

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.98 OF 2021

DISTRICT : LATUR

[Bhagwat s/o. Baburao Deshmukh,] {Died on
[Age : 60 years, Occu. : Retired Asst.] 12-11-2022}
[Police Sub Inspector,]
[R/o. At Vilage Kanheri, Latur,]
[Post- Tilak Nagar, Latur,]
[Tq. Latur, Dist. Latur.]

Through legal heirs -

1. Sanjivani w/o Bhagwat Deshmukh,
Age : 57 years, Occu.: Household,
2. Amar s/o Bhagwat Deshmukh,
Age : 30 years, Occu.: Unemployed,
3. Anjali d/o Bhagwat Deshmukh,
Age : 26 years, Occu.: Education,

(R/o. At Vilage Kanheri, Latur,
Post- Tilak Nagar, Latur,
Tq. Latur, Dist. Latur.)

...APPLICANTS

V E R S U S

- 1) The Superintendent of Police,
Latur, S.P. Office Latur,
Tq. & Dist. Latur.
- 2) The Accountant General II,
Maharashtra State,
Civil Lines, Nagpur.

...RESPONDENTS

APPEARANCE : Shri V.D.Godbharle, Counsel for
Applicant.

: Shri I.S.Thorat, Presenting Officer
for the respondents.

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

DECIDED ON : 25.01.2023.

ORAL ORDER:

1. Heard Shri V.D.Godbharle, learned Counsel for the applicant and Shri I.S.Thorat, learned Presenting Officer representing respondent authorities.
2. In the present matter, the applicant as a Government servant died during the pendency of the present O.A. and his legal heirs are taken on record who have prosecuted the present matter further. Applicant has retired on 28-02-2019 on attaining age of superannuation. It is the grievance of the applicant that on the ground that criminal prosecution is pending against him for the offences punishable under prevention of corruption Act benefit of leave encashment was not granted to him. Learned Counsel submits that the Government servant i.e. the original applicant died on 12-11-2022 and on his death criminal prosecution pending against him has been abated. Learned Counsel tendered the order of abatement dated 21-01-2023 at bar. Same is taken on record.

3. Learned Counsel submits that in the circumstances, now there may not be any hurdle in allowing the present O.A. It is further contended that even in the lifetime of the applicant also on this ground the amount of leave encashment could not have been withheld. Learned Counsel for the applicant has placed reliance on sub-rule 6(a) of Rule 68 of the Maharashtra Civil Services (Leave) Rules, 1981, it reads thus:

“68. Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation,- (1) The authority competent to grant leave shall suo motu sanction to a Government servant who retires on attaining the age of superannuation, the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his superannuation, subject to a maximum of 300 days.

(2)

(3)

(4)

(5)

(6) (a) *The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of*

retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any.”

4. In their affidavit in reply, respondents have not come out with any such case that the competent authority has passed any order expressing an opinion or recording the conclusion that there is possibility of some money becoming recoverable from the applicant on conclusion of the criminal prosecution pending against him. In absence of any such defence raised by the respondents, the applicant cannot be deprived from the payment of leave encashment. Now, the criminal prosecution itself is abated and cause, if any, for withholding amount of leave encashment has thus become redundant. Amount of leave encashment, thus, deserves to be released in favour of the applicants.

5. Though the applicant has also claimed interest on the amount of leave encashment alleging that the same

has not been paid within stipulated period, I am not inclined to accept the request for the reason that there appears no deliberate intention of the respondents in not making the said payment till date. The amount has not been paid on bona fide belief that criminal prosecution is pending against the applicant. In the circumstances, application deserves to be partly allowed. Hence, the following order:

ORDER

[i] Respondents shall release the amount of leave encashment due to the applicant as per record available with them to the legal heirs of the applicant within a period of 8 weeks from the date of this order or else said amount will carry interest @ 9% p.a.

[ii] However, request for grant of interest till date is rejected.

[iii] Original Application stands partly allowed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 25.01.2023.