

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****With****ORIGINAL APPLICATION NO. 321/2019(S.B.)**

Uttam S/o Manga Jadhav,
Aged about 64 years,
Occupation : Retired,
R/o. Ram Nagar (Jodgavhan),
Tah. Malegaon, District - Washim.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector,
Washim, District - Washim.

Respondents

With**ORIGINAL APPLICATION NO. 322/2019(S.B.)**

Dattaram Shriram Fuke,
Aged about 60 years,
Occupation : Retired,
R/o. Koli, Tahsil - Karanja,
District - Washim.

Applicant.**Versus**

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector,
Washim, District – Washim.
4. Sub-Divisional Officer,
Mangrulpir, District – Washim.

Respondents

Shri A.D.Girdekar, Ld. Counsel for the applicants.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 06th October, 2023.

COMMON JUDGMENT

Heard Shri A.D.Girdekar, learned counsel for the applicants and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. Cases of the applicants in short are as under.

In O.A.No.321/2019, the applicant was working as Revenue Inspector. He was arrested for the offence punishable under

Sections 7, 12, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988 and registered Crime No.3057/2011. The criminal case is pending for the said offence before the Sessions Court, Washim. The applicant was suspended as per order dated 25.07.2011. The enquiry was initiated. The applicant is retired, but the amount of pensionary benefits such as gratuity etc. is not paid to him. Therefore, he has filed the present O.A. for direction to the respondents to release the pensionary benefits.

3. In O.A.No.322/2019, the applicant was working as a Talathi. He was arrested for the offence punishable under Sections 7, 12, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988 and registered CrimeNo.3146/2014. He was suspended and enquiry was initiated. Criminal case is pending therefore, final order in the enquiry is not passed. The applicant is retired. The respondents have not paid pensionary benefits to the applicant. He is getting only provisional pension. Therefore, he has approached to this Tribunal for direction to the respondents to pay pensionary benefits.

4. Both the O.As. are strongly opposed by the respondents. It is submitted that as per Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 pensionary benefits cannot be given to the

applicants till the decision of departmental enquiry or till the decision of criminal case. Hence, the O.As. are liable to be dismissed.

5. The learned counsel for the applicants has pointed out the Judgment of this Tribunal in O.A.No.761/2019, decided on 20.04.2023. In that O.A., the departmental enquiry was closed (dismissed), no any punishment order was passed. Therefore, the O.A. was allowed by this Tribunal.

6. The learned P.O. has pointed out the Judgments of this Tribunal in O.A.No.250/2021, decided on 29.09.2023 and O.A.No.57/2023, decided on 31.08.2023.

7. While deciding the O.A.No.51/2023 this Tribunal has relied on the Judgments of the Hon'ble Bombay High Court, Bench at Nagpur and Bench at Aurangabad.

8. The Hon'ble Bombay High Court, Bench at Nagpur in the case of Parasram Gomaji Nasre Vs. State of Maharashtra & Ors. decided on 07.11.2017, 2018 (3) Mh.L.J., 504, has held as under-

6. Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982, in terms, envisages only payment of provisional pension in such a situation. Rule 4 of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 disqualifies a Government servant from seeking commutation of fraction of his provisional pension during pendency of proceedings against him.

7. The Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad & Ors. decided on 08.01.2019** has held as under-

3. It is not disputed that the criminal prosecution is pending against the petitioner. Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 apply. In view of the said provision, the petitioner is entitled for provisional pension pending the Judicial proceedings. As provisional pension is already sanctioned to the petitioner, the relief of pensionary benefits as claimed by the petitioner can not be granted.

4. The petitioner may make an application to the Court where the criminal prosecution is pending to decide his criminal prosecution expeditiously.

8. Rule 130 1(c) of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under-

130. Provisional pension where departmental or judicial proceedings may be pending:

(1)(a).....

(b).....

(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.

9. This Tribunal has recorded its findings in para 20 as under-

20. Rule 130(1)(c) of pension rule clearly shows that till the conclusion of the departmental enquiry applicant is not entitled to get amount of Gratuity, Leave Encashment etc. Judgments cited by the side of applicant are not applicable to the case in hand. The recent judgments of Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad in the case of Govind Trimbakrao Kanadkhedkar (supra) and also the judgment in the case of Prabhakar Marotirao Dalal (supra) clearly show that during pendency of departmental enquiry, applicant cannot claim Leave Encashment and Gratuity etc. Therefore, applicant is not entitled for the reliefs.

10. The Hon'ble Bombay High Court, Bench at Nagpur and Aurangabad held that Rule 130(1)(c) of the M.C.S. (Pension) Rules, 1982 is very clear. During the pendency of criminal proceeding or during the pendency of enquiry, the respondents may withheld the pensionary benefits such as gratuity etc. In the case of **Govind Trimbakrao Kanadkhedkar (supra)** decided by the Hon'ble Bombay High Court, Bench at Aurangabad has held that when the

criminal case is pending before the Court then the employee/applicant may move before the criminal Court for deciding criminal case as early as possible. It is held that till the pendency of criminal case, the pensionary benefits can be withheld as per the Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982.

11. In view of the decision of the Hon'ble Bombay High Court in the cases of *Parasram Gomaji Nasre (supra)* and *Govind Trimbakrao Kanadkhedkar (supra)*, the applicants are not entitled for relief as prayed. Hence, the O.As. are dismissed. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 06/10/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 06/10/2023.
Uploaded on : 12/10/2023.