

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.259 OF 2022

DISTRICT : JALGAON

Rahul Kumar s/o. Murlidhar Wagh,
Age : 59 years, Occu. : Retired Government Servant,
R/o. Gautam Housing Society, Kandari,
Tq. Bhusawal, Dist. Jalgaon. **...APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through: The Additional Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
- 2) Sub-Divisional Officer,
Division Office, Bhusawal Branch,
Bhusawal, Near Prabhakar Hall,
Jalgaon Road, Bhusawal, Dist. Jalgaon.
- 3) The Tahsildar,
Tahsil Office, Jalgaon Road,
Bhusawal, Dist. Jalgaon. **...RESPONDENTS**

APPEARANCE : Shri M.R.Kulkarni, Counsel for
Applicant.

: Shri B.S.Deokar, Presenting
Officer for respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 07.02.2023.

O R A L O R D E R:

1. Heard Shri M.R.Kulkarni, learned Counsel for the
applicant and Shri B.S.Deokar, learned Presenting Officer
for the respondent authorities.

2. It is the grievance of the applicant that on the ground that a criminal case is pending against him, his amount of gratuity has not yet been paid. Learned Counsel for the applicant has relied upon certain judgments to buttress his case that only due to pendency of a criminal case gratuity amount payable to the applicant cannot be withheld.

3. Learned Counsel for the applicant has relied upon the following judgments:

[i] Writ Petition No.2630/2014 decided on 16-02-2016
(Purushottam Kashinath Kulkarni & Ors. V/s. The State of Maharashtra & Ors.)

Hon'ble Bombay High Court Bench at Aurangabad.

[ii] O.A.No.346/2021 decided on 17-07-2022 (Dilip s/o. Parbat Patil V/s. The State of Maharashtra & Ors.)
MAT Aurangabad Bench.

[iii] O.A.No.3910/2016 decided on 08-03-2019
(Syed Sagar Ali s/o. late Sajjad Ali V/s. Govt. of India & Ors.)

CAT Principal Bench at Delhi.

4. I have gone through the judgments so relied upon by the applicant. Before advertng to the ratio laid down in the aforesaid judgments, it would be expedient to see the basic provision on the basis of which the respondents have withheld the amount of gratuity. Sub clause (c) of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 reads thus:

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

(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.”

5. In view of the specific provision as above, it does not appear to me that the respondents have committed any illegality in not releasing amount of gratuity. Criminal prosecution is admittedly pending against the applicant. In so far as the amount of leave encashment is concerned, in the judgments relied upon, the same has been directed to be released since there is no such bar as is in respect of payment of gratuity amount. It was also contended by the learned Counsel that, to some of the similarly placed employees against whom also criminal prosecution is

pending, the respondents have released the amount of gratuity. This submission also cannot be considered for the reason that the parity cannot be claimed in illegality. It need not be stated that if there has been a benefit or advantage conferred on a set of people without legal basis or justification that cannot be relied upon as a principle of parity of equality.

6. For the reasons state above, O.A. deserves to be dismissed. O.A. is accordingly dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 07.02.2023.