MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 837 / 2018 (S.B.)

Laxmikant Chandulal Koturkar,
Age – 64 years, Occ. Retired,
R/o 201, MHADA Colony,
Shivaji Nagar, Bhokardhan Road,
District : Jalna-431203.

Applicant.

Versus

1) The State of Maharashtra,
Through its Secretary,
Department of Revenue and Forest, Mantralaya,
Mumbai.

2) Principal Chief Conservator of Forest (Van Pramukh),
Maharashtra State, Vanbhawan,
Ramgiri Road, Civil Lines,
Nagpur.

3) Chief Conservator of Forest,
Maharashtra State, Vanbhawan,
Ramgiri Road, Civil Lines,
Nagpur.

4) Chief Conservator of Forest (Regional),
Shishu Vihar, State Bank Square,
Dhamangaon Road,
Yavatmal-445001.

5) Senior Accounts Officer,
Indian Accounts Audit Department,
Office of the Accountant General,
Civil Lines, Nagpur-440001.

Respondents

Smt. R.S.Sirpurkar, the ld. Advocate for the applicant.

Shri A.M.Ghogre, the ld. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

Judgment is reserved on 18th February, 2021.

Judgment is pronounced on 02nd March, 2021.

Heard Smt. R.S.Sirpurkar, ld. counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the respondents.

2. The applicant was discharging his duties as an office Superintendent with the respondent no. 4 when the respondent no. 4 issued suspension order dated 02.08.2012 invoking Rule 4 (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in the form of deemed suspension as an options against the applicant under Section 7(13) 1(d), 13(2) of the prevention of Corruption Act, 1988 was registered against the applicant wherein the applicant was arrested on 28.07.2012. The suspension order thereafter merged into the date of superannuation of the applicant.

3. By order dated 11.10.2012 (Annexure-A-3, P.B., Pg. No. 26), the applicant was declared to have superannuated from service w.e.f. 31.10.2012.

4. Thereafter, the respondent no. 4 has also issued an order dated 09.11.2012 (Annexure-A-4, P.B., Pg. No. 28) for release of the provisional pensions of the applicant. As per his order, the applicant accordingly being paid provisional pension @ Rs.11,295/- per month from the date of his retirement till recently.

5. The applicant was tried for his offence before Special Judge and Additional Session Judge, Yavalmal vide special case no. 01/2014 for his offence and judgment was passed on 11.08.2017 (Annexure-A-5, P.B., Pg. Nos. 30 to 52), the Additional Sessions Judge, Yavatmal convicted applicant for his offence under Section 7 of the prevention of Corruption Act and sentence to simple imprisonment of 1 year and fine of Rs. 5000/- was awarded.

6. The applicant preferred Criminal Appeal before Hon'ble High Court, Mumbai Bench at Nagpur vide Criminal Appeal No. 442/2017 with Criminal Appeal No. 740/20217 against the said conviction, seeking stay. The applicant had been placed under suspension vide order dated 02.08.2012 by respondent no. 4 (Annexure-A-1, P.B., Pg. No. 21). However, the department did not proceed with departmental enquiry after this suspension order till the retirement of the applicant on 31.10.2012 and even till now.

7. The order of Hon'ble High Court Bombay Bench at Nagpur in Criminal Appeal No. 442/2017 with Criminal Application (APPA) No. 740/2017 dated 14.09.2017 at P.B., Pg. No. 53; passed following order:-

"1. Criminal Application No. 740/2017 is allowed.

2. The substantive jail service imposed against the applicant by the learned Additional Sessions Judge, Yavatmal in Spl. Case No. 01/2014 dated 11.08.2017 shall remain suspended during the pendency of the present appeal.

3. The applicant shall be released on bail by executing fresh bonds of the same amount, as in the trial court.

4. The ld. Judge before whom the bail bonds will be executed shall ensure that before execution of the bail bonds, the entire fine amount is deposited by the applicant.

5. The applicant shall remain personally present before this Court at the time of final hearing of the Appeal."

8. Respondents have filed their reply on 25.07.2019, P.B., Pg. No. 77 to 82 and in reply para no. 2 on Pg. NO. 78 in the last they have admitted that applicant was paid provisional pension of Rs. 11,295/- per month from November, 2012 till July, 2017. In reply para no. 4 (Pg. No. 80) applicants have taken view of respondent no. 1 which is reproduced below:-

"It is further submitted that , the provision made in Rule 27 (1) of Maharashtra Civil Services (Pension) Rules, 1982 is as under.

"Government 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."

Hon. High Court has suspended the sentence of imprisonment but not stayed the conviction of the applicant, as per provision made under Rule 27(1) of Maharashtra Civil Services (Pension) Rules, 1982, the Respondent no. 1 has informed by letter dated

18.11.2017 (Annexure-A-7) to withhold pension of the applicant and take punitive action under the provision in Rule 13(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 as per circular dated 14.09.2015. Considering the above facts, the request is being made to reject the original application."

9. Arguments and pleadings of both sides are considered and it appears that injustice is being caused on applicant by not starting D.E. or serving chargesheet from the date when he was initially suspended i.e. 02.08.2012 (Annexure-A-1, P.B., Pg. No. 21). Hon'ble Apex Court has laid down time line regarding completion of D.E. in the case of

Prem Nath Bali Vs. Reg., High Court Of Delhi & Anr. on 16 December, 2015 Reportable in the Supreme Court of India in Civil Appellate Jurisdiction in Civil Appeal No.958 of 2010.

10. In view of discussions in above paras, following orders:-

ORDER

1. O.A. is Partly Allowed.
2. The respondents are directed to release provisional pension with immediate effect which has been stopped since July, 2017.
3. Regarding other pensionary benefits that will be decided as per the decision awaited in appeal in Hon'ble High Court.
4. No order as to costs.

(Shri Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno	:	Akhilesh Parasnath Srivastava.
Court Name	:	Court of Hon'ble Vice Chairman.
Judgment signed on and pronounced on	:	02/03/2020.
Uploaded on	:	03/03/2020.