

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 57/2023 (S.B.)**

Subhash S/o Shivannaji Pedapaliwar,  
Aged about 59 years,  
Occ. Retired Vice Principal ITI,  
Resident of Plot No. 38,  
Mahalakshmi Society, Manish Nagar,  
Nagpur-440 037.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Principal Secretary,  
Skill Development,  
Employment & Entrepreneurship Department,  
Mantralaya, Mumbai-32.
- 2) The Director of Vocational Education and Training,  
3, Maha Palika Marge, Mumbai-400 001.
- 3) The Joint Director of Vocational Education and Training,  
Regional Office, Morshi Road,  
Amravati-444 603.
- 4) Principal, Industrial Training Institute,  
Khamgaon, Dist. Buldhana.

**Respondents**

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**Shri B. Kulkarni, Id. Advocate for the applicant.**

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

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**Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**

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**JUDGEMENT**

**Judgment is reserved on 22<sup>nd</sup> Aug., 2023.**

**Judgment is pronounced on 31<sup>st</sup> Aug., 2023.**

Heard Shri B.Kulkarni, ld. counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the Respondents.

2. The case of the applicant in short is as under:-

The applicant was working as a Principal, Industrial Training Institute, Saoner, District Nagpur. The applicant was suspended as per order dated 11.11.2019. The said suspension order was revoked on 14.10.2011. Applicant was reinstated on non-executive post of Vice Principal at Industrial Training Institute, Khamgaon, District Buldhana. The applicant was joined on the post of Vice Principal at I.T.I., Khamgaon on 01.07.2020. The applicant came to be retired on 28.02.2022 on superannuation.

3. It is submitted that after the retirement applicant is entitled for all retiral benefits i.e. Leave Encashment, Gratuity etc. The applicant has submitted representation on 01.08.2022 but it was not replied by the respondents. The departmental enquiry is still pending against the applicant. At present he is getting pension as per The Maharashtra Civil Services (Pension) Rules, 1982. The respondents have not paid Gratuity and Leave Encashment. Therefore, the applicant has filed the present O.A. for following reliefs:-

*“A. Direct the respondents to release of gratuity and leave encashment due on retirement to the applicant, within a stipulated period;*

*B. Direct respondents to pay the interest on the delayed payment of gratuity and leave encashment @ 12% p.a. in the interest of justice; as the applicant has loss of interest on the huge amounts.*

*C. Grant any other relief as may be deemed fit in the interest of justice.”*

4. Respondents have filed reply. It is submitted by the side of respondents that on 03.03.2022 applicant submitted application for Leave Encashment of 300 days of accrued leave i.e. accrued leave remaining in the Earned Leave account due to his retirement. The said proposal was submitted by respondent no. 4 to the office of respondent no. 3 for further action. On scrutinizing the proposal for Leave Encashment some lacunas were found. The respondent no. 3 returned the said proposal for correction vide letter dated 26.04.2022. After removing the lacunas which are found in the Leave Encashment of the applicant, the respondent no. 4 re-submitted to the office of respondent no. 3 vide letter dated 18.05.2022. Respondent no. 3 forwarded it to the office of respondent no. 2 for sanction vide letter dated 08.07.2022.

5. Applicant was arrested for accepting the bribe. Offence punishable under Section 7, 12 of Prevention of Corruption Act, 1988 was registered against the applicant. Departmental enquiry has been initiated against the applicant by respondent no. 1. Respondent no. 2 has issued the communication dated 04.08.2022 regarding Leave Encashment of the applicant. The communication is as under:-

लाचलुचपत प्रकरणी शासकीय कर्मचा-यावरील दोष सिध्द झाल्यास विभागीय चौकशी नियमपुस्तिका 1991 मधील परि. 4.6 अनुसार तसेच महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम 1979 मधील नियम , 5 मधील परंतुकातील तरतुदीनुसार शासन सेवेतुन काढुन टाकणे किंवा बडतर्फ करणे या शिक्षेस पात्र ठरतात महाराष्ट्र नागरी सेवा (रजा) नियम 1981 च्या नियम 22 (1) अनुसार शासन सेवेतुन काढुन टाकलेल्या किंवा बडतर्फ केलेल्या शासकीय कर्मचा-याच्या जमेस असलेल्या रजेसंबंधिचा कोणताही हक्क, अशा बडतर्फीच्या किंवा काढुन टाकल्याच्या तारखेपासुन समाप्त होतो.

त्याअनुषंगाने येथे नमुद करण्यांत येते की, श्री पेदापल्लीवार हे सेवानिवृत्त अधिकारी आहेत व त्यांच्या विभागीय चौकशी प्रकरणी अंतिम निर्णय झालेला नाही. सदर अधिका-याविरुध्द गुन्हा सिध्द झाल्यास ते संपुर्ण सेवानिवृत्ती वेतन व उपदान / अर्जित रजा रोखीकरणासह काढुन घेण्यांच्या शिक्षेस पात्र ठरू शकतात. त्यामुळे सद्यस्थितीत श्री पेदापल्लीवार यांना अर्जित रजा रोखीकरण देता येणार नाही. याबाबत श्री पेदापल्लीवार यांना आपल्या स्तरवरुन कळविण्यांत यावे.

6. It is submitted that Rule 130 sub-rule (c) of Maharashtra Civil Service Pension Rules, 1982 provides that no Gratuity shall be paid to Government servant until the departmental/ judicial proceedings are concluded and final order in respect of it is passed. In this aspect respondent no. 3 has communicated to the applicant vide letter dated 15.02.2023. The respondent no. 3 has also informed the applicant that by

letter dated 04.08.2022/15.02.2023 that because of the pendency of departmental enquiry Leave Encashment, Gratuity etc cannot be paid in view of Rule 130 of Maharashtra Civil Service (Pension) Rules, 1982 and Rule 22 (1) of the Maharashtra Civil Services (Leave) Rules, 1981.

7. It is submitted that if the Government Servant is found guilty as per Section 4.6 of the departmental enquiry rules and as per the provision of Rule 5 of Maharashtra Civil Services (Discipline and Appeal) Rules 1979, he is liable for removal/dismissal from Government service. Any entitlement to leave accruing to a Government servant removal/ dismissed from Government service shall cease from the date of such removal/ dismissal in terms of Rule 22 (1) of the Maharashtra Civil Services (Leave) Rules, 1981.

8. It is submitted by the side of respondents that Rule 130 sub-rule (c) of the Maharashtra Civil Service (Pension) Rules, 1982 provides that no Gratuity shall be paid to a Government servant until the departmental/judicial proceeding are concluded and the final order in respect thereof is passed.

9. The applicant is retired Government Servant and no final decision has been taken in the departmental enquiry. In the present case if the crime against the applicant is proved then as per provision mentioned in the rules he may be eligible for punishment of withdrawing

the entire Gratuity, Leave Encashment etc. Therefore, no Gratuity/ Leave Encashment can be given to the applicant. Hence, O.A. is liable to be dismissed.

10. During the course of submission Id. Counsel for the applicant Shri B. Kulkarni has pointed out the decision in O.A. No. 53/2022 decided by M.A.T., Principal Bench, Mumbai dated 25.03.2022. In para no. 4 following finding was recorded as under:-

*Indisputably, applicant stands retired on 29.02.2020 without there being initiation of D.E. and pendency of criminal prosecution, so as to withhold gratuity or regular pension. It is only after retirement, belatedly, the Government had issued charge-sheet on 25.02.2021 against the Applicant and other co-delinquents for certain, irregularities while disbursing funds to certain institutions and thereby allegedly committed breach of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules of 1979' for brevity). As such, there is no denying that on the date of retirement, the Applicant was not subjected to any departmental proceedings.*

11. In the above cited decision the judgment of **Hon'ble High Court in 2013 (6) Mh.L.J. 311 in the case of Manohar B. Patil Vs. State of Maharashtra** was pointed out and another judgment of **Hon'ble High Court in the Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Vs. Bhujgonda B. Patil : 2003 (3) Mh.L.J.602**. The Tribunal came to the conclusion that

pendency of departmental enquiry cannot be a ground to deny the Gratuity. It is observed in para no. 12 of the judgment that the word Government servant in Rule 130(1)(c) of pension rule does not mean the word pensioner. Therefore, directed the respondents/employer to release the Gratuity and regular pension.

12. Ld. Counsel for the applicant has pointed out the judgment of **Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 2630/2014 decided on 16.02.2016 in the case of Purushottam Kashinath Kulkarni Vs. State of Maharashtra & Ors. 2016 (3) Mh.L.J., 300.** Hon'ble High Court relying on the judgment of **Hon'ble Supreme Court in the case of State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava and Another (2013) 12 SCC 210** came to the conclusion that pension and gratuity are the property of retired employee. Therefore, it cannot be withheld due to pendency of criminal case or departmental enquiry.

13. Hon'ble Supreme Court in the case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava and Another (2013) 12 SCC 210** has relied on Article 300-A. Hon'ble Supreme Court has held that pension and gratuity are the property of retired person and, therefore, no person shall be deprived of his property as defined in Article 300-A.

14. Ld. P.O. Shri Khadatkar has pointed out the decision of Division Bench of **Hon'ble Bombay High Court, Bench at Nagpur** in the case of **Parasram Gomaji Nasre Vs. State of Maharashtra & Ors. decided on 07.11.2017, 2018 (3) Mh.L.J., 504.** The judgment of **Hon'ble Bombay High Court, Bench at Aurangabad** in the case of **Prabhakar Marotirao Dalal Vs. State of Maharashtra & Another decided on 23.07.2008, 2009 (1) Mh.L.J., 209** and the judgment of **Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No. 3978/2018 in Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad & Ors. decided 08.01.2019.**

15. In the case of Parasram Gomaji Nasre (supra) the Hon'ble Bombay High Court, Bench at Nagpur has held in para no. 6 as under:-

*6. Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982, in terms, envisages only payment of provisional pension in such a situation. Rule 4 of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 disqualifies a Government servant from seeking commutation of fraction of his provisional pension during pendency of proceedings against him.*

16. In the case of Prabhakar Marotirao Dalal (supra) the Hon'ble Bombay High Court, Bench at Aurangabad has held as under:-



*The Disciplinary inquiry pending against petitioner on the date of superannuation, delay in payment of gratuity not attributable to administrative lapses. As per Rules gratuity not payable until conclusion of the departmental or judicial proceedings and issuance of final orders thereon. Petitioner not entitled for any interest on the payment of gratuity as there was no delay on the part of the authorities in releasing the gratuity amount.*

*Gratuity cannot be authorised till the departmental proceedings are concluded and a final order passed thereon. Interest for delayed payment of gratuity is payable only in the event of the conclusion of the departmental proceedings and payment of gratuity is authorised and after such authorization it is not paid within three months.*

17. The Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad in the case of Govind Trimbakrao Kanadkhedkar (supra) has held:-

*3. It is not disputed that the criminal prosecution is pending against the petitioner. Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 apply. 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 can not be granted.*

*4. The petitioner may make an application to the Court where the criminal prosecution is pending to decide his criminal prosecution expeditiously.*

18. The recent Division Bench judgment of Hon'ble High Court Bombay, Bench at Aurangabad in the case of Govind Trimbakrao Kanadkhedkar (supra) and judgment in the case of Parasram Gomaji Nasre (supra) were not pointed out before the M.A.T., Bench at Mumbai. The judgment in case of Prabhakar Marotirao Dalal (supra) was also not pointed out to the M.A.T., Bench at Mumbai. Moreover from the judgment of Principal Bench, M.A.T., Mumbai it is clear from the reading of para 4 that there was no any departmental enquiry pending against the applicant when he was retired. After the retirement belatedly the Government has issued chargesheet. In the present matter when applicant was working as a Principal he was arrested for accepting the amount of bribe and he was prosecuted. The applicant was suspended and departmental enquiry was initiated. Afterwards suspension was revoked and he was posted on the post of Vice Principal. There is no dispute that till date departmental enquiry is not completed. The

Criminal Case is also not decided. Therefore, applicant cannot claim Leave Encashment, Gratuity should be paid to him along with interest.

19. Rule 130(1)(c) reads as under:-

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

*(1)(a).....*

*(b).....*

*(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.*

20. Rule 130(1)(c) of pension rule clearly shows that till the conclusion of the departmental enquiry applicant is not entitled to get amount of Gratuity, Leave Encashment etc. Judgments cited by the side of applicant are not applicable to the case in hand. The recent judgments of Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad in the case of Govind Trimbakrao Kanadkhedkar (supra) and also the judgment in the case of Prabhakar Marotirao Dalal (supra) clearly show that during pendency of departmental enquiry, applicant cannot claim Leave Encashment and Gratuity etc. Therefore, applicant is not entitle for the reliefs. Hence, the following order is passed:-

**O R D E R**

A. O.A. is dismissed.

B. No order as to costs.

**(Shri Justice M.G.Giratkar)**  
**Vice Chairman**

**Dated :- 31/08/2023.**  
**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 Vice Chairman.

Judgment signed on : 31/08/2023.  
and pronounced on

Uploaded on : 01/09/2023.