

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 329/2023(S.B.)

Avinash S/o Haribhau Jarulkar,
Aged 60 years. Occu.: Nil,
R/o Plot No.19, Chatrapati Nagar,
Wardha Road, Nagpur- 440 015.

Applicant.

Versus

1. State of Maharashtra,
Through its Secretary,
Public Health Department,
10th Floor, G.T. Hospital Campus Building,
New Mantralaya, Fort, Mumbai-01.
2. The Commissioner,
Public Health Department,
Arogya Bhawan, St. Georges Hospital Compound,
CST, Mumbai-01.
3. Deputy Director of Health Services,
Nagpur Region, Matakacheri Compound,
Sraddhanand Peth, Nagpur.
4. District Health Officer,
Zilla Parishad, Nagpur.

Respondents

Shri N.D.Thombre,Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents 1 to 3.
Shri M.Shaikh, Ld. Counsel for the respondent no.4.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 07th March, 2024.

JUDGMENT

Heard Shri N.D.Thombre, learned counsel for the applicant, Shri M.I.Khan, learned P.O. for the Respondents 1 to 3 and Shri M.Shaikh, learned counsel for the respondent no.4.

2. Case of the applicant in short is as under-

Deceased wife of applicant was working as a Medical Officer with respondent no.4. She died due to Cancer on 22.05.2019. The applicant informed to respondent no.4 on 29.06.2019, requesting to pay amount of gratuity, pension etc.. Thereafter, the respondents have not paid any pension, gratuity etc.. Therefore, the applicant approached to this Tribunal by filing O.A.No.319/2021. That O.A. was decided on 15.12.2022 by this Tribunal directing the respondents to pay the arrears of time bound promotion and arrears in respect of revision of pay by granting time bound promotion within a period of three months.

3. During the pendency of that O.A., the respondents have paid amount of pension, gratuity etc.. The applicant has given the Chart in respect of the payment made by the respondents as under-

Sr. No.	Particulars	Interest claimed upto from 01/09/2019
1.	GPF Rs.13,37,390/-	27/11/2019
2.	Temporary Pension Rs.2,19,603/-	12/05/2020
3.	Temporary Pension Rs.2,18,700/-	19/11/2020
4.	Leave encashment Rs.13,34,625/-	13/12/2021
5.	Gratuity Rs.14,00,000/-	19/01/2022
6.	Group Insurance Scheme Rs.9,60,000/-	25/01/2022
7.	Regular Pension Arrears (Month May, 19 to April, 22) Rs.19,88,061/-	23/05/2022
8.	Pension (Month May, 2022) Rs.74,570/-	01/06/2022
9.	Provident Fund Insurance Deposit Rs.60,000/-	28/07/2022
10.	Medical Leave Rs.1,78,988/- 3 Bills.	19/10/2022
11.	7 th Pay Commission Arrears Rs.3,91,576/-	19/10/2022
12.	Benefit of Time Bound Promotion Rs.1,98,141/-	28/02/2023

4. It is submitted that the respondents are at fault and not the applicant and therefore, the applicant is entitled for interest.

5. The O.A. is strongly opposed by the respondents. It is submitted that deceased was appointed in a reserved category i.e. of

N.T.(B), but the deceased not produced any Caste Validity Certificate. Therefore, proposal was moved to the Government to keep her on supernumerary post. It was not decided by the respondents. It is submitted that the respondent no.4 submitted all leave applications to the Deputy Director, Health Services, Nagpur as per letter dated 22.11.2019 by which he was requested to grant leave of 451 days. Thereafter, some query was made. Hence, there was some delay. The delay was not intentionally. The delay was caused because of non-production of Caste Validity Certificate. Hence, the applicant is not entitled for any interest.

6. During the course of submission, the learned counsel for the applicant has pointed out the Judgment of this Tribunal in O.A.No.163/2021 and submitted that the applicant is entitled for interest of the delayed period of payment of pension, gratuity etc..

7. The learned counsel for the respondent no.4 submits that deceased wife of applicant was appointed in reserved category i.e. of N.T.(B) she could not produce Caste Validity Certificate. Therefore, proposal was moved to keep her on supernumerary post. Moreover, her 451 days leave were to be decided by the Deputy Director of Health Department and therefore, gratuity, pension etc. was not paid to the applicant. The applicant applied on 03.12.2021 for provisional family pension. Thereafter, provisional family pension is paid to the

applicant i.e. the husband of the deceased employee (Medical Officer). At last submitted that the applicant is not entitled for interest.

8. In earlier O.A. no such defence was raised by the respondents stating that her service was not regularised for non-production of Caste Validity Certificate.

9. Para nos. 3, 4, 5 and 6 of the order are reproduced below-

3. Shri S. Majid, Id. counsel for R-4 has filed communication dated 15/12/2022 issued by the District Health Officer, Zilla Parshad, Nagpur. It is marked Exh-X. As per this communication, the applicant has received the pensionary benefits except the arrears of time bound promotion and revision of pay, pension and pensionary benefits.

4. As per the said communication dated 15/12/2022, the bill is submitted to the Pay Verification Unit and after sanction, the arrears will be paid.

5. Looking to the communication dated 15/12/2022, the grievances of the applicant are now satisfied.

6. Hence, the O.A. is disposed of with direction to the respondents to pay the arrears of time bound promotion and arrears in respect of revision of pay by granting time bound promotion within a period of three months. In the meanwhile, the point of interest is kept open.

10. It is clear from the order dated 15.12.2023 in O.A.No.319/2021, that the respondent no.4 has paid all the pensionary benefits during the pendency of that O.A.. If it was the

case of the respondents that she was kept on supernumerary post, she was not regular employee etc. then the respondents could not have paid the amount of pension, gratuity etc.. In the order specific direction was given to the respondents to pay arrears of bound promotion and also the revision of pay. This itself shows that this Tribunal came to the conclusion that deceased wife of applicant was regular employee and there was no hurdle for granting time bound promotion etc.

11. Therefore, the contention of the respondents that Caste Validity Certificate was not produced by the deceased wife cannot be a ground to deny the interest on delayed payment. Nothing is on record to show that any show cause notice was issued to the deceased wife of the applicant not to continue her service. Nothing is on record to show that any notice was given to her to produce the Caste Validity Certificate. Therefore, at this stage it cannot be said that the respondents could not pay the pension, gratuity etc. within time because she could not file Caste Validity Certificate. Even letter dated 22.11.2019 shows that the Deputy of Director, Health was requested to grant 451 days leave of the deceased employee. The applicant as per letter dated 29.06.2019 requested the respondent no.4 to pay amount of gratuity, pension etc.. Nothing is on record to show that the applicant was at fault. As per the Judgment of Hon'ble

Supreme Court, the interest is to be granted by taking into consideration, if the employee is not at fault. The Hon'ble Supreme Court in the case of **State of U.P. and Others Vs. Dhirendra Pal Singh (2017) 1 SCC 49** has held as under-

"Pension and gratuity are not any bounty to be distributed by Government to its employees on retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with penalty of payment of interest. Further held, in absence of any plea that delay in payment of retiral dues was due to employee's fault and employer had obtained permission in writing from controlling authority in terms of Section 7(3-A), Payment of Gratuity Act, 1972, appellants liable to pay interest @ 6% p.a. on unpaid pension amount from date it had fallen due and interest @ 8% p.a. on unpaid amount of gratuity from date of retirement of employee till the actual payment."

12. As per the Judgment of Hon'ble Supreme Court, pension is not a bounty it is a property of the employee and therefore if there is any delay on the part of the employer to pay the pension and pensionary benefits and if the employee is not at fault, then employer is bound to pay interest. Hence, the following order.

ORDER

1. The O.A. is allowed.
2. The respondents are directed to pay the interest @6% p.a. to the applicant on the amount of gratuity,

pension etc. after six months from the date the death of deceased wife of applicant.

3. The respondents are directed to comply the above direction within a period of four months from the date of receipt of this order.

3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 07/03/2024.
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 : 07/03/2024.
Uploaded on : 15/03/2024.
