

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.314/2019 (S.B.)

Ramesh S/o. Tulshiram Bansod,
Aged about 64 years,
Occu: Retired, R/o. 25, Indrayani Colony,
Nawathe Square, Badnera Road, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Finance,
Mantralaya, Mumbai: 32
- 2) The Chief Auditor,
Local Funds Account, 6th Floor,
Konkan Bhavan, Mumbai.
- 3) Joint Director,
Local Funds Audit,
Lekha Krushak Bhavan,
Mardi Road, Camp Amravati.
- 4) Joint Director,
Local Audit Funds 1st floor,
Administrative Building, Buldana.

5) Indian Audit & Accounts Department,
Through Accountant General
(Accounts & Entitlement) -1,
Pension Wing, Old Building,
Civil Lines, Nagpur.

Respondents

Shri M.I.Dhatrak, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated: - 15th February, 2024.

JUDGMENT

Judgment is reserved on 11th December, 2023.

Judgment is pronounced on 15th February, 2024.

Heard Shri M.I.Dhatrak, learned counsel for the applicant
and Shri M.I.Khan, learned P.O. for the respondents.

2. When the applicant was working in the office of respondent
no.3 Crime No.278/2006 was registered against him (and others) inter
alia under Sections 420, 409, 468, 471 r/w 34 of I.P.C. and 7, 13(1)(d) of
the Prevention of Corruption Act. By order dated 02.06.2010 he was
granted anticipatory bail. In this crime charge-sheet came to be filed
against him. By order dated 08.04.2011 (Annexure A-3) he was placed

under suspension on account of registration of aforesaid crime. He made representations before and after his retirement on superannuation on 30.06.2013, but to no avail. His pension case was not finalised. Amount of gratuity and leave encashment have been withheld. By order dated 23.01.2019 (Annexure A-15) respondent no.3 directed that provisional pension be paid and amount of gratuity be withheld till the decision of criminal case. Said criminal case is still pending. The applicant has impugned orders dated 08.04.2011 (Annexure A-3) and 23.01.2019 (Annexure A-15). Hence, this O.A..

3. The respondents have resisted the O.A. by relying on the following provisions of the M.C.S. (Pension) Rules, 1982-

27. Right of Government to withhold or withdraw pension

(1) X XX

(2) X XX

(3) X XX

(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.

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.

So far as withholding of amount of leave encashment is concerned, the respondents have relied on sub-rules (5) and (6) of Rule 68 of the M.C.S. (Leave) Rules, 1981 which read as under-

68. Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation.-

(1) X XX

(2) X XX

(3) X XX

(4) XXX

(5) 2["Subject to the provision of sub-rule (6), a Government servant"] who retires from service on attaining the age of compulsory retirement while under suspension shall be paid cash equivalent of leave salary under sub-rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the Government servant has been fully exonerated and the suspension was wholly unjustified.

3[(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.

(b) Where a Government servant is compulsorily retired as a measure of punishment under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the authority competent to grant leave shall issue an order granting cash equivalent of leave salary for earned leave, if any, at credit of the Government servant on the date of such retirement, subject to a maximum of three hundred days, in the manner specified in this rule.]

4. The applicant sought to rely on Judgment dated 09.06.2017 (Annexure A-13) which was confirmed in appeal, delivered by the Controlling Authority under the Payment of Gratuity Act, Labour Court, Amravati. This Judgment will not help the applicant since fate of the matter would be decided by the M.C.S. Pension and Leave Rules. The Rules quoted above clearly authorised withholding of gratuity as well as amount of leave encashment, and payment of only provisional pension. Admittedly, criminal case against the applicant is still pending. Apart from provisional pension, amounts of G.P.F. and group insurance have been paid to him. Thus, this O.A. lacks merits. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 15/02/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : RakshaShashikantMankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 15/02/2024.
and pronounced on
Uploaded on : 16/02/2024.