

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 704/2022(S.B.)**

Mr.Rajkiran Singh S/o Hanumansingh Baghel,
Aged about 60 yrs, Occ. Retired,
R/o. Maharbaba Colony,
Dental College, Amravati.

Applicant.

Versus

1. State of Maharashtra through
Police Commissioner Amravati.
2. Deputy Commissioner of Police,
(Headquarter Police Commissionerate Amravati city.)
3. Indian Audit and Accounts
Department Office of the Accountant General,
Accountant General 2 Pension Department,
Old Building, Civil Lines, Nagpur.
4. State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai- 32.

Respondents

Shri A.A.Mardikar, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated: - 10th January, 2024.

JUDGMENT

Heard Shri A.A.Mardikar, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the Respondents.

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

The applicant was appointed as a Police Constable. In the year 2019, one criminal case was lodged against the applicant for the offence punishable under Sections 425, 506 r/w Section 34 of Indian Penal Code and Section 4 of Dowry Prohibition Act. On 19.05.2021, show cause notice was issued by the respondents as to why the penalty of Rs.5,000/- should not be imposed against applicant. On 31.05.2021, reply was filed to the show cause notice. Without giving any opportunity of hearing fine of Rs.5,000/- was imposed upon the applicant. On 13.10.2021, a representation was given by the applicant to the non-applicant for releasing of retiral benefits. The applicant is retired from the service, but the respondents have not paid the retiral benefits to the applicant. Therefore, the applicant has approached to this Tribunal for the following reliefs-

1) Hold and declare that the communication issued by non-applicant No.3 to the applicant No.1 dated 18.01.2022 is illegal, arbitrary.

II) Quashed and set aside the communication issued by non-applicant No.3 dated 18.01.2022 to applicant No.1.

III) Direct the non-applicant No.1 to 3 to process the pension case of the applicant and give the applicant all pending retiral benefits, pending 10 month salary, back dated pension and also commencing of regular pension.

IV) Direct the non-applicant No.1 to 3 to give the said amount due to the applicant after procession of pension papers with 18% interest from 31.05.2021 till its realization.

V) Grant any other relief which this Hon'ble court may found applicant entitled to in the light of facts and circumstances of the present case in the interest of justice.

3. The O.A. is strongly opposed by the respondents. Main contention of the respondents is that as per Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 and Rule 4 of Maharashtra Civil Services (Pension) Rules, 1982, the applicant is not entitled for the pensionary benefits because of the pendency of criminal case. Hence, the O.A. is liable to be dismissed.

4. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.12817/2017, decided on 29.10.2021 and submitted that in view of the Judgment, the applicant is entitled to get pensionary benefits.

5. The learned P.O. has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.6108/2016, decided on 07.11.2017, the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Mohan Khapake Vs. Ahmednagar Municipal Corporation reported in AIR 2016 SCC Online Bom 9784**, the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.3978/2018 in the case of **Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad, Nanded & Ors. decided on 08.01.2019** and Judgment in the case of **Prabhakar s/o Marotirao Dalal Vs. State of Maharashtra and another 2009(1) Mh.L.J.] 209**.

6. The learned counsel for the applicant has pointed out Judgment of this Tribunal in O.A.No.57/2023, decided on 31.08.2023.

7. There is no dispute that criminal case is pending against the applicant. The Rule 4 of Commutation Rules & Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 are very clear. Those Rules are reproduced below-

4. Restriction on commutation of pension

No Government servant, against whom departmental or judicial proceedings have been instituted before the date of his retirement, or the pensioner against whom such proceedings are

instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized or the pension, as the case may be during the pendency of such proceedings.

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 subrule (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 on 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.

(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.

8. The Judgment in the case of *Sau Sheela Rameshchandra Bargaje Vs. the State of Maharashtra & Ors., decided on 29.10.2021* pointed out by the learned counsel for the applicant. It was the submission before the Hon'ble High Court that suspension of the Petitioner was illegal. In view of the Judgment of Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 291*. In para 12 of the Judgment it is observed that daughter-in-law of the Petitioner lodged complaint for the offence punishable under Sections 321, 323 & 506 of I.P.C.. It is not connected with the service of the Petitioner, therefore, directed the employer/respondents to release pensionary benefits.

9. The fact in the cited Judgment is very much different. In the cited Judgment by applicant, the impugned order of suspension was quashed and set aside, in view of the Judgment of Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 291*, the specific order was passed stating that the suspension order dated 08.02.2016 was quashed and set aside.

10. In the present matter, there is no question of suspension. There are various Judgements of Division Bench of the Hon'ble Bombay High Court. In case of **Prabhakar s/o Marotirao Dalal Vs. State of Maharashtra and another 2009(1) Mh.L.J.] 209** it is held that if the criminal case or departmental enquiry is pending, the applicant / employee is not entitled to get pensionary benefits. Thereafter, in the case of **Parasram Gomaji Nasre Vs. State of Maharashtra & Ors. 2018 (3) Mh.L.J., 504 decided on 07.11.2017,** the Division Bench has held that Rule 4 of Commutation Rules and Rule 130 of M.C.S. (Pension) Rules, 1982 are very clear. In para 7 and 8 following observations are made.

7. Adv. Potbhare, however, has relied upon the Division bench judgment of this Court in the case of Vishnu Sonawane vs. Chief Executive Officer, Z.P. Nashik and others, reported at 2015 (3) Mh.L.J. 41 : [2015(2) ALL MR 363]. There, the Division Bench has considered the provisions of Article 300A only and the Bench observes that in absence of any provision in law, pensionary benefit which is recognised as property cannot be withheld and/or stopped. There, employer was Nashik Zilla Parishad.

8. With respect, we find that above legal provisions were squarely applicable even in reported judgment. However, the Bench then did not receive effective assistance. Its attention was not invited to Rule 130 of Pension Rules or Rule 4 of Commutation Rules, supra, by any Advocate. The judgment therefore proceeds on a premise that pension being property, one cannot be deprived of it, except in accordance with law, as mandated by Article 300A. The fact that legal provisions already occupy the field was not pointed out by Nashik Zilla Parishad, to the Court. Said Division Bench judgment therefore does not lay down correct proposition of law and it presumes that there are no legal provisions.

In the case of *Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad, Nanded & Ors.* the Hon'ble Division Bench has held in para 3 and 4 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 cannot be granted.

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

11. In view of the Judgments in the case of *Prabhakar s/o Marotirao Dalal, Parasram Gomaji Nasre and Govind Trimbakrao Kanadkhedkar.* the applicant is not entitled for pension and pensionary benefits, during the pendency of the criminal case. As per the Judgment in the case of *Govind Trimbakrao Kanadkhedkar* the applicant is at liberty to make an application to the criminal Court where the prosecution is pending to decide his criminal case expeditiously. Hence, the following order.

ORDER

The O.A. is dismissed with no order as to costs.

**(Justice M.G.Giratkar)
Vice Chairman**

Dated - 10/01/2024
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 : 10/01/2024.
Uploaded on : 22/01/2024.