

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O. A. NOS. 611 AND 612 OF 2016

(1) ORIGINAL APPLICATION NO. 611 OF 2016

DIST. : AURANGABAD

Shri Ashok s/o Bhaskarrao Deshmukh,
Age. 60 years, Occ. Nil (Pensioner)
R/o H. No. 738, Sahyadri Nagar,
N-5, Cidco, Aurangabad.

-- APPLICANT

VERSUS

- (1) The State of Maharashtra,
Through its Principal Secretary,
Higher & Technical Education Department,
M.S., Mantralaya, Mumbai – 32.
- (2) The Director of Art,
Maharashtra State,
J.J. School of Art Compound,
Dr. D.N. Road, Mumbai – 1.
- (3) The Dean,
Govt. Art College,
Killeark, Aurangabad.
- (4) The Accountant General,
(A&E) – II, Maharashtra State,
Nagpur – 1.

-- RESPONDENTS

WITH

(2) ORIGINAL APPLICATION NO. 612 OF 2016

DIST. AURANGABAD

Shri Bhagwat s/o Malhari Jamadar,
Age. 60 years, Occ. Nil (Pensioner)
R/o Plot no. 1, Gat no. 92,
Peshwe Nagar, Bank Colony,

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Opp. Lohiya Hospital, Satara Parisar,
Aurangabad.

-- APPLICANT

VERSUS

- (1) The State of Maharashtra,
Through its Principal Secretary,
Higher & Technical Education Department,
M.S., Mantralaya, Mumbai – 32.
- (2) The Director of Art,
Maharashtra State,
J.J. School of Art Compound,
Dr. D.N. Road, Mumbai – 1.
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Govt. Art College,
Killeark, Aurangabad.
- (4) The Accountant General,
(A&E) – II, Maharashtra State,
Nagpur – 1.

-- RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, learned Advocate for
the applicants in both the matters.
: Smt. Priya R. Bharaswadkar & Smt. Sanjivani
Deshmukh Ghate, learned Presenting Officers
for respondents in both the matters.

CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

JUDGMENT

(Delivered on this 24th day of January, 2017)

1. Heard Shri Avinash Deshmukh, learned Advocate for the applicants
in both the matters and Smt. Priya R. Bharaswadkar & Smt. Sanjivani

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Deshmukh Ghate, learned Presenting Officers for respondents in both the matters.

2. The applicant in the original application no. 611/2016 Shri Ashok Bhaskarrao Deshmukh has joined the services as a Technical Assistant on 17.6.1980 and w.e.f. 30.9.1981. He was appointed as an Assistant Lecturer in Applied Art. The applicant in the original application no. 612/2016 Shri Bhagwat Malhari Jamadar was appointed as a Assistant Lecturer in Applied Art on 6.8.1986. In the year 1993 both the applicants were promoted as a Lecturer. The applicant in the original application no. 611/2016 retired on superannuation on 31.5.2016, whereas the applicant in the original application no. 612/2016 got retired on 30.9.2016. Till today the pension case of the applicants in both the matters has not been finalized. The provisional pension was granted to both the applicants for the first six months, but thereafter the said provisional pension has been stopped. The applicants are, therefore, claiming that the respondents in general and the res. no. 4 in particular i. e. the Accountant General (A&E) – II, Nagpur shall be directed to continue to pay the provisional pension case and for that 2 separate original applications are filed, which are being disposed of by this common order.


3. In both these original applications, the res. nos. 1 to 3 have filed joint affidavit in reply, which is sworn in by Shri Rohidas Jagannath Zombade, Deputy Director, Directorate of Art, Mumbai. So also in both



these original applications the res. no. 4 has filed affidavit in reply, which is sworn in by Smt. Kamal Motilal Mirani, Assistant Accounts Officer in the office of Accountant General (A&E) – II, Maharashtra, Nagpur. Sum and substance of both the affidavit in replies in both the cases is one and the same.

4. In short, it is the defense of the res. nos. 1 to 3 that the provisional pension can be granted only for the period of 6 months as per rule 126 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short the Pension Rules, 1982) and, therefore, the proposal was not sent for extension of provisional pension.

5. According to the res. no. 4 it cannot grant any pension, unless the proposal is received from the competent authority. It is stated that the res. no. 3 had forwarded the proposal for extension of provisional pension on 8.12.2014 for first six months and in view thereof the A.G. office vide letter dated 28.1.2015 had sanctioned extension of provisional pension for the six months as per rule 126 of the Pension Rules, 1982. It is further stated that under rule 126 of the Pension Rules, 1982, there is no provision for extension of provisional pension beyond one year. It is further stated that as per rule 121 and 125 of the Pension Rules, 1982, it is the responsibility of the appointing authority to forward the pension case of the applicants and in absence of such proposal, no decision can be taken by the res. no.4.



6. It seems from the affidavit in replies of res. nos. 1 to 3 & 4 that they are trying to shirk their responsibility. The learned Advocate for the applicants has invited my attention to the order dated 29.4.2016 passed by this Tribunal in O.A. no. 231/2016, wherein directions were given by this Tribunal to the respondents to grant the provisional pension till finalization of proper pay fixation. The respondents are coming with a case that the directions of this Tribunal in O.A. no. 231/2016 are not applicable in the present case. Surprisingly it is to be noted that the order in O.A. no. 231/2016 is in respect of same department of the respondents.

7. Rule 126 of the Pension Rules, 1982 deals with the provisional pension and gratuity. The purpose of granting provisional pension is to avoid starvation of retired employees. It is the duty of the competent authority to pay pension to the retired employee immediately after retirement and, therefore, the pension papers are to be forwarded six months prior to the retirement and in case there is a delay on account of technicalities, the competent authorities are to pay the provisional pension. There is a provision for extension of provisional pension as per rule 126 (6) (a) of the Pension Rules, 1982, which reads as under :-

“126. Provisional Pension and gratuity –



6 (a) The payment of provisional pension shall not continue beyond a period of six months from the date of retirement of the Government servant *[In case where it is not possible for the Head of Office to get the amount of final pension payable to the Government servant determined from the Audit Officer within a period of six months from the date of his retirement, the said period of six months for payment of provisional pension shall be extended by the Head of Office, in consultation with the Audit Officer, by another six months.] If the amount of final pension and the amount of final gratuity had been determined by the Head of Office in consultation with the Audit Officer before the expiry of the said period of six months, the Audit Officer shall

(i) issue the pension payment order, and

(ii) direct the Head of Office to draw and disburse the difference between the final amount of gratuity and the amount of provisional gratuity paid under sub-clause (ii) of clause (b) of sub rule (4) after adjusting the Government dues, if any, which may have come to notice after the payment of provisional gratuity.”

8. In the present case, there is nothing on record to show that any departmental enquiry or criminal proceedings are pending against the applicants in both the matters. It is stated that the benefits under Assured Career Progression Scheme were granted to the applicants wrongly and



the same are to be recovered from the applicants, but this cannot be a ground to deny the pension to the applicants and it is also very difficult to digest that the applicants are denying to repay the excess payment.

9. In such circumstances, in fact, the proposal to sanction regular pension to the applicants immediately should have been forwarded by the res. nos. 1 to 3 to the res. no. 4. It is evident from the record that the res. nos. 1 to 3 have also not forwarded the proposal for continuation of provisional pension to the applicants till the finalization of the regular pension case of the applicants in both the cases. Hence, I pass following order :-

ORDER

- (i) The O.A. Nos. 611 & 612 both of 2016 stands disposed of.
- (ii) The res. nos. 1 to 3 are directed to immediately forward the proposal to res. no. 4 for grant of monthly provisional pension to the applicants in both the matters with retrospective effect Le. from 16.2015 within a period of 15 days from the date of this order.
- (iii) The res. no. 4 shall sanction the said proposal for grant of monthly provisional pension to the applicants in both the matters with retrospective effect Le. from 16.2015 within a period of 4 weeks from the date of receipt of said proposal.

* i.e. from the date on which the provisional pension of both the applicants is stopped,*

* i.e. from the date on which the provisional pension of both the applicants is stopped,*

[Signature]

- (iv) The applicants in both the matters are also entitled to the arrears of provisional pension.

There shall be no order as to costs.

[Handwritten signature]
27/01/17

MEMBER (J)

ARJ-OA NOS.611 AND 612 OF 2016 JDK (JOINING THE SERVICE - DIRECTION)

* corrections carried out as per order dt. 27.1.17 on speaking to Minutes by the Hon'ble Member (J).

[Handwritten signature]
Registrar
27/1/17.

ORDER ON SPEAKING TO MINUTES

ORIGINAL APPLICATION NO. 611 OF 2016

[Shri Ashok B. Deshmukh Vs. the State of Mah. & Ors.]

WITH

ORIGINAL APPLICATION NO. 612 OF 2016

[Shri Bhagwat Mohan Jamadar Vs. the State of Mah. & Ors.]

CORAM :- Hon'ble Shri J. D. Kulkarni, Member (J)

DATE :- 27.1.2017

Oral Order :-

1. Heard Shri Avinash S. Deshmukh, learned Advocate for the applicants in both the matters and Shri M.S. Mahajan, learned Chief Presenting holding for Smt. Priya R. Bharaswadkar & Smt. Sanjivani Deshmukh Ghate, learned Presenting Officers for the respondents in both the matters.
2. The learned Advocate for the applicants submits that the provisional pension of the applicant in O.A. no. 611/2016 Shri Ashok Bhaskarrao Deshmukh was stopped from 1.6.2015; whereas that of the applicant in original application no. 612/2016 Shri Bhagwat Malhari Jamadar has been stopped from 1.10.2014.
3. In the operative order of the judgment & order delivered by this Tribunal on 24.1.2017 the date of stoppage of provisional pension in respect of applicant in O.A. no. 611/2016 Shri Ashok Bhaskarrao Deshmukh has been

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mentioned as "1.6.2016", however, no date of stoppage of provisional pension has been mentioned in respect of applicant in original application no. 612/2016 Shri Bhagwat Malhari Jamadar.

4. In view thereof, the learned Advocate for the applicants has requested this Tribunal for correction in the judgment (operative order) delivered by this Tribunal on 24.1.2017.

5. Considering the said request, I pass following order :-

ORDER

- (i) In item nos. (ii) and (iii) of the operative order of the judgment dated 24.1.2017 delivered by this Tribunal in O.A. nos. 611 & 612 both of 2016 the words "**i.e. from 1.6.2015**" be deleted and at that place "**i.e. from the date on which the provisional pension of both the applicants is stopped**" be inserted.

The Registrar of this Tribunal shall correct the judgment accordingly and issue fresh copy of judgment to the parties.


MEMBER (J)