

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.06/2014.

Premraj Wasudeo Lanjewar,
Aged about 65 years,
Occ-Retired Govt. servant,
R/o Baba Tajuddin Layout, Near Sugat Nagar,
Nara Road, Jaripatka, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.

2. The Commissioner of Police,
Nagpur City.

3. The Superintendent of Police (Rural),
Civil Lines, Nagpur.

Respondents.

Shri R.V. Shiralkar, Ld. counsel for the applicant.

Shri A.P. Potnis, Ld. P.O. for the respondents.

Coram:- S.S. Hingne, Member (J)

Dated:- 17th March, 2016.

Order

3. The Superintendent of Police (Rural), Civil Lines, Nagpur. The applicant- a Police Sub-Inspector though superannuated on 31.8.2016, did not receive gratuity amount and is not getting full pension. Hence, this O.A.

2. The applicant, while working as Police Station Incharge was prosecuted U/ss 354 and 509 of the I.P.C. for outraging modesty of a woman. Prosecution was launched vide Criminal Case

No. 182/1999. He came to be acquitted on 30.9.2004 (Annexure A-2, P.11). The applicant was superannuated on 31.8.2006. The State Government had preferred an appeal against the acquittal which is pending before the Hon'ble High Court vide Criminal Appeal (St.) No.28/2005 (P.77).

3. The applicant is given provisional pension only. So he prayed to get the gratuity amount and regular pension. The respondents' case is that since judicial proceedings are going on, benefits are not released under Rule 130 (C) of the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules).

4. The relevant rule runs as under:

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

(a).....

(b)The provisional pension shall be authorized 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 up to 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.

S/S

Provided that where departmental proceedings have been instituted under Rule 10 of the M.C.S. (Discipline and Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant."

5. In view of the above provision, the department can withhold the amount of gratuity. The object behind the enactment of such provision is to facilitate, if any recovery is to be done from the errant or delinquent. In view of this glaring provision, some difference has to be made between the judicial or departmental proceedings on one hand which have consequences of recovery of the amount. The second set of cases can be where there is no question of recovery, when the applicant can only be punished. So far as the latter type of cases are concerned, there cannot be any hurdle to release the benefits of the employee. Because if the criminal case is pending, there can be punishment to the employee and there is no question of recovery of any amount. In case departmental proceedings are pending, there can be a recovery. However, in the case in hand, it is not the case of the respondents that the applicant is subjected or is likely to be subjected of any departmental proceedings. As such, nothing has to be recovered from the applicant. Under such circumstance, there is no reason to withhold the benefits.

S/SF

6. The respondents have come with a case that serious allegations are made against the applicant that he outraged the modesty of a woman, who was called in the police station as a witness in another case. No doubt charges are serious and grave, however, the applicant is acquitted by the learned Magistrate of the said charges. No doubt, appeal is pending before the High Court. However, the learned counsel for the applicant relied upon the observations made in one **O.A. No. 727/2013 Aurobindo Ravindranath Ghosh ..Vs.. State and three others decided on 6.2.2015 decided by this Tribunal,** wherein withheld benefits were released. In that case, the employee was facing criminal prosecution under the Prevention of Corruption Act, was acquitted by the Trial Court and the appeal was pending before the High Court. Reliance is also placed on a case of **Vishnu Gangaram Sonawane V/s Chief Executive Officer, Z.P. Nashik and others reported in 2015 (3) Mh.L.J. 41,** wherein Their Lordships of the Bombay High Court held that only because the criminal appeal is pending, the employee cannot be deprived of retiral benefits.

8. The applicant is aged about 65 years and is retired long back on 31.8.2006. Facts are identical to the case in **Aurobindo Ravindranath Ghosh** (supra). As such, there is no point to withhold the benefits.

9. In the result, the O.A. succeeds in the following terms:

(i) The respondents are directed to finalize the pension case of the applicant as expeditiously as possible and in any event within a period of six months from the date of receipt of this order. The applicant is at liberty to make reference to the respondents for interest.

(ii) It is clarified that in that event, the respondents succeed in criminal appeal, they will have a right to take steps available to them, as per rules.

(iii) There shall be no order as to costs.

sd/-

(S.S.Hingne)
Member (J)

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