

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.71/2022

DISTRICT:- JALNA

Sampat Dayaram Pawar,
Age : 60 years, Occ : Pensioner,
R/o. Mahada Colony, Near Pach Amaba Devo,
Ambad Choufuli, Jalna,
Tq. & Dist. Jalna.

...APPLICANT

V E R S U S

The Superintendent of Police Jalna,
Administrative Building, Jalna,
Tq. & Dist. Jalna.

...RESPONDENT

APPEARANCE :Shri V.B.Wagh, Counsel for
Applicant.

:Shri N.U.Yadav, Presenting Officer for
the respondent.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 21-08-2023.

O R A L O R D E R :

1. Heard Shri V.B.Wagh, learned Counsel for the
applicant and Shri N.U.Yadav, learned P.O. appearing for
the respondent.

2. Learned Counsel for the applicant sought leave to
add one more prayer in the O.A. thereby seeking
quashment of the order dated 12-08-2021 passed by the

respondent. Though the request has been made at the time when the matter is being finally heard, I see no reason to decline the request for the reason that reliefs which are already claimed in the O.A. are in consonance with the prayer which is now sought to be added. The applicant is, therefore, permitted to add the said prayer in the prayer clause as Clause B-1. Necessary amendment be carried out forthwith.

3. The applicant has retired on 30-09-2020 on attaining the age of superannuation from the post of Police Sub Inspector (PSI) from the office of the respondent. In the year 2018 a criminal case was registered against the applicant for the offences punishable u/s.7, 13, (1)(d)(2) of the Prevention of Corruption Act, 1988. Applicant was, therefore, placed under suspension in the period between 02-07-2018 to 27-01-2019. The applicant came to be acquitted in the aforesaid criminal case bearing Special Case (ACB) No.27/2018 by the Additional Sessions Judge, Jalna vide the judgment delivered on 23-12-2020. The State has preferred Appeal bearing ALS No.25/2021 against the said order before the Hon'ble High Court and

the same is pending. The Appeal has been filed on 09-04-2021.

4. After the retirement of the applicant when the respondent did not initiate process for grant of the final pension to the applicant for the reason that no decision was taken as about the period of suspension, applicant vide his application dated 02-03-2021 requested the respondent to regularize the period of suspension undergone by him. It has to be stated that the departmental proceedings were also initiated against the applicant, however, applicant came to be exonerated from the charges levelled against him in the said departmental enquiry. Thus, on the date on which the applicant retired on attaining the age of superannuation, no departmental proceedings were pending against him and the criminal case has resulted into his acquittal. Respondent, however, vide its communication dated 12-08-2021 refused the request of the applicant to regularize his period of suspension stating that the same cannot be regularized unless the appeal filed by the State is finally decided by the Hon'ble High Court. Aggrieved by the said order, the applicant has preferred the present O.A.

5. Shri V.B.Wagh, learned Counsel for the applicant submitted that unless the decision is taken as about the period of suspension between 02-07-2018 to 27-01-2019, final pay of the applicant may not be fixed and consequently his final amount of pension may also not be determined. Learned Counsel submitted that in the identical fact situation, Aurangabad Bench of the Hon'ble Bombay High Court in **W.P.No.6650/2020** in the case of **Ashfakali Khan Abdulali Khan V/s. State of Maharashtra & Ors.** decided on 25-10-2021 has ruled that once the acquittal is recorded in favour of a Government employee, even though an appeal preferred by the State against the said order be pending, Government employee cannot be deprived of his retiral benefits and the said benefits can be remitted in favour of the said employee by obtaining an undertaking from him for refund of the said benefits in the event his acquittal is converted into conviction by the Hon'ble High Court in the Criminal Appeal filed in the said matter. Learned Counsel in the circumstances has prayed for setting aside the order dated 12-08-2021 and has sought directions against the respondent for grant of retiral benefits payable to the

applicant and further direction to process his case for determination of the final pension payable to the applicant.

6. The respondent has opposed the contentions raised in the O.A. and the prayers made therein. Shri Yadav, learned P.O. pointed out that in paragraph 13 and 16 of the affidavit in reply filed on behalf of the respondent he has elaborately justified his action of rejecting the request of the applicant to regularize the period of suspension undergone by him. Learned P.O. referred to Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 as well as Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payments During Suspension, Dismissal & Removal) Rules, 1981 in support of his contentions and prayed for dismissal of the O.A.

7. I have duly considered the submissions advanced on behalf of the applicant as well as the respondent. Issue which has been raised in the present O.A. is no more res-integra. Hon'ble Bombay High Court while deciding **Writ Petition No.6650/2020** has dealt with the aforesaid issue. I deem it appropriate to reproduce the said judgment, which is a short judgment delivered by the Hon'ble High Court, which reads thus:

“1. We have considered the strenuous submissions of the learned Advocates for the respective sides. The learned Advocate for respondent Nos.2 and 3 and the learned AGP have vehemently opposed this petition and pray for its dismissal. It is pointed out that though the petitioner has been acquitted for committing offences punishable under sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 vide judgment dated 19/07/2019 in Special Case (ACB) No.07/2007, a criminal appeal challenging such acquittal is pending in this Court.

2. The petitioner has put forth prayer clause B, C and D as under :-

"B. By Writ, order or directions the respondent No.2 and 3 may kindly be directed to fix final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of justice.

C. By writ, order or directions the respondent No.2 and 3 may kindly be directed to pay the difference of final regular pension deducting the amount paid to the petitioner by way of provisional pension from 01.07.2017 till the actual grant of regular pension as per 7th Pay Commission and to pay interest @ 12% on regular pension from 20.07.2019 till the grant and payment of actual regular pension and for the payment of interest on the amount payable to the petitioner of gratuity from 01.07.2017 till the actual payment of gratuity in the interest of justice.

D. Pending hearing and final disposal of this Writ Petition the respondent No.2 and 3 may kindly be directed to fix the final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of Justice."

3. *It is settled Law that gratuity cannot be forfeited unless the offence amounting to moral turpitude is proved to have been committed by the petitioner, u/s 4, 6(d)(2) of the Payment of Gratuity Act, 1972 and in the light of the judgment delivered by the Hon'ble Apex Court in the matter of Union Bank of India and others Vs.C.G.Ajay Babu and another [(2018) 9 SCC 529].*

4. *The learned Advocate for the Corporation submits that the provisional pension is being granted to the petitioner. He, however, cannot point out any provision under the MCS (Pension) Rules, 1982 that an appeal pending against acquittal would empower the employer to hold back regular pension.*

5. *In the light of the facts as recorded above and keeping in view that an appeal against the acquittal is pending adjudication, the petitioner need not be made to suffer the rigours of litigation, though, we intend to pass an equitable order.*

6. *In view of the above, this petition is partly allowed in terms of prayer clause "B" with the following rider :-*

[a] The petitioner shall tender an affidavit/undertaking to respondent No.3 Municipal Commissioner stating therein that if he suffers an adverse order in the pending proceedings for challenging the acquittal and his acquittal is converted into conviction, he shall

return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the petitioner to the extent of the monetary reliefs that he would be getting in view of this order.

[b] After such affidavit is filed satisfying the above stated ingredients, the Corporation shall initiate steps for compliance of prayer clause "B" and ensure that such compliance is made within 12 (twelve) weeks from the date of the filing of such affidavit by the petitioner."

8. In view of the law laid down in the aforesaid judgment, it is quite evident that merely on the ground of pendency of appeal before the Hon'ble High Court against the order of acquittal recorded in favour of the Government employee, the Government employee cannot be deprived indefinitely from the retiral benefits. The Hon'ble High Court in the said matter has directed the respondents therein to release all such benefits in favour of the petitioner therein by obtaining an undertaking from the said petitioner. The case of the present applicant is identical with the case of the petitioner in the said Writ Petition. As such, the law laid down in the aforesaid matter would squarely apply to the facts in the present case also. For the reasons stated above, the O.A. deserves to be allowed. Hence, the following order:

ORDER

- [i] The order dated 12-08-2021 is set aside.
- [ii] Respondent is directed to regularize the period of suspension from 02-07-2018 to 27-01-2019, subject to the decision of the criminal appeal ALS No.25/2021 pending before the Hon'ble High Court.
- [iii] Respondent shall release all the retiral benefits in favour of the applicant on obtaining an undertaking to the effect that if he suffers an adverse order in the pending criminal appeal before the Hon'ble High Court and his acquittal is converted into conviction, he shall return the entire gratuity amount as well as other retiral benefits received to him within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the applicant to the extent of the monetary reliefs that he would be getting in view of this order.
- [iv] O.A. stands disposed of in aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 21.08.2023.

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