

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 597 / 2022 (S.B.)

Madhao S/o Dinanath Borkhade,
Aged about 59 years,
R/o House No. 1,
Ghanashyam Nagar,
Saturda, Badnera Road,
Amravati-444 607.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Women and Child Development Department,
New Administrative Building, 03rd Floor,
Mantralaya, Mumbai- 32.
- 2) The Commissioner,
Women and Child Development Department,
Pune-01,
28, Ranicha Bag, Near Old Circuit House,
Pune-411 001.

Respondents

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

Shri V.A.Kulkarni, Id. P.O. for the Respondents.

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

JUDGMENT

Judgment is reserved on 24th Mar., 2023.

Judgment is pronounced on 28th Mar., 2023.

Heard Shri Bharat Kulkarni, Id. counsel for the applicant and
Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. The applicant retired on 28.02.2021 on superannuation. At that time he was holding the post of Joint Commissioner, Women and Child Development, Amravati. A show cause notice was issued to him before his retirement but chargesheet was issued after his retirement vide order dated 18.01.2022. It is separately challenged before this Tribunal in O.A. No. 215/2022. Said O.A. is pending. One Shri M.K.Sirsat who was holding the post of Deputy Commissioner, Women and Child Development was also served with a chargesheet after his retirement. He challenged it before Principal Bench of this Tribunal in O.A. No. 53/2022. The Principal Bench partly allowed the O.A. by judgment dated 25.03.2022 (A-2) operative part of which reads as under:-

“(A) The Original Application is allowed partly.

(B) The Respondents are directed to release gratuity and regular pension to the Applicant within a month from today.

(C) The Applicant may avail remedy for grant of interest on delayed payment on retiral benefits independently.

(D) No order as to costs.”

Vide order dated 31.03.2021 provisional pension i.e. 90% is being paid to the applicant. The applicant has challenged deduction of 10% pension in O.A. No. 324/2022 which is pending before this bench. After judgment was passed by the Principal Bench in O.A. No. 53/2022,

the applicant made a representation dated 09.05.2022 (A-1) but to no avail. Hence, this original application to grant relief on the basis of parity as per judgment passed in O.A. No. 53/2022.

3. Stand of respondents 1 & 2 is as follows. Judgment in O.A. No. 53/2022 is a judgment in personam. The applicant could have claimed the relief which he is presently claiming, by amending O.A. No. 324/2022. The applicant retired from Pune office. Therefore, Bench of this Tribunal at Mumbai will have territorial jurisdiction to entertain this O.A.. The Departmental Enquiry was contemplated before retirement of the applicant though chargesheet was issued to him after his retirement. Therefore, provisional pension was granted. Departmental Enquiry against the applicant is pending. After making representation dated 09.05.2022 the applicant, without waiting for a reasonable period, filed this O.A.. The applicant has filed multiple O.As.. For all these reasons, the O.A. deserves to be dismissed.

4. So far as ground of want of territorial jurisdiction is concerned, there is no merit in it. Since this O.A. is admitted it deserves to be decided on merits. It would not be proper to ask the applicant to apply for amendment of pleading in O.A. No. 324/2022 which is pending before this Tribunal, and claim the relief which he is presently claiming though such course was certainly open to him.

5. Reliance placed by the applicant on the judgment passed by the Principal Bench in O.A. No. 53/2022 is well founded. Following observations in O.A. No. 53/2022 fully support case of the applicant:-

“15. In view of aforesaid discussion, the inevitable position emerges that there being no initiation of DE on the date of retirement, the Respondents could not have withheld gratuity and regular pension. The submission advanced by learned P.O. that DE was contemplated, and therefore, regular pension and gratuity can be withheld is contrary to the legal position. Once Applicant retired without any DE, his right to pension and gratuity accrues to him and it cannot be kept in abeyance on speculation or possibility of initiation of DE in future.

16. Indeed, this situation is no longer res-integra in view of decisions rendered by this Tribunal in O.A.No.188/2020 (Vilas R. Walgude Vs. The State of Maharashtra) dated 27.07.2020 and O.A.No.748/2020 (Avinash M. Patil Vs. The Commissioner, ESIS) decided on 25.06.2021 as well as G.R. dated 06.10.1998 issued by Government reiterating the provisions of Pension Rules 1982' as reproduced above. Insofar as DE now initiated is concerned, it will take its own course and it is only in case of positive finding in the DE, the Applicant can be subjected to

punishment of withholding pension in terms of Rule 27 of 'Pension Rules of 1982' as Government deems fit."

6. The applicant has made out a case to extend benefit of parity to him. What is held in O.A. No. 53/2022 with regard to applicable position of law squarely applies to the instant case since facts of these two cases are identical. Hence, the order:-

O R D E R

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

- A. The respondents are directed to release gratuity and regular pension to the applicant within a month from today.**
- B. Issue of interest is kept open.**
- C. No order as to costs.**

Dated :-28/03/2023.
aps

(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 : 28/03/2023.
and pronounced on

Uploaded on : 29/03/2023.