

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS.1043 TO 1046 OF 2018**

**DISTRICT : MUMBAI**

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**ORIGINAL APPLICATION NO.1043 OF 2018**

Shri Ashok D. Kulkarni )  
R/at 26 B/13, Rajdeep Soc., Vrindavan, )  
Thane (W), Mumbai 400 601. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
through the Secretary, )  
Revenue & Forest Dept., Mantralaya, )  
Mumbai - 400 032. )
2. The Collector of Mumbai City, )  
Old Customs House, Shahid Bhagat )  
Singh Marg, Fort, Mumbai – 400 001. )...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.1044 OF 2018**

Shri Vijay Lahu Raut )  
Plot No.58, Mithesh Sadan, Flat No.202, )  
Sector 19/20, Belapur, Navi Mumbai 400614. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. ) ....**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.1045 OF 2018**

Shri Ananda T. Landge )  
R/at. B-5, Kalyandaswadi, opp.Jai Hind Cinema,) )  
Dr. Ambedkar Road, Mumbai 400 012. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. ) ....**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.1046 OF 2018**

Shri Tanaji R. Kharat )  
R/at. 203, Blue Nest Cooperative Hsg. Soc., )  
Plot No.74, Sector 9, New Panvel (E) - 410206. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. )...**Respondents**

**Shri K. R. Jagdale, Advocate for Applicants.**

**Ms. S.P. Manchekar, Chief Presenting Officer for the Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 13.02.2019**

**JUDGMENT**

1. Since the common question of law and facts is involved in all these Original Applications (OAs), the same are decided by common Judgment.

2. Shortly stated facts giving rise to these applications are as follows :

All these Applicants are retired Government servants. They retired from the post of Senior Clerk, Naib-Tahasildar, Draftsman and Maintenance Surveyor. They stand retired from the Office of Collector, Mumbai. In the year 1984, offence under Sections 420, 466, 467, 468 & 471 of Indian Penal Code was registered against them by Anti-Corruption Bureau (ACB). Consequently, they were suspended and later reinstated in service. They were prosecuted by ACB in Special Case No.9 of 1987. The learned Special Judge convicted them by Judgment dated 17.01.2001 and sentenced to suffer Rigorous Imprisonment for three years and fine. Being aggrieved by the Judgment of conviction, they filed appeal vide Criminal Appeal No.296/2001 on 03.05.2001 before Hon'ble High Court. The said appeal is subjudice.

3. After reinstatement in service, despite the Judgment of conviction, the Applicants (except Applicant in O.A.1043/2018) were continued in service. The Applicant in O.A.1043/2018 stands retired on 31.03.1997, Applicant in O.A.1044/2018 stands retired in June, 2012, Applicant in O.A.1045/2018 stands retired on 30.04.2014 whereas the Applicant in O.A.1046/2018 stands retired on 29.02.2012. After retirement, the provisional pension was granted to them and it was continued till the passing of impugned order.

4. In O.A.1043/2018, by impugned order dated 31<sup>st</sup> October, 2018, the provisional pension was stopped invoking Rules 26 and 27 of Maharashtra Civil Services (Pension) Rules, 1982 read with 13(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Whereas, in remaining O.As, same order was passed stopping provisional pension on 29.09.2018. The Applicants have challenged these orders of stoppage of provisional pension in these O.As.

5. In all these O.As, the Applicants have challenged the impugned orders on the common ground that the appeal being continuous judicial proceedings, they are entitled to provisional pension and all other terminal benefits. According to

Applicants, so long as appeal is not decided finally, the Respondents cannot withhold provisional pension, which they were getting till the issuance of impugned orders. In this behalf, the Applicants sought to place reliance on the Judgment of Hon'ble Supreme Court in **(2013) 12 SCC 210 (State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr.)**. Besides, the reliance is also placed on the Judgment of Hon'ble High Court in **2016(3) Mh.LJ 300 (Purushottam Kulkarni Vs. State of M.P.)** which has been delivered on the basis of Judgment in **State of Jharkhand's** case (cited supra).

6. The Respondents resisted the applications by filing Affidavit-in-reply raising common defences. The factual aspects about the date of conviction, pendency of criminal appeal, date of retirement as well as stoppage of provisional pension by impugned orders is a matter of record. The Respondents contend that the action of stoppage of provisional pension was taken in view of instructions contained in Departmental Enquiry Manual, 1991 read with Rules 26 & 27 of M.C.S. (Pension) Rules, 1982 read with 13(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Respondents contend that the Appellants were held guilty for grave charges, and therefore, the action taken is legal. Before issuance of impugned order, the show cause notices dated 16.07.2018 were given to the Applicants. Their reply was not satisfactory and there is no stay to the Judgment of conviction by Hon'ble High Court. As such, the sum and substance of the defence is that the Applicants having held guilty for the charges by competent court of law, the action initiated for stoppage of provisional pension is legal and valid.

7. Shri K.R. Jagdale, learned Advocate for the Applicants submitted that, as the appeal against the Judgment of conviction is pending, the action of stoppage of provisional pension is illegal. He sought to refer definition of 'judicial proceedings' as defined in Section 2(i) of Code of Criminal Procedure. He also

sought to place reliance on the Judgment of Hon'ble Supreme Court in ***State of Jharkhand's*** case (cited supra).

8. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer urged that the action taken by the Respondents though belatedly is in consonance with Rules 26, 27 of M.C.S. (Pension) Rules, 1982 read with Section 13) of M.C.S. (Discipline and Appeal) Rules, 1979. Learned CPO has also pointed out that the reliance placed on ***State of Jharkhand's*** case is misconceived, as in that case, there was absence of provision of Pension Rules empowering the Government to withhold pension. On this line of submission, the learned CPO submitted that, after conviction of the Applicant, there is no question of continuation of provisional pension.

9. At the very outset, it is quite shocking to note that, despite the conviction in Criminal Case by Judgment dated 17.01.2001, the Applicant in O.A.1044/2018, 1045/2018 and 1046/2018 were continued in service till they attained the age of superannuation in 2012 and whereas, the Applicant in O.A.1043 of 2018 retired on attaining the age of superannuation w.e.f.31.03.1997 i.e. before the Judgment of conviction. This aspect will be dealt with a little later.

10. Presently, the question posed for consideration is, whether the impugned action of stoppage of provisional pension is in consonance with the Rules and the answer is in affirmative.

11. Undisputedly, the Applicants were convicted by Judgment dated 17.01.2001 on the charges under Sections 420, 466, 467, 468 and 471 of I.P.C. and they were sentenced to three years R.I. with fine and there is no stay to the conviction. True, the Applicants have preferred appeal before the Hon'ble High Court and the same is subjudice. The Applicants are released on bail. Thus, the fact remains that there is no stay to the conviction.

12. At this juncture, it would apposite to reproduce Rule Nos.26(1), 27(1) and 130 of M.C.S.(Pension) Rules, 1982 as well as Rule No.13 of M.C.S. (Discipline and Appeal) Rules, 1979, which are as follows.

**“26. Pension subject to good conduct.-** (1) Future good conduct shall be an implied condition of every grant of pension, Government may, by order in writing, withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.”

**27. Right of Government to withhold or withdraw pension.-** (1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.”

**“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 authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(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.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & 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.]”

Rule 13 of M.C.S. (Discipline & Appeal) Rules, 1979 is as under.

**“13.** Special procedure in certain cases :

Notwithstanding anything contained in rules 8 to rule 12 of these rules –

- (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, or the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

\*[Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i).

Provided further that the Commission shall be consulted. Where such consultation is necessary before any orders are made in any case under this rule].”

13. Conjoint reading of Rule 26(1), 26(2) and 27(1) of M.C.S. (Pension) Rules, 1982 makes it abundantly clear that, even after retirement the Government servant is expected to be of good conduct for the continuation of pension and where he is convicted for a serious charge, then he forfeit the right to receive pension. In the present case, before issuance of impugned orders, show cause notices were issued and the explanation found not satisfactory, the impugned orders have been issued. Whereas, as per Rule 13 of M.C.S. (Discipline & Appeal) Rules, 1979 showing Government servant is liable for punishment without formal D.E. in case of conviction by Court on proved charges.

14. True, in Section 2(i) of Criminal Procedure Code, ‘judicial proceedings’ defined as follows :

**“2(i)** “Judicial Proceedings” includes any proceedings in the course of which evidence is or may be legally taken on oath.”

15. Shri Jagdale, learned Advocate for the Applicants sought to refer Rule 130 of M.C.S. (Pension) Rules, 1982 as reproduced above, which provides for grant of provisional pension where departmental enquiry or judicial proceeding is pending. The submission advanced by the learned Advocate for the Applicants that the appeal against conviction being judicial proceeding, the Applicants are entitled to provisional pension in terms of Section 130 of 'Pension Rules' is fallacious and misconceived. Rule 130 of 'Pension Rules' contemplates grant of provisional pension where judicial proceeding is pending and has no application where judicial proceedings are terminated in conviction. Once there is conviction on serious charge, Sections 26 and 27 would get attracted which empowers the Government to withhold retirement benefits to the Government employee after his conviction.

16. Suffice to say, only because appeal is pending against the Judgment of conviction, the Applicants cannot claim provisional pension otherwise Rules 26 and 27 would render nugatory. The intention of the legislature is manifest that after conviction, the Government is empowered to withhold retiral benefits.

17. Now, turning to the Judgment of Hon'ble Supreme Court in ***State of Jharkhand's*** case. In that matter, the issue before the Apex Court was whether in absence of any provision in the Pension Rules of State of Jharkhand, the State can withhold part of pension and gratuity during the pendency of criminal procedure. There was no such Rules prohibiting the pensioners to receive the pension, and therefore, in that context and in the light of State Rules, the Hon'ble Supreme Court held that the Government employee cannot be deprived of his right to receive pension which has been recognized as a right in property. Whereas in the present case, we have specific Rules embodied in Pension Rules, 1982 which empowers the Government to stop the pension on conviction. Therefore, this authority is of little assistance to the Applicants.

18. Similarly, the Judgment in ***Purushottam Kulkarni's*** case (cited supra), which is based on the Judgment of ***State of Jharkhand's*** case have no application in the present case. In ***Purushottam Kulkarni's*** case, Criminal Case was pending and the pension was withheld. It is in that context, the Judgment was delivered with direction to release the retiral benefits. Whereas, in the present case, the Applicants have been convicted by the Court of law. This being the factual difference, the Judgment in ***Purushottam Kulkarni's*** case is also of no assistance to the Applicants.

19. The necessary corollary of the aforesaid discussion leads me to sum-up that the challenge to the impugned orders is devoid of merit and O.As deserve to be dismissed.

20. Before parting with the Judgments, it is necessary to note some aspects which need some remedial measures by the Respondents. As state above, the Applicants were convicted on 17.01.2001. By that time, the Applicant in O.A.1043/2018 was already retired on 31.03.1997. Whereas, the Applicants in remaining O.As retired in 2012 & 2014. Thus, it is shocking to note that, despite conviction on serious charges and sentence to R.I. of three years in 2001, the Applicants in O.As.1044, 1045 and 1046 of 2018 were allowed to continue in service till they attained the age of superannuation in 2012 & 2014. The Respondent No.2 failed to take note of the Judgment of conviction and to take action as contemplated under Section 13 of M.C.S. (Discipline & Appeal) Rules, 1979 reproduced above. Rule 13 starts with non-obstante clause and empowers the Government to impose punishment on the Government servant where he is convicted on the criminal charge without holding further enquiry. As such, in view of conviction of the Applicants in 2001, the Respondent No.2 was obliged to take immediate action of punishment as contemplated in Section 13 of 'Rules 1979'. However, amazingly, apart from inaction of imposition of sentence, the

Applicants (except the Applicant in O.A.1043/2018) were allowed to work on the same post with full pay and allowances. It did not stop there only. Even after retirement, the provisional pension has been granted ignoring the Judgment of conviction. Thus, what emerges from the record that, though the Applicants were liable to punishment, they were allowed to continue the service and even after retirement were granted provisional pension. There was no question of continuation of provisional pension in view of Judgment of conviction in 2001. It is, therefore, explicit that there is total inaction as well as negligence to look into the matter on the part of concerned Officer, which resulted into this scenario. This being very serious aspect of culpable negligence in discharging the duties causing loss to the state exchequer, it needs to be examined seriously by the concerned and to take necessary action as a remedial measure. Having noticed such blatant negligence and maladministration, it cannot be ignored and it requires to be taken to some logical conclusion by the concerned authority. Therefore, the Respondent No.1 is obliged to look into this matter and to take appropriate action.

21. With the aforesaid observation, I pass the following order.

### **ORDER**

- (A) All these Original Applications are dismissed with no order as to costs.
- (B) The Respondent No.1 is directed to cause the enquiry into the aspect noted above in Para Nos.19 & 20 of the Judgment and to take appropriate action against concerned public servant responsible for the same in accordance to Rules.
- (C) Action taken report be submitted to the Tribunal within three months.

- (D) The copy of Judgment be forwarded to the Secretary, Revenue and Forest Department, Mantralaya, Mumbai for necessary compliance.
- (E) The copy of Judgment be also forwarded to Chief Secretary, State of Maharashtra, Mantralaya, Mumbai for information and appropriate action as deem fit.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 13.02.2019

Dictation taken by :

S.K. Wamanse.

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