

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.292/2022

DISTRICT:- PARBHANI

Ramkishan s/o. Chhaganrao Mavai,
Age : 76 years, Occ : Block Development
Officer, Panchayat Samiti, Mantha,
District Jalna (Now retired)
R/o. Pandurang Provisions, Shivaji Nagar,
Jintur, Tq. Jintur, Dist. Parbhani. **...APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai-400032.
- 2) The Accountant General (A & E) II,
Maharashtra, Post Box No.114,
Nagpur.
- 3) The Chief Executive Officer,
Zilla Parishad, Jalna. **...RESPONDENTS**

APPEARANCE :Shri J.B.Choudhary, Counsel for
Applicant.

:Smt. Sanjivani Ghate, Presenting
Officer for the respondents.

:Shri Bhausahab S. Deshmukh,
Counsel for respondent No.3
(absent).

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on: 05-09-2023.

ORAL ORDER:

1. Heard Shri J.B.Choudhary, learned Counsel for the applicant and Smt. Sanjivani Ghate, learned Presenting Officer appearing for the respondent authorities.

Shri Bhausahab S. Deshmukh, learned Counsel for respondent no.3 (**absent**).

2. The applicant has preferred the present O.A. seeking quashment of order passed by respondent no.2 dated 03-11-2021 to the extent of recovery of amount of Rs.31,369/- directed from the DCRG amount of the applicant. The prayer has also been made for refund of the said amount. The applicant has also prayed for the interest for delay which has occurred in remittance of the amount of gratuity to him.

3. The facts which are not in dispute are thus: -

(i) The applicant stood retired after attaining the age of superannuation on 28-02-2004 from the post of Block Development Officer, Class-I.

(ii) The departmental enquiry was pending against the applicant on the date of his retirement.

(iii) The charge-sheet was issued to the applicant in the said pending departmental enquiry on 19-12-1991. Prior to that, the applicant was placed under suspension vide order passed on 12-08-1991. Suspension was revoked on 15-01-1993.

(iv) Enquiry officer was appointed for conducting the departmental enquiry against the applicant on 04-06-1992. However, the said enquiry could not commence till 31-07-1998 and hence, another enquiry officer was appointed. He also could not commence enquiry. Therefore, on 10-08-2001 third enquiry officer was appointed and he commenced the D.E. against the applicant. On 29-01-2004 enquiry officer submitted his report. Said report was made available to the applicant on 11-03-2004. On 10-05-2004 the applicant submitted his say to the enquiry report. Thereafter, there was no further progress in the D.E. and in the meanwhile applicant stood retired on 28-02-2004.

(v) After about 12 years of submitting enquiry report applicant was issued with a show cause notice dated 14-10-2016 regarding the punishment proposed against him. To the said notice applicant gave his reply on 04-11-2016. Thereafter, for 2 years there was again no movement and ultimately on 26-12-2018 respondent no.1 imposed punishment upon the applicant under Rule 27 of the Maharashtra Civil

Services (Pension) Rules, 1982, thereby directing deduction of Rs.500/- per month from the pension of the applicant for the period of 1 year. Applicant accepted the said punishment and accordingly amount of Rs.500/- per month was deducted from the provisional pension amount of the applicant for 1 year.

(vi) Thereafter, the applicant was requesting for release of the retiral benefits payable to him including that of the gratuity amount. The Accountant General, Nagpur sanctioned the amount of Rs.1,74,688/- towards amount of Death-cum-Retirement Gratuity (DCRG) payable to the applicant. However, in the same order dated 03-11-2021 recovery was also directed of the amount of Rs.31,369/- towards the overpayment made to the applicant of the pay and allowances. Accordingly, amount of Rs.31,369/- was deducted from the amount of gratuity payable to the applicant and balance amount was paid to him.

4. It is the grievance of applicant in the present application that amount of Rs.31,369/- has been illegally recovered from the gratuity amount payable to the applicant. In the application, applicant has contended that before directing recovery of the said amount, notice was not given to the applicant and applicant was not informed as to on what account the recovery of the aforesaid amount

was directed against him. It is the contention of the applicant that he was never made aware as to which pay and allowances were paid in excess of his entitlement and during which period. It is the contention of the applicant that no recovery was permissible after the period of about 17 years of his retirement from the retiral benefits payable to him. In the circumstances applicant has prayed for the refund of the said amount with interest. The applicant has also claimed the interest on the delayed payment of the amount of gratuity.

5. The contentions raised in the application and the prayers made therein are opposed by the respondents. Respondent nos.1 & 2 have filed their separate affidavits in reply. Respondent no.1 in its affidavit in reply has contended that when the proposal for determination of the pension to be paid to the applicant was under process, it was noticed that the applicant was wrongly paid an amount of Rs.31,369/- towards the pay and allowances in excess of his entitlement. A.G. office has, therefore, directed recovery of the said amount and accordingly the said amount was recovered from the gratuity amount payable to the applicant. It is further contended that

because of the pendency of the D.E. against the applicant delay has occurred in payment of gratuity amount. It is further contended that the delay caused in payment of the said amount is unintentional, and as such, request made by the applicant for payment of interest is unjust and deserves to be rejected.

6. In its reply respondent no. 2 has stated that the pension was determined on the basis of the proposal forwarded by respondent no.3 i.e. Chief Executive Officer, Zilla Parishad, Jalna. This respondent however, has not disclosed further details as about the recovery of the amount of Rs.31,369/- allegedly towards the overpayment of pay and allowance.

7. It has to be noted that despite due opportunities given, respondent no.3 has failed in filing his affidavit in reply. Today also no one is present for respondent no. 3.

8. Shri J.B.Choudhary, learned Counsel appearing for the applicant assailed the impugned order on various grounds. Learned Counsel submitted that amount of Rs.31,369/- has been unilaterally recovered by the respondents from the amount of gratuity payable to the

applicant. Learned Counsel further submitted that no notice was given to the applicant before issuance of such order of recovery and the applicant was not heard before passing any such order. Learned Counsel submitted that neither in the order impugned in the present O.A. nor in the affidavits in reply filed on behalf of the respondents, it has been disclosed as to on what account the aforesaid amount was recovered from the applicant. Learned Counsel submitted that after the retirement of the applicant in the year 2004 no recovery was permissible from the retiral benefits payable to the applicant in view of the guidelines laid down by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in [**AIR 2015 SC 696**].

9. Learned Counsel submitted that though it has been alleged that some pay and allowances were paid to the applicant in excess of his entitlement, particulars thereof are not provided to the applicant, neither such details are provided in the present proceedings in the affidavits in reply and vague defenses are raised by the respondents. Learned Counsel submitted that the said amount has been illegally recovered from the amount of

gratuity payable to the applicant and it deserves to be refunded to the applicant with interest thereon. Learned Counsel further argued that respondents have committed inordinate delay in making the payment of gratuity to the applicant and, as such, respondents are liable to pay the interest for the period of delay caused for payment of aforesaid amount of gratuity.

10. Learned Presenting Officer submitted that recovery has been made on the basis of the pension proposal which was forwarded by respondent no.3 to the A.G. and the State Government has not played any role in the recovery so directed and made from the amount of gratuity payable to the applicant. Insofar as the delay in making payment of gratuity amount is concerned, the State Government has again blamed respondent no.3 i.e. Zilla Parishad, Jalna and has denied the allegation against it for delay in remittance of the amount of gratuity.

11. I have duly considered the submissions made on behalf of the applicant as well as the respondent authorities i.e. respondent nos.1 & 2. As noted hereinabove, no one was present on behalf of respondent no.3 i.e. Zilla Parishad, Jalna.

12. I have hereinabove noted the undisputed facts. If the chronology of the facts as are stated above is taken into account, it apparently reveals that inordinate delay was committed in concluding the departmental enquiry proceeding against the applicant. As noted above, the enquiry was initiated sometimes in the year 1991 and the enquiry officers were required to be appointed thrice as first 2 enquiry officers could not even commence the enquiry proceeding. The enquiry officer who was appointed on 10-08-2001 conducted departmental enquiry proceeding and submitted the enquiry report. As has come on record the enquiry officer has submitted the enquiry report on 29-01-2004. The applicant has submitted his say on the said enquiry report on 10-05-2004 and thereafter for about 14 years there was no action from the side of the respondents.

13. In the meanwhile, the applicant stood retired on attaining the age of superannuation on 28-02-2004. However, only because of the departmental enquiry proceeding initiated against him in the year 1991 was not completed, the applicant was paid the retiral benefits after the prolonged period of about 15 years. Ultimately, on

26-12-2018, punishment was imposed upon the applicant. From the enquiry report, it is revealed that only one charge was proved against the applicant and minor punishment of deducting Rs.500/- per month from the amount of pension was imposed upon the applicant. As is revealing from the record, on 03-11-2021 the impugned order was issued directing the recovery of the amount of Rs.31,369/- from the gratuity amount payable to the applicant. It is the precise grievance raised by the applicant that before directing the said recovery, no notice was issued to him nor any opportunity of hearing was given.

14. It is his another grievance that no particulars are provided for the recovery so directed against him and the amount was unilaterally recovered from the amount of gratuity payable to him. In the affidavit in reply filed on behalf of respondent no.1 as well as respondent no.2 nothing has been explained about the recovery. The only contention on behalf of the respondents is that recovery was towards overpayment of pay and allowances made to the applicant. However, throughout the proceedings and till this date the respondents have failed in providing the particulars as to for what period the overpayment of pay

and allowances was made to the applicant. In absence of any such particulars provided by the respondents, recovery cannot be sustained. Moreover, in view of the law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih**, cited supra, recovery from the emoluments payable to the retired employees is impermissible. In the present matter, the applicant has raised specific plea that without giving him any opportunity of hearing, amount has been unilaterally recovered from his gratuity without providing any particulars about the recovery so made.

15. Opportunity was available to the respondents to give particulars about the recovery so made. However, respondents have failed in providing such particulars. As is revealing from the contentions taken by the respondents in their affidavit in reply, the recovery is towards the overpayment of pay and allowances. As has been amply discussed hereinabove, in which period the pay and allowances were paid in excess of the entitlement to the applicant is not explained by the respondents. Whatever the case may be the fact remains that, the recovery of the said amount is directed after about 17 years of the retirement of the applicant. It is further not the case of the

respondents that in the alleged excess payment made to the applicant any foul role was played by him or that the overpayment was made because of any misrepresentation on the part of the applicant. For all aforesaid reasons the recovery so directed has to be held unsustainable and deserves to be set aside. Applicant is, therefore, entitled for the refund of the said amount.

16. In so far as the delay in payment of gratuity amount is concerned, the applicant has sufficiently established that delay has occurred on the part of the respondents in making the payment of gratuity to the applicant. Applicant has, therefore, prayed for interest on the delayed payment of gratuity amount from the year 2005 till the date of its payment in November, 2021. Said delay cannot be said to be from the year 2005 for the reason that departmental enquiry proceedings were not concluded till the year 2018. As provided under Rule 130(c) of the Maharashtra Civil Services (Pension) Rules, 1982 the amount of gratuity was not liable to be released until the departmental proceedings are concluded.

17. It appears to me that there was absolutely no reason for withholding the amount of gratuity after

conclusion of departmental enquiry proceedings, and thereafter, the respondents were under an obligation to release the amount of gratuity within the period stipulated therefor in the Payment of Gratuity Act. As per the said provision within 90 days respondents were bound to make the payment of amount of the gratuity. The enquiry proceedings were concluded on 26-12-2018. The respondents were thus under an obligation to release the amount of gratuity to the applicant on or before 01-04-2019. However, it has been paid to the applicant on 03-11-2021. Therefore, the applicant is certainly entitled for the interest of the aforesaid period from 01-04-2019 to 03-11-2021 on the entire amount of gratuity @ 8% per annum.

18. For the reasons stated above, following order is passed:

ORDER

[i] The order of gratuity dated 03-11-2021 is quashed and set aside, to the extent of direction issued therein to recover the amount of Rs.31,369/- from the applicant.

[ii] Respondents are directed to refund the said amount of Rs.31,369/- to the applicant within 3 months from the date of this order.

[iii] Respondents are further directed to pay interest to the applicant on the gratuity amount of Rs.1,74,688/- @ 8% per annum from 01-04-2019 till 03-11-2021 within 3 months from the date of this order.

[iv] O.A. is allowed in the aforesaid terms, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 05.09.2023.