

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 556 OF 2015

DISTRICT: AURANGABAD

Shri Sudhir S/o Goturam Adhikari,
Age: 63 years, Occu: Retd. Sr. Assistant
Government Milk Scheme, Aurangabad,
R/o Mayurpark Building No. C-8/3-1,
Jalgaon Road, Harsul, Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Through: Secretary,
Dairy Development Department,
Mantralaya, Mumbai-32.

(Copy to be served on the C.P.O., MAT, Aurangabad)

- 2) **The Regional Dairy Development Officer,**
Govt. Milk Scheme,
Aurangabad.

.. **RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde, learned Advocate
holding for Shri S.G. Kulkarni, learned
Advocate for the Applicant.
: Shri I.S. Thorat, learned Presenting Officer
for the Respondents.

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

O R D E R

(Delivered on this 24th day of August, 2017.)

1. Heard Shri S.D. Dhongde, learned Advocate holding
for Shri S.G. Kulkarni, learned Advocate for the applicant and
Shri I.S. Thorat, learned Presenting Officer for the
respondents.

2. The Original Application was filed by one Shri Sudhir Goturam Adhikari, retired Sr. Assistant in Government Milk Scheme, Aurangabad. Since the original applicant has died during the pendency of the Original Application, his LRs. are brought on record for the purposes of convenience. The original applicant Shri Sudhir Goturam Adhikari, herein after be referred as the applicant.

3. The applicant stood retired on superannuation on 30.06.2009. He was granted pension and Death Cum Retirement Gratuity (D.C.R.G.) on the basis of unrevised pay vide order dated 3.7.2009. His pay scale was revised w.e.f. 1.1.2006 and accordingly, it was revised.

4. While granting the difference of D.C.R.G. amount of Rs. 1,23,585/- was to be paid to the applicant as per order dated 9.7.2010. The said amount has not been paid due to modification of order of sanction. The respondent No. 2 sent reminder to the Accountant General, Nagpur. The applicant has also submitted applications on 12.08.2010 and 13.03.2014 and requested that the amount paid to him. However, the amount has been withheld. On the contrary, on 9.11.2011, the respondents issued show cause notice to the applicant as to why the amount of Rs. 1,02,667/- should not be recovered from him. According to the applicant, the said

notice is illegal and therefore, he has filed present Original Application to quash and set aside the show cause notice dated 9.11.2011 and to direct the respondents to pay Rs. 1,23,585/- along with interest which has been withheld by the respondents.

5. The respondent Nos. 1 and 2 have filed affidavit in reply. The respondents have admitted the fact that the difference of amount worth Rs. 1,23,585/- from the gratuity was to be paid to the applicant, but due to audit objection an amount of Rs. 1,02,667/- is due against the applicant and therefore, same amount has not been paid and sanctioned.

6. In the affidavit in reply in paragraph No. 6, the respondents have submitted that though the applicant is retired on 30.06.2009, he did not challenge show cause notice issued to him, when he was in service and thereafter, as per administrative decision the action was taken by the respondents for recovery of the amount in view of the written representation filed by the applicant on 15.04.2011 and after deducting, the loss suffered to Government. The remaining amount has been paid to the applicant. The applicant is therefore, estopped from claiming the amount recovered.

7. Learned Presenting Officer has placed reliance on one decision taken by the respondent authorities vide letter

dated 23.02.2012 which is at paper book page no. 64 of the paper book. In the said letter, the some observations have been made and conclusion is drawn. The said conclusion is as under:-

“निष्कर्ष :- वरील सर्व बाबींचे अवलोकन केले असता, असे दिसून येते की, श्री. एस. जी. अधिकारी यांनी अपूर्ण पदभार हस्तांतरण करून पदभार देणा-याच्या स्वाक्षरीसहीत अहवाल कार्यालयास सादर केला नाही. तसेच पदभार घेताना हस्तांतरणाचे वेळी कोणत्याही उणिवा निदर्शनास आणून न देण्याची गैरकृती केलेली आहे. पदभार देणा-याची पुरावा म्हणून स्वाक्षरी घेणे आवश्यक होते. तथापि, ही कृती न केल्याने साहित्याची तूट होती का ? असल्यास, केव्हापासून ? यांबाबत संभ्रम निर्माण होतो. याउलट श्री. एस. जी. अधिकारी यांनी बदलीनंतर श्री के.टी. भालेराव यांना पदभार हस्तांतरीत करतांना स्वतःच्या स्वाक्षरीनिशी कमी/तूट असेल्या वस्तूंचे परिमाण नोंदवून कार्यालयास अहवाल दिलेला आहे.

वरील बाबी लक्षात घेवून भांडार साहित्यातील तूट/कमी बाबत सकृतदर्शनी श्री. एस.जी. अधिकारी हेच कारणीभूत असून, शासनाचे नुकसानीस जबाबदार असल्याचे दिसून येते.”

8. From the aforesaid communication dated 23.02.2013 it seems that there was some preliminary enquiry in which the applicant was found guilty for causing loss to the Government and therefore, the loss, which was contemplated to Rs. 1,02,667/- was withheld from gratuity amount. Admittedly, there was no Departmental Enquiry against the applicant during his entire service period and even after his retirement as required under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and therefore, merely on the basis of some conclusions drawn by the respondent authorities, it was not proper on the part of the respondents to

withhold the amount of Rs. 1,02,667/- from the gratuity of the applicant.

9. Learned Presenting Officer has invited my attention to one application dated 15.04.2011, which was filed by the applicant after retirement. In the said application, the applicant himself allowed the respondents to withhold the amount till the decision was taken. It is material to note that in the said application, it has been stated by the applicant that he was undergoing tremendous financial crises and therefore, he requested that the remaining amount be paid to him. This letter cannot be said to be unconditional undertaking by the applicant for allowing respondents to withhold the amount. Admittedly, no enquiry has been held against the applicant and even if for argument sake, it is accepted that the applicant allowed the respondents to withhold the amount, it was subject to decision in the enquiry and not subject to the conclusions drawn by the competent authority.

10. From the record, it seems that there is no evidence to prove that the applicant actually caused loss to the tune of Rs. 1,02,667/- and for that purpose, no enquiry was initiated against the applicant during the service period and in such circumstances, recovery of huge amount from his gratuity

amount may cause great hardship to the applicant and his family. In view thereof, withholding amount of gratuity without any proper enquiry is not legal and proper. Hence, I pass following order:-

ORDER

1. The Original Application is allowed.
2. The show cause notice dated 9.11.2011 issued to the applicant is quashed and set aside.
3. The respondents are directed to pay amount of Rs. 1,23,585/- to the applicant forthwith. If the amount is not paid within a period of three months to the applicant, from the date of this order, the LRs. of the applicant will be at liberty to file representation for interest on the said amount from 30.06.2009 till the same is actually paid as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982.

There shall be no order as to costs.

(J.D. KULKARNI)
VICE CHAIRMAN (J)

Kpb/S.B. O.A. No. 556 of 2015 JDK 2017