

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.918 & 968 OF 2021

ORIGINAL APPLICATION NO.918 OF 2021

DISTRICT : SOLAPUR

Shri Pradip Bhikaji Zende)
Age : 62 Yrs., Retired as Assistant Sub-)
Inspector, Residing at 47, Bank Colony,)
Near Dnyaneshwar Nagar,)
Solapur – 413 224.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police.)
Hotgi Road, Gandhi Nagar,)
Solapur – 413 003.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.968 OF 2021

DISTRICT : NASHIK

Shri Satish Sadashiv Jadhav.)
Age : Major, Retired as Assistant Sub-)
Inspector, Residing at Snehaneel Society,)
Flat No.8, Mali Colony, Shivaji Nagar,)
Jail Road, Nashik – 422 101.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police.)
Maharashtra State having office at)
Shahid Bhagat Singh Marg, Colaba,)
Mumbai – 400 039.)
3. The Inspector General of Police,)
Nashik, Dakshata Building,)
Gadkari Chowk, Nashik – 422 002.)
4. The Superintendent of Police)
(Rural), Nashik, District : Nashik.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant in O.A.918/2021.

Mr. Ashok Jadhav, Advocate for Applicant in O.A.968/2021.

Mr. A.J. Chougule, Presenting Officer for Respondents in O.A.918/2021.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents in O.A.968/2021.

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

DATE : 23.12.2021

JUDGMENT

1. Since common issue is involved in these two Original Applications, they are decided by common Judgment.

2. Facts of O.A.No.918/2021 are as under :-

In 2012, while Applicant was serving as Police Constable, he was suspended by order dated 16.08.2012 due to registration of criminal offence under the provisions of Prevention of Corruption Act, 1988. He was reinstated in service by order dated 15.02.2016. He was prosecuted

under the provisions of Prevention of Corruption Act, 1988 in Criminal Case No.03/2013 and acquitted by learned Sessions' Judge on 14.12.2016. Thereafter, he was promoted as Assistant Sub-Inspector. He came to be retired on 31.05.2017 from the post of ASI. Against Judgment of acquittal in criminal case, the State Government has filed appeal before the Hon'ble High Court and it is subjudice. The Applicant made representation to release gratuity and regular pension, but it came to be rejected by order dated 04.06.2019 on the ground of pendency of appeal, which is challenged in the present O.A. The Applicant, therefore, prayed for direction to release gratuity, regular pension and to treat suspension period as duty period in view of his acquittal in criminal case.

3. Whereas, the facts of O.A.No.968/2021 are as under :-

The Applicant stands retired on 31.07.2020 from the post of ASI. The offence under the provisions of Prevention of Corruption Act was registered against the Applicant on 13.02.2001. Consequent to it, he was suspended by order dated 05.02.2002. Thereafter, he was reinstated in service. The Applicant was prosecuted in Special Case No.02/2002 in which he came to be acquitted by learned Special Judge on 29.04.2005. Being aggrieved by the Judgment of acquittal, the Government has filed appeal before the Hon'ble High Court and it is subjudice. The Applicant stands retired on 31.07.2020 on attaining age of superannuation. The Applicant, therefore, made representation for releasing gratuity and regular pension. However, it came to be rejected by communication dated 22.07.2021 stating that appeal against acquittal is pending before Hon'ble High Court and only after decision in appeal, further steps will be taken. It is on this background, the Applicant has filed O.A.No.968/2021 to challenge the impugned communication and sought direction to release gratuity, regular pension and to treat suspension period as duty period.

4. Heard learned Advocates for the Applicants and learned Presenting Officers for the Respondents.

5. Learned Advocate for the Applicants submit that once a Government servant is acquitted in criminal case, the judicial proceedings comes to an end, and therefore, denial of gratuity on the ground of pendency of appeal against acquittal is totally unsustainable and arbitrary.

6. In O.A.No.918/2021, the learned Advocate for the Applicant has pointed out that Government in the matter of Shri Ashok R. Sasane, Additional Public Prosecutor by order dated 06.09.2018 released all retiral benefits and also regularized suspension period despite pendency of criminal appeal against acquittal. Adverting to this aspect, the learned Advocate for the Applicant submits that, however, in the matter of Applicant, he is subjected to discrimination. The learned Advocate for the Applicant also placed reliance on the said decision rendered by this Tribunal in **O.A.No.31/2001 (Pandurang B. Borate Vs. State of Maharashtra) decided on 28.10.2021** wherein in similar situation, directions were given to release gratuity and regular pension on furnishing Undertaking that if criminal appeal is allowed and he is asked to refund gratuity, he would refund the same without any grievance.

7. Whereas, learned Presenting Officers sought to justify the impugned orders inter-alia contending that though Applicants are acquitted in criminal case, the appeal preferred by the Government is subjudice before Hon'ble High Court and it is to be taken as a continuation of judicial proceedings. The learned P.Os made reference to Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) and submit that till the decision of criminal appeal, the gratuity cannot be paid.

8. In view of submissions advanced at the Bar, the issue posed for consideration is whether pendency of criminal appeal against the

acquittal could be a ground to deny gratuity, regular pension to the Applicants.

9. The factual aspects of the matter as adverted to above are not in dispute. Both the Applicants are admittedly acquitted from the charges levelled against them under the provisions of Prevention of Corruption Act. Apart, admittedly, in both the matters, there is no initiation of regular DE till date.

10. Before proceeding ahead, here it would be important to note that in so far as O.A.No.968/2021 is concerned, the Applicant was prosecuted under the provisions of Prevention of Corruption Act along with co-accused viz. Shri Gautam P. Pawar. The Applicant was Accused No.2 in criminal case. Both came to be acquitted by learned Special Judge on 29.04.2005. Here, surprising to note that in the matter of Gautam Pawar, the Respondents have released all retiral benefits stating that no DE or criminal case is pending against him, though the Government has filed criminal appeal against acquittal in which he is Respondent No.1. As such, different treatment and discrimination in the same situation is obvious.

11. At this juncture, it would be apposite to reproduce Rule 130 of 'Rules of 1982' which are 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 of

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 authorised to be paid to the Government Servant].

(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.”

12. Now turning to the decision rendered by this Tribunal in **Pandurang Borate's** matter, the Tribunal referred various decisions and allowed O.A. with direction to release gratuity and regular pension by taking bond or undertaking from the Applicant that if in future, criminal appeal is allowed and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted. The learned P.O. on query stated that they have no knowledge as to whether that Judgment is under challenge.

13. In so far as Rule 130(c) of 'Rules of 1982' is concerned, it provides no gratuity shall be paid to a Government servant until conclusion of departmental or judicial proceedings. In the present case, admittedly, no DE is initiated till date. As regard judicial proceedings, the Applicants are already acquitted by Trial Courts. The "judicial proceedings" as defined under Section 2(1)(i) of Code of Criminal Procedure includes any proceedings in the course of which evidence is or may be legally taken on oath. Needless to mention, on retirement, right to receive gratuity and pension accrues to a Government servant. However, where judicial proceedings or DE at the time of retirement, the payment is deferred till the decision of judicial proceedings or DE. In the present case, the

Applicants being acquitted from the criminal charges and there is no initiation of DE, it is difficult to accept the contention raised by the Respondents that so long as appeal is not decided, they are not entitled to retiral benefits. If such contention is accepted, the payment of retiral benefits would be in abeyance for decades together and there is no certainty to the same since it would be unending.

14. In O.A.No.968/2021, the Applicant was acquitted by Judgment dated 29.04.2005 and still criminal appeal is subjudice though period of more than 15 years is over. Therefore, it would be unjust and iniquitous to deny gratuity and regular pension mainly on the ground of pendency of criminal appeal.

15. This issue of deferment of retiral benefits on the ground of pendency of criminal appeal has been dealt with in various Judgments, which are as under :-

- (a) In **2002(3) LLN 638 (State of West Bengal Vs. Hari Ramalu)**, a Government servant was placed under suspension on account of registration of criminal offence. While consider the scope of definition of “enquiry” and “investigation” under Section 2(9) and 2(4) of Code of Criminal Procedure and Sub-rule 3 of Rule 3 of All India Services (Discipline and Appeal) Rules, 1969, following observations were made :-

“Continuation of the proceedings must relate to investigation, enquiry or trial and such investigation, enquiry or trial, if any, have come to an end with the judgment of acquittal. The same being continuing in the instant case is misconceived, only on the ground that an appeal there against is pending. If respondent is convicted by the appeal Court for commission of a criminal offence, sub-rule (4) of rule 3 of the said Rules would be attracted. Keeping in view the fact that different sub-rules of rule 3 operate in different fields, we are of the opinion that sub-rule (3) of rule 3 be held to be operative only in case namely, when an investigation, enquiry or trial remains pending and not or when the

employee person is acquitted. The situations obtaining under different sub-rule being absolutely different, in our opinion, sub-rule (3) of rule 3 must be given a restrictive interpretation.”

(b) In **2009 SCC Online HP1303 (Chandu Ram Vs. State of H.P.)**, a Government servant was acquitted from the charges under the Prevention of Corruption Act and later retired. Even after acquittal, he was not given gratuity. The Petitioner, therefore, claimed gratuity with interest and also pleaded that he was eligible to be promoted as Deputy Ranger w.e.f. the date his juniors were promoted. The Hon'ble High Court directed to release gratuity with interest.

(c) In **2010 SCC Online P & H 183 (State of H.P. Vs. Banwarilal)** while dealing with the issue of keeping departmental proceedings in abeyance and withholding of gratuity, it was noticed that the Petitioner was already acquitted in criminal case, but DE was kept in abeyance. The Hon'ble High Court held that State had enough opportunity to conclude departmental proceedings instead of keeping the same in abeyance and the provision to withhold gratuity during the pendency of proceedings implies that the concerned authorities takes steps expeditiously to finalize the same. It has been further held that if proceedings are kept pending for indefinite period withholding of pensionary benefits cannot be justified.

(d) In **2010 (2) ALD 773 (Chief Commissioner of Land Administration, A.P., Hyderabad Vs. R.S. Ramakrishna Rao)**, the Hon'ble A.P. High Court considered a case as to whether Government can withhold payment of retiral benefits after acquittal on the ground of pendency of criminal appeal. The Central Administrative Tribunal allowed the Original Application directing the Government to release retiral benefits holding that

the pendency of criminal appeal against the order of acquittal is of no consequences. However, State challenged the decision of CAT before Hon'ble High Court wherein on consideration of A.P. Revised Pension Rules, 1980, it has been held that though Department has right to file appeal, but it cannot be said that judicial proceedings have not been concluded. It has been specifically held that once the Criminal Court acquits the accused, it must amount to be the conclusion of judicial proceedings in the first instance, and therefore, the appeal filed against the Applicant cannot be treated as continuation of criminal proceedings.

(e) In **2013 SCC Online MP 1004 (R.C. Dubey Vs. M.P. State Electricity Board)**, the Petitioner was not granted the benefit of second higher pay scale because of criminal prosecution launched against him under the provisions of Prevention of Corruption Act in which he was acquitted. However, his request for higher pay scale was not considered and his claim was rejected on the ground that the State has filed appeal against the order of acquittal. The Hon'ble M.P. High Court held as follows :-

“The preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceeding as the initial presumption of innocence gets re-enforced by the orders of acquittal. The contention, therefore, put forth by the respondents that the filing of revision against the judgment dated 12.12.2000 would tantamount to the pendency of judicial proceeding does not reason with the provisions as they stand under law. In the considered opinion of this Court, after acquittal, which lead to an affirmation of the innocence of the accused, an appeal or revision, as the case may be, being not a continuation of trial, will not amount to a pendency of judicial proceedings.”

(f) In **2014 SCC Online MP 1036 (Balak Singh Thakur Vs. State of Madhya Pradesh)**, the issue was about wages of suspension period of a Government servant which was rejected by the Government on the ground that against the order of acquittal under the provisions of Prevention of Corruption Act, an appeal

has been preferred. However, Hon'ble High Court rejected the contention of Government that since an appeal was preferred, the Petitioner therein was still under cloud, and therefore, not entitled to finalization of suspension period. The Hon'ble High Court finally turned down the objections stating that they were unjustified.

16. The issue again came up before the Hon'ble High Court of Madras in **Writ Petition No.18853/2015 and MP No.1/2015 (Bharat Sanchar Nigam Ltd. Vs. S. Rajagopal & Ors.) decided on 26.08.2015** though it context of different service conditions, but ultimately, the conclusion boiled down to the determination of scope of the word "judicial proceedings". The Petitioner therein was not given promotion though he was acquitted in criminal case. The Hon'ble Madras High Court held that the pendency of criminal appeal cannot be termed an extension of judicial proceedings and in Para No.19 summarized the position as under :-

"19. The final orders, as indicated in Sub-rules (b) and (c) of Rule 52 (1) of the Pension Rules, are the orders to be passed by the Department upon conclusion of the departmental or judicial proceedings. Once the departmental proceedings end in favour of delinquent employee, there is no question of agitating the orders of the disciplinary authority by the Department itself. Therefore, the final orders are required to be passed for the purpose of payment of retirement benefits."

17. At this juncture, it would be also apposite to refer the decision of Andhra Pradesh High Court in **Writ Petition No.1581/2017 (B.V. Koteswar Rao Vs. State of Telangana & Ors.) decided on 14.03.2018** where in similar situation, denial of retiral benefits on the ground of pendency of criminal appeal found unsustainable. In Para No.8, it has been held as under :-

"8. The rule as interpreted by the Division Bench is clear and the decision of the Division Bench holding the field, it is no more open for the Government to reject request to grant retirement benefits on the very ground that criminal appeal is pending. Even in the counter affidavit no other reason is assigned except referring to pending criminal appeal. There was no application of mind. No discussion on statutory environment and precedent decision operating the field. The attitude and approach of the

authorities is highly deprecated. Due to illegal denial of retirement benefits, employee and his family is subjected to suffering and hardship for more than three years.

18. In this behalf, learned Advocate for the Applicant also referred to the decision rendered by this Tribunal in **O.A.No.843/2016 (Mr. Baban Y. Ghuge Vs. State of Maharashtra & Ors.) decided on 04.07.2017** where in similar situation, retiral benefits were withheld on account of filing of appeal against the Applicant. The Tribunal referred to the decisions referred to above and relying upon these Judicial pronouncements held that the Government cannot deny regular pension and gratuity on the ground of pendency of criminal appeal and directions were given to release the same. As such, this decision being of coordinate Bench of this Tribunal and I see no reason to deviate from it.

19. Thus, the conspectus of these judicial pronouncements is that the filing of revision or appeal against the acquittal cannot be said continuance of the trial and it cannot be treated as pendency of judicial proceedings. Once a person was acquitted from the charges stand at par with a person who is not being charged and was not subjected to criminal proceedings.

20. In view of above, the claim of the Applicants for gratuity, regular pension is totally infeasible. However, at the same time, it would be appropriate that the interest of Government is also protected by taking bond or undertaking from the Applicants that if in future, criminal appeal is allowed and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted by the Department. Such direction would suffice the purpose to balance the rights of the Applicants as well as Respondents.

21. The cumulative effect of aforesaid discussion leads me to sum-up that the impugned orders are unsustainable in law and liable to be

quashed. The Applicants are entitled to gratuity, regular pension and regularization of suspension period as duty period in following terms.

ORDER

- (A) Both the Original Applications are allowed partly.
- (B) The impugned communications rejecting the claim of the Applicants for gratuity and regular pension are quashed and set aside.
- (C) The Respondents are directed to release regular pension, gratuity to the Applicant as per their entitlement within two months from today on furnishing bond/undertaking that if criminal appeal is allowed, and he is asked to refund gratuity, he would refund the same without raising any grievance in lump sum or installments, if permitted or by deduction from monthly pension payable to him.
- (D) The Respondents are further directed to treat the suspension period of the Applicant as duty period, subject to final decision in criminal appeal and shall pass necessary orders.
- (E) In so far as interest is concerned, the Applicants are at liberty to redress the claim of interest independently, as may be permissible in law.
- (F) No order as to costs.

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

Mumbai
Date : 23.12.2021
Dictation taken by :
S.K. Wamanse.

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