Encashment and G.I.S., provisional pension and arrears of provisional pension is being received from the applicant from time to time. What is withheld is remaining regular pension amount and gratuity. In view of the provisions of Rules 27 and 130 of Maharashtra Civil Services (Pension) Rules, 1982, the respondents have rightly withheld the said amounts in view of

the pendency of criminal case against the applicant which has arisen out of discharge of his duties. The criminal case cannot be said to be unconnected with discharge of duties of the applicant while working as Government servant. Hence, there is no merit in the Original Application and it is liable to be dismissed. Hence following order:-

ORDER

- (A) The Original Application stands dismissed.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad
Date : 15.12.2022
SAS O.A.237/2021