

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.844 OF 2021
WITH
ORIGINAL APPLICATION NO.433 OF 2022**

**DISTRICT : RAIGAD
Sub.:- Retirement Dues**

ORIGINAL APPLICATION NO.844 OF 2021

Shri Chandrakant S. Lokhande.)
Age : 62 Yrs, Occu.: Nil, Retired as Store)
Keeper from I.T.I, Mulund,)
Mumbai – 400 080 and residing at)
Shri Ashray CHS, Room No.1, Plot No.142,))
Sector-10, New Panvel, District : Raigad-6.)...**Applicant**

Versus

1. The Joint Director of Vocational)
Education and Training, Having)
Regional Office at 49, A.J. Marg,)
Kherwadi, Bandra (E),)
Mumbai – 400 051.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development and)
Entrepreneurship Department,)
Having Office at Mantralaya,)
Mumbai – 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.433 OF 2022

Shri Chandrakant S. Lokhande.)
 Age : 62 Yrs, Occu.: Nil, Retired as Store)
 Keeper from I.T.I, Mulund,)
 Mumbai – 400 080 and residing at)
 Shri Ashray CHS, Room No.1, Plot No.142,))
 Sector-10, New Panvel, District : Raigad-6.)...**Applicant**

Versus

1. The Joint Director of Vocational)
 Education and Training, Having)
 Regional Office at 49, A.J. Marg,)
 Kherwadi, Bandra (E),)
 Mumbai – 400 051.)
2. The Head Master.)
 Elphinstone Technical High School)
 and Junior College, Mumbai, having)
 Office at 3, Mahapalika Marg,)
 Mumbai – 400 001.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.07.2023

JUDGMENT

1. In O.A.No.844/2021, the Applicant who stands retired from service on 31.07.2017 sought direction to the Respondents to release his unpaid retiral benefits with interest. Whereas in O.A.No.433/2022, the Applicant has challenged the order dated 02.11.2021 issued by Respondent No.1 - Joint Director of Vocational Education and Training thereby seeking recovery of Government dues of Rs.16,89,162/- towards

shortage of equipment and goods from the store of the Institutes. For convenience, these O.As are being decided by common order.

2. At the very outset, it needs to be clarified that O.A.No.433/2022 is the main O.A, since the fate of O.A.No.844/2021 is depending upon the outcome of O.A.No.433/2022.

3. Shortly stated facts giving rise to O.A.No.433/2022 are as under :-

The Applicant was Store Keeper at Elphinstone Technical High School and Junior College from 01.07.2006 to 31.05.2013. As a Store Keeper, he was Incharge of the equipment and goods and to maintain the same as per Stock Register. He was also given additional charge of the Store of ITI, Mandavi and Store of ITI, Mumbai – 400 001. By order dated 28.05.2013, the Applicant was transferred from Elphinstone Technical High School and Junior College, Mumbai to TMT, Sawantwadi. Accordingly, he was relieved from Elphinstone Technical High School on 31.05.2013 [Page 25 of Paper Book] subject to handing over of the charge of the Stores. Thereafter, Respondent No.2 – Head Master, Elphinstone Technical High School issued letters on 01.07.2013 and 30.07.2013 [Page 151 and 152 of P.B.] directing the Applicant to remain present and hand-over the charge of the goods and equipment of the Store, but he did not comply. Ultimately, Respondent No.2 constituted one Committee by order dated 06.01.2014 [Page 153 of P.B.] to take inventory of the goods and equipment lying in the Store and to submit the report, since Applicant failed to remain present and to hand-over the charge. The Committee accordingly prepared the inventory and submitted report dated 17.04.2014. On receipt of report of Committee, the Head Master, Elphinstone Technical High School found shortage of goods quantified as Rs.29,99,289/- and communicated the same to the Applicant by letter dated 07.06.2014 [Page 192 of P.B.] and called his explanation upto 09.06.2014. Head Master, Elphinstone Technical High School again by his reminder letter dated 01.07.2014 [Page 26 of P.B.] called upon the

Applicant to submit explanation upto 04.07.2014 and to trace the goods. Notably, Applicant gave reply on 04.08.2014 [Page 193 of P.B.] stating that the goods which are found in short by the Committee is not available in the Store. The ITI, Mumbai by his communication dated 20.08.2014 [Page 197 of P.B.] also informed that no such goods are available in the Store and at ITI, Mumbai and there is no chance of mixing the goods of Elphinstone Technical High School in the Store of I.T.I, Mumbai. As per inventory prepared by the Committee, the charge was given to Shri K.S. Patil, Store-Keeper who was posted in place of Applicant at Elphinstone Technical High School. He again verified the goods in the Store in presence of the Applicant and prepared inventory of the goods received by him. The report of Shri K.S. Patil dated 22.08.2014 is at Page Nos.195 to 199 of P.B.] and inventory of goods is at Page Nos.200 to 222 of P.B. which bears signature of Shri K.S. Patil and Applicant. Thereafter, hearing was given to the Applicant by Respondent No.1 in his Office on 26.08.2014 and finally, shortage of goods was quantified at Rs.15,03,059/-, since some goods were again traced. The Respondent No.1 – Joint Director of Vocational Education and Training, therefore, issued letter dated 26.08.2014 [Page 224 of P.B.] to the Applicant informing him about shortage of goods worth Rs.15,03,059/- and asked the Applicant to trace the goods and to hand over the same upto 30.08.2014. However, Applicant did not respond, and therefore, again reminders were issued on 18.09.2014, 08.10.2014 and 27.10.2014 [Page Nos.226 to 229 of P.B.]. On receipt of it, the Applicant traced some goods and deposited as per his letters dated 22.10.2014 and 31.10.2014. Ultimately, after deducting the cost of those goods traced by the Applicant, the cost of goods was reduced to Rs.12,78,786/-. The Head Master, Elphinstone Technical High School, therefore, by letter dated 03.11.2014 [Page 230 of P.B.] informed the Applicant about his liability to pay Rs.12,78,786/- and to pay the same in monthly instalment of Rs.38,751/- from his salary in 33 months. Thereafter, Respondent No.1 gave hearing to the Applicant on 20.01.2015 and Applicant deposited

some goods. After deducting its cost, the liability of Applicant for loss of goods was reduced to RS.12,09,807/- and he was directed to pay it in monthly instalment of Rs.36,661/- p.m. from the salary by letter dated 13.04.2015 [Page 30 of P.B.].

4. Belatedly, Applicant by his letter dated 02.05.2015 [Page Nos.250 to 254 of P.B.] addressed to Respondent No.1 – Joint Director of Vocational Education and Training apologized for the delay in handing over the charge and tried to explain deficiency about certain items. Respondent No.1 thereon forwarded Applicant's letter dated 02.05.2015 to Head Master, Elphinstone Technical High School, Mumbai for verification of the explanation of the Applicant. Accordingly, Head Master, Elphinstone Technical High School examined the matter and by his letter dated 16.07.2015 [Page Nos.255 to 259 of P.B.] informed to Respondent No.1 that the explanation tendered by the Applicant is totally incorrect and unacceptable and he is trying to mislead the Office.

5. Thereafter material to note, Applicant by his letter dated 12.10.2015 [Page No.291 of P.B.] informed to TMT Institute, Sawantwadi that minimum amount should be deducted from his salary subject to refund the amount to him on clearance of shortage of goods. It is in pursuance of it, the amount of Rs.35,000/- was deducted from his salary.

6. In addition to the charge of Store-Keeper of Elphinstone Technical High School, the Applicant was also holding additional charge of store of I.T.I, Mumbai, I.T.I, Mandovi which were newly established in view of G.R. dated 23.10.2008 and 29.08.2009 (Page Nos.337 and 340 of P.B.). The Principal, I.T.I, Mumbai by his letter dated 25.04.2011 directed the Applicant to handover the charge to Shri Ahire, Store-Keeper upto 30.05.2011 and to submit the report. It is in pursuance of it, Shri Ahire took charge of the store from the Applicant, as seen from Charge Report dated 15.05.2011 (Page No.350 of P.B.). That time, inventory was

prepared which is at Page Nos.351 to 357 of P.B. The inventory is signed by the Applicant as well as Shri Ahire as a person handing over the charge and taking over the charge. As per inventory, the goods of Rs.2,42,728/- were in short. Thereafter, certain goods were found and the loss of goods of I.T.I, Mumbai was reduced to Rs.1,64,745/-. Accordingly, Principal, I.T.I, Mumbai by letter dated 08.09.2015 (Page No.395 of P.B.) directed the Applicant to deposit Rs.1,64,745/- in monthly installments from his salary.

7. Insofar as charge of I.T.I, Mandovi is concerned, the Principal, I.T.I, Mandovi by his letter dated 25.04.2011 (Page No.348 of P.B.) directed the Applicant to handover the charge of the store to Smt. Thakur. Accordingly, Applicant gave charge to Smt. Thakur and while handing over the charge, the inventory of the goods was prepared and signed by the Applicant as well as Smt. Thakur (Page Nos.360 to 390 of P.B.). The goods worth of Rs.3,19,044/- were found in short.

8. Notably, Applicant by his letter dated 20.09.2019 addressed to Respondent No.1 for the first time raised the issue of denial of regular pension, since his provisional pension was stopped from 01.08.2018. He, therefore, requested for regular pension and gratuity of Rs.8,81,000/-. At the same time, in letter, he stated that whatever due towards loss of goods from Store is pending against him, it be ascertained and for that purpose, gratuity may be withheld (Page Nos.260 to 262 of P.B.). Thereafter, he remained silent till the receipt of impugned order dated 02.11.2021 for recovery of Rs.16,89,162/- towards loss of goods from Store. It is at that time only, he challenged the action of recovery by filing O.A.No.433/2022 on 04.05.2022. Insofar as O.A.No.844/2021 is concerned, it was filed on 22.10.2021 seeking direction to the Respondents to release his gratuity and other retiral benefits. It is during the pendency of this O.A, O.A.No.433/2022 is filed challenging the recovery.

9. It is on the above background, the Applicant has challenged the impugned communication dated 02.11.2021 whereby sum of Rs.16,89,162/- towards loss of goods sought to be recovered from the retiral benefits of the Applicant.

10. Insofar as claim to release retiral benefits raised in O.A.844/2021 is concerned, except gratuity amount of Rs.8,81,000/- withheld for loss of goods, all other dues are paid. The Applicant is also being paid 100% regular pension. The learned Advocate for the Applicant also fairly concedes that the Applicant is getting 100% pension regularly.

11. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to challenge the impugned order dated 02.11.2021 mainly on the ground that the recovery towards alleged Government dues from gratuity or pension is totally impermissible without conducting DE and finding holding the Applicant guilty for loss of goods from Store. He has pointed out that as per Section 27 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity), it is only in event of holding Government servant guilty for monetary loss caused to Government, the pension can be withheld permanently or for specific period. Whereas in the present case, Respondents failed to initiate DE, and therefore, impugned action of recovery of Rs.16,89,162/- from gratuity and pension is totally illegal. In alternative submission, he contends that the consent given by the Applicant for deduction of amount from pension or gratuity cannot be treated as admission of guilt or accepting the liability to make good the loss to the tune of Rs.16,89,162/-. He further tried to contend that the amount calculated and charged by the Respondents differs from time to time and there is no such conclusive material to quantify the loss to the tune of Rs.16,89,162/- as claimed by the Respondents in impugned order dated 02.11.2021.

12. Per contra, Smt. A.B. Kololgi, learned Presenting Officer for the Respondents sought to justify the impugned order dated 02.11.2021 *inter-alia* contending that Applicant being Store-Keeper at Elphinstone Technical High School was duty bound to maintain the goods and to hand-over the same on his transfer to TMT, Sawantwadi. He was transferred from Mumbai to Sawantwadi by order dated 28.05.2013 and thereafter several letters were issued from time to time to hand-over the charge, but he totally ignored it. Ultimately, Committee was constituted to take inventory of goods kept in Store and to submit report. Thereafter also, letters were issued to the Applicant to trace the goods found in short. In pursuance of which Applicant produced some goods and after final assessment, goods of Rs.16,89,162/- were found in short. Learned P.O. further emphasized that the Applicant has not challenged the communication issued by Head Master, Elphinstone Technical High School dated 13.04.2015 whereby loss of goods amounting to Rs.12,09,807/- was ordered to be deducted in 33 monthly instalments of Rs.36,661/- from his salary. She has further pointed out that the Applicant by his letter dated 12.10.2015 even consented for minimum deduction from his salary and it amounts to admission of acceptance of liability to make goods loss caused to the Government. Furthermore, Applicant by his letter dated 20.09.2019 again admitted his liability and gave consent for withholding gratuity towards Government dues. On this line of submission, she contends that in facts and circumstances of the case, even if DE is not conducted, the Applicant is liable to pay Government dues of Rs.16,89,162/- and gratuity of Rs.8,81,000/- is rightly adjusted towards Government dues.

13. At first flush, the submission advanced by the learned Advocate for the Applicant that in absence of full-fledged DE and finding holding the Applicant guilty, the recovery from gratuity and pension is not permissible appears quite attractive. But in the facts and circumstances

of the present case, non-holding full-fledged DE itself could not be the ground to give clean chit to the Applicant. In the present case, we are dealing with the loss of goods from the Store where Applicant was working as Store-keeper. As a Store-keeper, he was duty bound to maintain goods in the Store as per Dead Stock Register and to hand-over the charge of the goods to his successor on transfer. There is no denying that the Applicant was Store-keeper at Elphinstone Technical High School. He worked as Store-keeper from 01.07.2006 to 31.05.2013. On his transfer, he was relieved subject to hand-over the charge of the Store. The record clearly establishes that Head Master, Elphinstone Technical High School issued letters dated 01.07.2013, 30.07.2013 to the Applicant directing him to remain present and hand-over the charge of the goods and equipment of the Store, but he did not respond. Ultimately, Respondent No.2 constituted one Committee by order dated 06.01.2014 to take inventory of the goods and shortage of goods of Rs.29,99,289/- was found. Notably, Applicant was informed by letter dated 07.06.2014 and he was directed to give explanation upto 09.06.2014. He then again issued reminder dated 01.07.2014 to submit explanation and to trace the goods. Here, material to note that the Applicant gave reply on 04.08.2014 stating that the goods found short by the Committee is not available in the Store. Suffice to say, Applicant has not raised any other grievance and failed to hand-over the charge. Later, as per inventory prepared by the Committee, the charge was given to Shri K.S. Patil, Store-keeper. Pertaining to note, that time Shri K.S. Patil, Store-keeper and Applicant jointly prepared inventory, in that exercise, some goods were traced and the amount of loss of goods was reduced to 15,03,059/-. Then again, hearing was given to the Applicant in the Office where some goods were produced by him and finally, shortage of goods was quantified at Rs.15,03,059/-. Therefore, Respondent No.1 – Joint Director of Vocational Education and Training issued letter dated 26.08.2014 and asked the Applicant to trace the goods, but he failed to respond. Thereafter again, reminders were issued

on 18.09.2014, 08.10.2014 and 27.10.2014. On receipt of it, Applicant traced some goods and deposited by his letters dated 22.10.2014 and 21.10.2014. Ultimately, the cost of loss of goods was reduced to 12.78,786/- and Head Master Elphinstone Technical High School by letter dated 03.11.2014 informed the Applicant to pay the same in monthly installment of Rs.38,751/- from his salary. Thereafter again, Respondent No.1 gave hearing to the Applicant on 20.01.2015 and Applicant deposited some goods. As a result of which, the value of loss of goods was reduced to Rs.12,09,860/- and by letter dated 13.04.2015, the Applicant was directed to pay the same in monthly installments. Significantly, this letter dated 13.04.2015 was not at all challenged by the Applicant nor raised any grievance about the liability imposed upon him. On the contrary, Applicant by his belated letter dated 12.10.2015 informed to TMT Institute, Sawantwadi, where he was posted after transfer from Mumbai, that minimum amount should be deducted from his salary subject to refund the amount on clearance of shortage of goods. Here, it would be apposite to reproduce the contents of letter, which is as under :-

“महोदय,

उपरोक्त विषयानुसार आपणास कळविण्यात येते की, सदर त्रुटीबाबत कार्यालया मार्फत मी माझे म्हणणे मा. सहसंचालक साहेब, मु. ५१ यांना पाठविलेले आहे. त्याबाबत कोणतेही आदेश प्राप्त झालेले नाहीत.

सदर त्रुटी बाबत त्रुटी क्लियर झाल्यावर माझी वसुली परत मिळेल या तत्त्वावर पगारातून कमीत कमी रक्कम वसूल करावी ही विनंती.”

It is in pursuance of it, sum of Rs.35,000/- was deducted from the salary of the Applicant, when he was working at TMT Institute, Sawantwadi.

14. Indeed, as per commitment made by the Applicant by his letter dated 12.10.2015 referred to above, monthly deduction ought to have been continued from the salary, but there is failure on the part of concerned not to do so. There is no explanation forthcoming from the Respondents in this behalf. The Applicant also chose to remain silent, since it was to his advantage and stands retired on 31.07.2017.

Strangely, even thereafter also, Applicant remained silent without raising any grievance about withholding of gratuity which clearly indicates acceptance of his liability for loss of goods. Initially, he was granted provisional pension from 2017 for one year. Thereafter, Applicant by his letter dated 20.09.2019 addressed to Respondent No.1 – Joint Director, Vocational Education and Training raised grievance that he is not getting pension and gratuity of Rs.8,81,600/- is payable to him. Pertinently, in letter dated 20.09.2019 also, he accepted the liability for loss of goods and consented for ascertaining amount of loss of goods and to withhold the said amount. The contents of the letter to that effect are material, which are as under :-

“सातव्या वेतन आयोगानुसार मला रु.८,८१,६००/- एवढे सेवा उपदान देय आहे. सदरहू रक्कम मला त्वरित मिळावी. भंडारासंदर्भात जी काही कथित वसुली माझ्याकडे आहे, त्या वसुलीची रक्कम निश्चित करून सध्या माझ्या सेवा उपदानातून ती रक्कम रोखून ठेवण्यास माझी हरकत नाही.”

15. It is thus explicit that in the first place, the Applicant has not challenged the recovery order dated 13.04.2015. Secondly, by his letter dated 12.10.2015 consented for minimum deduction from his salary subject to clearance of goods and lastly, by his letter dated 20.09.2019 also accepted his liability to make the loss goods. Indeed, he requested Respondent No.1 to ascertain exact amount of loss of goods and to withhold the same from gratuity. Suffice to say, there are admissions on the part of Applicant accepting the liability for loss of goods though it was with rider to refund the same after amount of loss of goods is ascertained. It is on this background, one need to see whether the impugned action of withholding gratuity of Rs.8,81,000/- is sustainable in law.

16. True, ideally, Respondents ought to have initiated the DE for loss of goods as well as for appropriate punishment. There is failure on the part of Respondents and concerned Official in not initiating the DE against the Applicant which needs to be noted by the Respondents for

appropriate action against the concerned, as may be permissible in law. The Applicant is now trying to take advantage of the non-initiation of regular DE by the Respondents. However, in the facts and circumstances of the case as narrated above, he cannot be given clean chit, since there are various admissions on the part of Applicant admitting his liability for loss of goods.

17. This is not a case where no opportunity of hearing or production of goods was given to the Applicant. The record clearly spells that various letters were issued to the Applicant, but he did not respond, which shows is totally incongruous attitude. Therefore, he cannot be allowed to take disadvantage of his own lapses for not handing over the charge in proper manner. Since Applicant failed to remain present and to hand-over the charge, there was no alternative to the Department except to prepare inventory and to ascertain the loss. Accordingly, inventory was prepared and loss was ascertained. Even thereafter, while handing over the charge of the goods to Shri Patil, inventory of goods was prepared which was signed by the Applicant. The perusal of inventory which is at Page Nos.200 to 222 reveals all that Applicant stated that the missing goods are likely to be mixed in the goods of I.T.I, Mandovi and I.T.I, Mumbai. However, that was again verified. I.T.I, Mumbai by letter dated 20.08.2014 [Page No.194 of P.B.] informed that there was no such goods of Elphinstone Technical High School in their Department. Similarly, I.T.I, Mandovi by their letter dated 22.08.2014 [Page No.223] informed that no such goods of Elphinstone Technical High School was found with I.T.I, Mandovi. Thus, apparently, the Applicant tried to mislead the Department.

18. True, there is no such specific admission of the Applicant in the letters referred to above accepting his liability to the tune of Rs.16,79,162/-, but at the same time, Applicant by his letter dated 20.09.2019 allowed the Respondents to ascertain the loss of goods and

gave no objection to withhold the said amount from his gratuity. The Respondent No.1 constituted the Committee to ascertain the loss of goods and accordingly, it was quantified. It is in compelling situation, because of indifferent attitude of the Applicant, the Respondent No.1 had no other option but accept to prepare the inventory of the goods and to ascertain shortage of goods. No doubt, the initiation of DE would have been ideal but it should not be forgotten that the liability of the Applicant is arising from his own failure to maintain the goods and to hand-over the same on his transfer. However, Applicant failed to discharge his duties and to hand-over the goods or to give clear account of the goods which was given in his possession as a Store-keeper. In such situation, in the facts and circumstances of the case, in my considered opinion, non-holding of DE itself cannot be a ground to avoid the liability of loss of goods. Indeed, Applicant is estopped from denying his liability for loss of goods in view of his conduct and various admissions referred to above. He failed to challenge communication dated 13.04.2015 within the period of limitation which amounts to waiver. He remained silent for six years and filed this O.A. challenging subsequent communication dated 02.11.2021.

19. Even during the pendency of O.A, it was suggested to the Respondents as well as Applicant to examine the inventory to ascertain the correctness of loss of goods. Accordingly, Joint Director of Vocational Education and Training, Regional Office, Mulund by order dated 06.01.2023 appointed Committee consists of 7 persons directing them to take fresh inventory in presence of the Applicant on 11.01.2023. Accordingly, letter dated 06.01.2023 was issued to the Applicant to remain present on 11.01.2023 (Page No.403 of P.B.). In pursuance of it, again fresh inspection was conducted by the Committee and loss of goods was ascertained. The total loss of goods was quantified to Rs.16,93,596/- and after deduction of Rs.35,000/- recovered from the salary of the Applicant while he was in service, sum of Rs.16,58,596/-

found recoverable from the Applicant. The report of the Committee as well as inventory is at Page Nos.410 to 459 of P.B. The Applicant was also present for whole day, but refused to sign the Attendance Sheet. At the same time, in report submitted by the Committee, there is specific mention that Applicant did not raise any issue nor submit any kind of explanation.

20. Reliance placed by the learned Advocate for the Applicant on **2018(3) Mh.L.J. 611 [Manohar G. Kapsikar Vs. State of Maharashtra]** is totally misplaced. In that case, Government servant was charged for misappropriation of steel after 8 years and 10 months for handing over the charge and the explanation submitted by the Applicant was not considered. No regular DE was conducted. He was charge-sheeted on 28.01.1983 after 8 years and 10 months from the date of handing over the charge and explanation was called. He submitted explanation, but it was not considered. The punishment of censure was passed after his superannuation. The punishment of censure was challenged before Hon'ble High Court. Inspection of audit report did not reveal any irregularity in the matter. Therefore, in facts and circumstances, the punishment of censure was quashed having found it was stale charge. Therefore, in facts and circumstances, the punishment of censure was quashed and set aside. Whereas in the present case, there are several admissions of the Applicant as well as there are serious lapses on his part for not handing over the charge years together. This being so, this decision which turned out on facts, in my considered opinion, is of no assistance to the Applicant.

21. The learned Presenting Officer referred to the decision of Hon'ble High Court, Bench at Nagpur in **Writ Petition No.2471/2-15 [Kiran Bhatia Vs. State of Maharashtra] dated 07.07.2017**. In that case also, the Petitioner was working as Incharge of the Godown and there was shortfall of grains to the tune of Rs.7,92,975/-. The Petitioner was

asked to furnish his explanation and he accepted that there was misappropriation of goods to the tune of Rs.7,92,975/- and also accepted the liability to pay the same. However, he challenged the order of recovery of Rs.7,92,975/- by filing O.A. in the Tribunal, which was dismissed. Being aggrieved by it, he filed Writ Petition, which was dismissed in view of admission of the Petitioner. Hon'ble High Court accepted the contention of the Government that there was no necessity of holding DE, as there was nothing which could have been enquired into. True, in the present case, there is no such specific clear admission accepting the liability to pay Rs.16,89,162/- as sought to be recovered in the impugned order. However, the conduct of the Applicant, his failure to hand-over the charge for years together and admissions given in various letters referred to above, clearly indicates his liability for loss of goods. Indeed, by his letter dated 20.09.2019, he allowed the Department to ascertain loss of goods and to withhold the gratuity. It is on this background, the Department ascertained the liability and shortage of goods was quantified to the tune of Rs.16,89,162/- for loss of goods of three Institutes i.e. Elphinstone Technical High School, Mumbai, I.T.I, Mumbai-1 and I.T.I, Mandovi.

22. There are two aspects of the matter, first is adjustment of gratuity of Rs.8,81,000/- which was payable to the Applicant for gratuity against liability of the Applicant for loss of goods and second as to whether remaining amount towards loss of goods now could be recovered from the pension. As concluded above, even if, the Respondents have not conducted departmental enquiry, in view of peculiar facts and circumstances of the matter, accepting liability for loss of goods, the amount of gratuity, which was payable to the Applicant will have to be termed as a 'Government dues' and it is certainly adjustable from gratuity.

23. In this behalf, reference of Rules No.132 & 134 of Maharashtra Civil Services (Pension) Rules, 1982 is essential which reads as under:-

“132. Recovery and adjustment of Government dues.

- (1) *It shall be the duty of the Head of Office to ascertain and assess Government dues, payable by a Government servant due for retirement.*
- (2) *The Government dues as ascertained and assessed by the Head of office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable.*
- (3) *The expression ‘Government dues’ includes-*
 - (a) *dues pertaining to Government accommodation including arrears of license fee, if any;*
 - (b) *dues other than those pertaining to Government accommodation, namely balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income-tax deduction at source under the Income Tax Act, 1961 (43 of 1961).*

134. Adjustment and recovery of dues other than dues pertaining to Government accommodation

- (1) *For the dues other than the dues pertaining to occupation of Government accommodation as referred to in clause (b) of sub-rule (3) of rule 132, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.*
- (2) *The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant.*
- (3) *The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding, till the date of retirement of the Government servant, shall be adjusted against the amount of [retirement gratuity] becoming payable to the Government servant on his retirement.*

24. Notably, the definition of 'Government dues' as stated in Rule 132(3) of pension rules is illustrative and exhaustive. The amount payable towards loss of goods certainly falls within the expression of Government dues and it is liable to be adjusted against gratuity payable to a Government servant on his retirement as specifically mandated under Rule 134(3) of Pension Rules. In this view of the matter, I have absolutely no hesitation to sum up that amount of gratuity of Rs.8,81,000/- which was payable to the Applicant on his retirement is rightly withheld and adjusted towards his liability to pay Government dues. Suffice to say, the Applicant cannot claim gratuity as prayed for in O.A.No.844/2021.

25. Second issue now arises about claim of the Respondents to recover remaining amount of loss of goods after adjustment of gratuity of Rs.8,81,000/-. Such remaining amount now cannot be recovered from pension since as per Rule 27 of MCS (Pension) Rules, pension can be withheld or withdrawn in a case where a pensioner is found guilty in departmental or judicial proceedings. In present case, the Respondents have failed to initiate D.E. which surely shows serious lapses and inaction on the part of Respondents. The Applicant already stands retired on 31.07.2017. The question of conducting any such D.E. is now out of question. Therefore, the Respondents will have to suffer for their inaction and no such remaining amount could be recovered from pension in view of embargo of Rule 27 of Pension Rules. The Respondents are required to cause enquiry into the matter and take necessary action against concerned erring officials, as permissible in law. However, this aspect shall not affect the Respondents action of adjustment of gratuity of Rs.8,81,000/- which was payable to the Applicant towards gratuity against loss of goods as a Government dues. The Respondents action to adjust gratuity towards Government dues as specifically provided under Rule 132 and 134 of MCS (Pension) Rules is legal and valid.

26. The totality of the aforesaid discussion leads me to sum up that challenge to the order dated 02.11.2021 to the extent of adjustment of gratuity of Rs.8,81,000/- holds no water. Insofar as O.A.No.844/2021 is concerned, it is for direction to release retiral benefits. Admittedly, except gratuity all other retiral benefits are paid. The Applicant is also being paid regular pension and he is entitled to receive the same as per his entitlement in rules. Both the Original Applications are accordingly disposed of by following orders :

ORDER

- (A) O.A. No.433/2022 is partly allowed.
- (B) Impugned order dated 02.11.2021 challenged in O.A.433/2022 is upheld to the extent of adjustment of gratuity of Rs.8,81,000/- which was payable to the Applicant on his retirement.
- (C) O.A.No.844/2021 is partly allowed.
- (D) The Respondents shall pay monthly pension to Applicant which is being paid to him regularly as per his entitlement in Rules.
- (E) No order as to costs.

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

Place : Mumbai
Date : 28.07.2023

Dictation taken by : S.K. Wamanse.

D:\VSM\VSO\2023\ORder & Judgment\July\O.As.844.21 with 433.22.w.6.2023.Retirement Dues.doc