

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 765/2023 (S.B.)

Shri Sudhakar s/o Vinayakrao Hood,
Age: 61 years, Occu.: Pensioner,
R/o D-18, Pyramid city - IV,
Besa Ghogli, Near Mount Zee Litra School,
Nagpur- 440 037.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary, Department of State Tax,
Mantralaya, Mumbai-32.
2. Assistant Commissioner of State Tax,
Sales Tax Office, 2nd Floor, Administrative building,
Wardha- 442 001.
3. Addl. Commissioner of State Tax,
Goods and Service Tax Bhavan,
Opp. High Court, Civil Lines, Nagpur-440001.

Respondents

**S/Shri S.W. Sambre, M.V. Raut, R. Suryawanshi, Zohar Shakir,
Krishna Agrawal, Chintan Tamhane, Id. Advocates for the applicant.
Shri A.M. Khadatkar, Id. P.O. for the respondents.**

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

JUDGMENT

Judgment is reserved on 21st February,2024.

Judgment is pronounced on 27th February,2024.

Heard Shri S.W. Sambre, Id. counsel for the applicant and
Shri A.M. Khadatkar, Id. P.O. for the Respondents.

2. The applicant retired on superannuation on 30.06.2022. He was holding the post of Sales Tax Inspector (A-1). His retiral benefits were not released. He made representations A-2, A-3, A-5 to A-9 and A-11 with a request to release the same without delay. These representations went unheeded. Hence, this Original Application.

3. Stand of respondents 1 & 2 is that crime no. 372/2019 was registered against the applicant under Sections 366, 376, 383, 384, 417, 420, 506, 504 of I.P.C. and 3 (1) (XI) and 3 (1) (XII) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015. After completion of investigation chargesheet is filed in Special Court at Wardha and it is numbered as Special Case no. 13/2020. Since this case was pending against the applicant at the time of his retirement, regular pension and gratuity were withheld as provided under Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. Amounts of G.I.S., G.P.F. and Leave Encashment have been already paid to the applicant.

4. In support of his contention that regular pension and gratuity could not have been withheld, the applicant has relied on following rulings:-

i) State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Another (2013) 12 SCC 210. In this case it is held:-

“A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution.”

ii) Vishnu Gangaram Sonawane Vs. Chief Executive Officer, Zilla Parishad 2015 (3) Mh.L.J. 41.

iii) Purushottam Kashinath Kulkarni & Ors. Vs. State of Maharashtra & Ors. 2016 (3) Mh.L.J. 300.

In these cases reliance is placed on Jitendra Kumar (supra).

These rulings show that withholding of pension/gratuity without the authority of law is impermissible.

5. The respondents have relied on Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 which 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.”

Rule 27 (4) reads as under:-

27. Right of Government to withhold or withdraw pension

(1) XXXX

(2) XXXX

(3) XXXX

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule

(2), a provisional pension as provided in rule 130 shall be sanctioned.”

Since these Rules authorise withholding of regular pension and gratuity the applicant will not derive any benefit from the above referred rulings and he will not be entitled to any relief. **The O.A. is accordingly dismissed with no order as to costs.**

Member (J)

Dated :- 27/02/2024.

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 : 27/02/2024
and pronounced on

Uploaded on : 28/02/2024