

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.250/2021 (S.B.)

Digambar Bhaurao Mendake,
Aged about 62,
Occu. Retired Govt. Servant,
R/o Tembhardara, Post Akoli,
Th. Umarkhed, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra,
Through its Secretary,
Skill Development,
Employment & Entrepreneurship Dept.,
Mantralaya, Mumbai-32.
- 3) Additional Commissioner,
Tribal Development Department,
Adivasi Bhavan, Giri Peth,
Nagpur.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the Respondents.

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

JUDGEMENT

Judgment is reserved on 26th Sept., 2023.

Judgment is pronounced on 29th Sept., 2023.

Heard Shri N.R.Saboo, ld. counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the Respondents.

2. Facts leading to this O.A. are as follows. The applicant was serving on the establishment of respondent no. 2. By order dated 08.03.2011 (A-1) he was deputed to work in respondent no. 1 department and posted as Project Officer at Gadchiroli. Crime No. 1/2015 was registered against him at Police Station Gadchiroli under Sections 409, 420, 465, 468, 471, 473, 120 (B), 34, I.P.C. He was arrested on 23.02.2015 and remanded to Police Custody till 28.02.2015. He was placed under suspension by order dated 25.02.2015. He was deprived of subsistence allowance. Revocation of his suspension was unduly delayed against which he made representations. He retired on superannuation on 30.06.2016. His retiral benefits were withheld. He made representations to the respondents and also approached Hon'ble Lokayukta but to no avail. Hence, this Original Application to redress the grievance about withholding of Gratuity, amount of Leave Encashment and other retiral benefits by directing release of the same, with interest.

3. Stand of respondent no. 2 is that if the applicant succeeds, direction to release his retiral benefits will have to be issued to

respondents 1 & 3 on whose establishment he was working, though on deputation, at the time of his retirement on superannuation.

4. Stand of respondent no. 3 is that due to pendency of criminal case amounts of Gratuity and Leave Encashment have not been released as provided under Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 and Rule 68 (6) (a) of the Maharashtra Civil Services (Leave) Rules, 1981.

5. It is not in dispute that at the time of retirement of the applicant a criminal case was pending against him.

6. It was submitted by Shri Saboo, ld. counsel for the applicant that amounts of Gratuity and Leave Encashment could not have been withheld since the applicant had already retired on 30.06.2016 and became a pensioner. In support of this submission reliance was placed on judgment of Principal Bench of this Tribunal dated 11.10.2021 in O.A. No. 313/2020 (**Nitin Laxmikant Thade Vs. State of Maharashtra & 2 Ors.**). In this case on the date of retirement of the applicant neither departmental nor judicial proceeding was pending against him and departmental enquiry was initiated after his retirement. It was observed that Gratuity, Leave Encashment and regular Pension could not be

withheld where no departmental enquiry or criminal prosecution was instituted before retirement. In these facts it was held:-

10. As regards Gratuity, Rule 130 (1)(c) provides that no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Here the legislature has not used the word "Pensioner" and has specifically used the word "Government Servant", which is significant in the present context. Thus it is explicit that for withholding of Gratuity or other retiral benefits, there has to be initiation of D.E. against the Government servant before or on the date of retirement. Once the Government servant stands retired, right to receive regular Pension and Gratuity accrues to him and it cannot be kept in abeyance or withheld only on the speculation of initiation of D.E. in future.

Latter half of these observations reiterates facts of the case.

These observations will not assist the applicant because criminal case was pending against him on the date of his retirement.

7. The applicant has further relied on judgment of Aurangabad Bench of this Tribunal dated 17.07.2022 in O.A. No. 346/2021 (**Dilip S/o Parbat Patil Vs. State of Maharashtra & 3 Ors.**) wherein it is observed:-

14. After having considered rival submissions as above, in the background of the facts of the present case, it is seen that prima-facie it is evident that going to the place of election in private Alto car which met with an accident cannot be by any stretch of imagination can be said to be connected with discharging of the official duty by the applicant. From the nature of proceedings, it can be seen that even if the applicant is convicted in the trial of the said criminal case, it is not going to cause any monetary loss to the Government or leading to any recovery of money by the Government from the applicant. Otherwise also in case of conviction of the applicant, the provisions of Rule 26 (Pension) Rules at the most would come into play, but continuation of withholding the pension and pensionary benefits till decision of the Criminal proceedings unconnected with the official duty of the applicant would be detrimental of the

statutory right of the applicant to receive the pension and pensionary benefits arising out of his long standing service and otherwise also unblemished service rendered by the him. The balance can be struck by taking requisite undertaking from the applicant of refund of the amount in case he is held guilty in the criminal proceedings in accordance with law.

These observations, too, will not help the applicant considering nature of allegations made against him in the criminal case viz criminal breach of trust, misappropriation, cheating, forgery, etc while discharging his duties.

8. Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under:-

130. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27 the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional

pension or the pension is reduced or withheld either permanently or for a specified period.

(Emphasis supplied)

In **Prabhakar S/o Marotirao Dalal Vs. The State of Maharashtra and one another (judgment dated 23.07.2008 in W.P. No. 207/2008)** the **Hon'ble Bombay High Court** has held that no Gratuity is payable until the conclusion of the departmental/judicial proceeding and issuance of final orders thereon.

9. The applicant has further relied on **State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava & Another (Judgment of the Hon'ble Supreme Court dated 14.08.2013 in S.L.P. (C) No. 1427 of 2009)**. In this case the point for determination was framed as under:-

Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings?

Case of Jitendra Kumar Srivastava (supra) was considered by the **Bombay High Court in Mohan Madhavrao Kapke Vs. Ahmednagar Municipal Corporation 2018 (4) ALL MR 682** and it was held:-

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.

So far as this aspect of the matter is concerned, reliance may also be placed on judgment of Bombay High Court dated 08.01.2019 in W.P. No. 3978/2018 wherein it is held:-

3. It is not disputed that the criminal prosecution is pending against the petitioner. Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 applies. In view of the said provision, the petitioner is entitled for provisional pension pending the judicial proceedings. As provisional pension is already sanctioned to the petitioner, the relief of pensionary benefits as claimed by the petitioner cannot be granted.

Reliance may also be placed on the judgment of **Bombay High Court i.e. Parasram s/o Gomaji Nasre Vs. State of Maharashtra (2017) 11 BOM CK 0100**. In this case criminal case was admittedly pending against the petitioner. It was observed that Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982, in terms, envisages only payment of provisional pension in such a situation.

10. Aforediscussed legal position shows that the impugned act of withholding the Gratuity was authorised by Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982.

11. Now, the question of withholding of amount of Leave Encashment remains. The answer to this question is supplied by Rule 68

(6) (a) of the Maharashtra Civil Services (Leave) Rules, 1981 which reads as under:-

(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.

12. For the reasons discussed hereinabove, I have come to the conclusion that the O.A. is devoid of substance. **It is accordingly dismissed with no order as to costs.**

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

Dated :- 29/09/2023.
aps

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 : 29/09/2023.
and pronounced on

Uploaded on : 03/10/2023.