

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1003 / 2021 (S.B.)**

Shri S.G.Burde, Retd. Purchase Officer,  
Distt. Supply Office, Collectorate, Akola,  
(M.S.), R/o, Plot No. 192, Satya Saibaba  
Society, Duttawadi, Nagpur-440 023.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Represented through the Secretary,  
Ministry of Food & Civil Supplies and  
Consumer Protection Department,  
Mantralaya Extention, Mumbai- 400 032.
- 2) The Commissioner, Amravati Division,  
Camp, Amravati (M.S.)-444 602.
- 3) The District Supply Officer,  
Collectorate, Akola (M.S.)-444 001.
- 4) The Accountant General-II, (L. & H.)  
Civil Lines, Nagpur (M.S.)- 440 001.

**Respondents**

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**Shri M.G.Burde, Id. Advocate for the applicant.**

**Shri A.P.Potnis, Id. P.O. for the Respondents.**

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**Coram :- Hon'ble Shri M.A.Lovekar, Member (J).**

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**JUDGMENT**

**Judgment is reserved on 10<sup>th</sup> Feb., 2023.**

**Judgment is pronounced on 15<sup>th</sup> Feb., 2023.**

Heard Shri M.G.Burde, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. Facts leading to this original application are as follows. The applicant was serving as Assistant District Supply Officer at Washim. By order dated 11.01.2001 he was placed under suspension by respondent no. 2 as initiation of departmental enquiry against him was contemplated. However, no departmental enquiry was initiated against him. On 16.06.2001 chargesheet was filed against the applicant and 15 ors. in the Court of Chief Judicial Magistrate, Akola. By order dated 29.08.2003 respondent no. 2 revoked suspension of the applicant and reinstated him. The applicant retired on superannuation on 31.08.2003. Soon after retirement the applicant received pension but at a lesser rate. He received G.P.F. and G.I.S. amounts. During the pendency of O.A. No. 510/2006 filed by the applicant provisional pension @ 100% was paid. So also amount of encashment of earned leave was paid. In the said O.A.

the applicant claimed interest on the delayed payment of provisional pension and leave encashment. While rejecting said claim this Tribunal observed :-

*“It may be noted that since criminal prosecution is still pending against the applicant, no order regarding regularization of suspension period could be passed. Grant of Annual increments during this period also depends upon the regularization of the suspension period. Hence in my opinion, at present no relief can be granted to the applicant. The applicant is at liberty to claim interest on the delayed payment of full provisional pension as well as on the amount of encashment of earned leave after the criminal prosecution is over. With these observations, the O.A. is disposed of with no order as to costs.”*

Grievance of the applicant in the instant original application is that inspite of representations dated 29.07.2019 and 11.05.2020 (A-4 collectively) he has not been paid 100% provisional pension as per 7<sup>th</sup> Pay Commission w.e.f. 01.01.2016. Further grievance of the applicant is that amount of gratuity which has been withheld on account of pendency of criminal case be directed to be paid with interest and Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982 which is relied

upon to withhold the amount of gratuity be declared to be unconstitutional in view of the judgment of the **Hon'ble Supreme Court i.e. Dr. Hiralal Vs. State of Bihar & Ors. 2020 (3) All India Services Law Journal 146.**

3. Respondent no. 2 has relied on the order dated 02.12.2010 passed in O.A. No. 510/2006 to content that since the criminal case is still pending the applicant would not be entitled to get any relief. I have reproduced hereinabove relevant para of order dated 02.12.2010.

4. Order dated 02.12.2010 *inter alia* refers to payment of 100% provisional pension during the pendency of the said O.A.. Now, grievance of the applicant is that 100% provisional pension should be paid to him as per 7<sup>th</sup> pay commission w.e.f. 01.01.2016. Pleading of the applicant on this point has not been traversed by respondent no. 2. No ground is made out by respondent no. 2 on the basis of which claim of the applicant for payment of 100% provisional pension as per 7<sup>th</sup> pay commission could be denied. Hence, this grievance of the applicant deserves to be redressed.

5. Further contention of the applicant is that amount of gratuity which is withheld be directed to be released with interest. According to the applicant, Rule 130 (1) (c) of the Maharashtra Civil Services

(Pension) Rules, 1982 which is pressed into service to withhold gratuity is unconditional and declaration to that effect deserves to be granted. In support of this submission reliance is placed on **Ashok Kumar Vs. North Delhi Power Ltd. & Another 2014 (1) ALL India Services Law Journal 325**. In this case there was no provision in the Rules to withhold pension and gratuity on account of pendency of criminal case. Therefore, the act of withholding pension and gratuity was quashed and set aside. Further reliance is placed by the applicant on Dr. Hiralal (supra). In this case it was observed :-

*“15. With respect to withholding of the full amount of gratuity, we find that as per Rule 27 of the Bihar Pension Rules, “pension” includes “gratuity”. With the insertion of Rule 43 (c) in the statute book w.e.f. 19.07.2012, it is clear that gratuity also could not have been withheld under administrative circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980.”*

Thus, in this case also there was a provision which prevented withholding of gratuity on account of pendency of criminal case. As against this, in the instant case Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982 specifically provides for withholding amount of gratuity during pendency of criminal case. In **Mohan**

**Madavrao Kapke vs. Ahmednagar Municipal Corporation 2018 (4)**

**ALL MR 682** it is held:-

*“7. It is thus settled by the Apex Court that unless the Rules provide for withholding the gratuity, gratuity in the above said backdrop cannot be withheld on the basis of a circular issued by the employer. In the instant case, Rule 130(1)(c) specifically provides that until the departmental or judicial proceedings are concluded and final orders are issued, gratuity could be withheld.”*

Since the rulings sought to be relied upon by the applicant are distinguishable on facts, by relying on the same declaration as sought by the applicant cannot be granted. Aforequoted observations of the Hon’ble Bombay High Court clearly go against the applicant’s contentions.

For the reasons discussed hereinabove I pass the following order:-

The O.A. is allowed in the following terms:-

**ORDER**

- A. The applicant is held entitled to get 100% provisional pension as per 7<sup>th</sup> pay commission w.e.f. 01.01.2016.
- B. Arrears accrued so far shall be paid to the applicant **within three months from today.**
- C. The applicant is at liberty to claim interest on delayed payment after the criminal case is concluded. Prayers for release of gratuity and grant of declaration in respect of Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982 are rejected.
- D. No order as to costs.

**(Shri M.A.Lovekar)**  
**Member (J)**

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 Member (J).

Judgment signed on : 15/02/2023.  
and pronounced on

Uploaded on : 16/02/2023.