

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.302/2016

DISTRICT-AURANGABAD

Narendra s/o Kishanrao Ashtikar,
Age : 62 years, Occ. Nil (Pensioner),
R/o. 1154, "Saikunj", Sai Nagar,
N-6, Cidco, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through its Secretary,
Urban Development Department,
4th Floor, Main Building,
Mantralaya, Mumbai-32.
- 2) The Commissioner-cum-Director,
Directorate of Municipal Administration,
Worli, Mumbai.
- 3) The Divisional Commissioner-
cum-Regional Director of Municipal
Administration, Nashik Division,
Nashik.

...RESPONDENTS

APPEARANCE :Shri A.S.Deshmukh learned Advocate for the
applicant.

:Smt. Resha Deshmukh learned Presenting
Officer for the respondents.

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

DATE: 30th November, 2016.

J U D G M E N T

[Delivered on 30th November, 2016]

The applicant entered service of Government of Maharashtra as Municipal Chief Officer, Grade III on 15-10-1979. He was promoted to the post of Chief Officer Grade II on 18-11-1991 and was granted benefit of Assured Progress Scheme with retrospective effect from 18-11-2003 vide order dated 07-07-2007. On 03-12-2007, he was granted functional promotion to the post of Chief Officer, Grade I in which he worked till the date of his retirement on 31-07-2011.

2. According to the applicant he was neither facing any criminal prosecution nor departmental enquiry sustainable in the eye of law, though one memo was served on him on 07-06-2006 by respondent no.2 whereby it was decided to initiate enquiry against him under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Applicant was paid gratuity amount belatedly in November, 2015. There was absolutely no fault on the part of the applicant for non-payment of gratuity amount from 01-11-2011 to 06-11-2015 and the delay was on account of administrative lapses. Applicant, therefore, claimed

interest under Rule 129-A of Maharashtra Civil Services (Pension) Rules, 1982.

3. Vide communication dated 16-06-2016, applicant's claim for interest was rejected. Said communication is as under (page 87):

“मिजोर फो'क; ककर लहम, वतप; क वुफकस
 दगो.; क्र ; रस धि वकिY; को: /n lq vlyY; k
 फोहोच; प्ल'ह idj. क; क वुफकस ufo&15
 dk; क ukps वरर%Lo; बि'V vfhki क idr >R; कुरj
 R; कु'kj ufo&14 dk; क ukdMq R; कps uk&ns]
 uk&fohोच; प्ल'ह iek.ki= fn-27-04-2015 vlb; s
 uxler dj.; क्र vkys vlgS R; केG] Inj idj. क
 >kysk foye gk vkiY; को: /nP; k foहोच; प्ल'ह
 idj. कph miyC/k dloxni= क vk/कjs l folrj rikl . क
 o R; कवुफकस ?; को; क; क वरे fu. क क Bk
 dk; बघदजर >kysk vlu] R; के/; s izkl fud pd
 >kyh vlgS vl s Eg. krk ; skj ulgh-

2- e- uk- l s fuoRhosu½ fu; e] 1982 e/ky
 fu; e dz129&, e/; s ueq] foyekus inku dj.; क्र
 vkyY; k minukoj 0; कककरP; क rjrohe/ky ¼½; कs
 minukph jDde inku dj.; क्रhy foye gk izkl fud
 pdheG s >kysk vls Li'Vi. k iLFwir gskS vko'; d
 vlgS

3- मिजोर रजम फो'क; क वकिY; क मिनू
 इनूP; क वुफकस >kysk foye gk izkl fud
 pdheG s >kysk ul R; क; ककरps 0; कt inku
 dj.; कप izu mnkor ulgh.”

4. The applicant has been, therefore, constrained to file this O.A. in which he is claiming interest on delayed payment of gratuity from 01-11-2011 to 06-11-2015 as per Rule 129-A of the M.C.S. (Pension) Rules, 1982 and is also claiming that the

impugned order dated 16-03-2016 rejecting interest be quashed and set aside.

5. Respondent no.1 has resisted claim of the applicant. It is stated that the Commissioner and Director, Directorate of Municipal Administration, Mumbai vide memo dated 07-06-2006 initiated departmental enquiry under Rule 8 of the M.C.S. (D & A) Rules, 1979 against the Applicant. Applicant also submitted his reply to the said enquiry on 07-09-2007. The Commissioner and Director, Directorate of Municipal Administration vide letter dated 12-05-2010 forwarded case of the applicant for departmental enquiry to Government of Maharashtra and for appointment of enquiry officer. The Directorate of Municipal Administration also requested Government to make available the copies of documents regarding departmental enquiry against the applicant. In the meantime, applicant got retired on superannuation on 31-07-2011. However, it was found that during the process of the departmental enquiry all documents pertaining to the departmental enquiry were destroyed in fire incidence occurred in Mantralaya on 21-06-2012. The Enquiry Officer was appointed by the Government on 23-10-2013. The enquiry officer also requested for documents vide his letter dated 09-05-2014. Since the applicant has retired on 31-07-2011 as per paragraph 12.3(2) of Chapter 12 of the Manual of

Departmental Enquiry, 1999, enquiry against retired Government servant is to be conducted only if result of such departmental enquiry will result in dismissal of the said Government servant. Taking into consideration the fact that the applicant has retired and relevant documents could not be made available for conducting departmental enquiry, the Government decided to close the departmental enquiry against the applicant, and accordingly, order was issued on 08-04-2015.

6. It is further stated that another enquiry against the applicant along with 16 officers, which include 8 Officers and 8 employees of Sillod Municipal Council, was initiated by the Government as per Rule 12 of the Maharashtra Civil Service (D & A) Rules, 1979. The allegations against the applicant were that while working as Chief Officer, Sillod Municipal Council, he had given illegal permissions for construction and sanctioned lay out in “no development zone” area. However, said incidence was prior to more than 4 years before retirement of the applicant i.e. of 21-11-2002, and therefore, the respondents decided not to initiate enquiry against the applicant. Respondent no.1 further states that the delay for payment of gratuity amount was not due to administrative lapses, and therefore, the applicant is not entitled to interest thereon.

7. Heard Shri A.S.Deshmukh learned Advocate for the applicant and Smt. Resha Deshmukh learned Presenting Officer for the respondents. Perused memo of O.A., affidavit in reply and various documents placed on record by the parties.

8. Material point to be considered is whether the applicant is entitled to claim interest on the delayed payment of gratuity amount ?

9. As per impugned letter, whereby the claim for interest has been rejected, 'no dues' and 'no enquiry' certificates were received from the competent authority on 27-04-2015, and therefore, there was no administrative lapses on the part of the respondents for paying the gratuity amount late.

10. It has to be noted that there is no dispute of the fact that gratuity amount was paid late. Applicant has placed on record one chart at paper book page 86 from which it seems that the applicant got retired on superannuation on 31-07-2011, and he has received amount of gratuity on 06-01-2015. Thus, there is no dispute that amount was paid late. Applicant has calculated interest from which it seems that for the first 3 months from the

date of retirement he has claimed no interest. Thereafter, for the period from 01-11-2011 to 30-10-2012 he has claimed interest @ 7%, from 01-11-2012 to 30-10-2015 @ 10% and from 01-11-2015 to 06-11-2015 @ 10%. Total calculated interest is Rs.1,76,854/- (One lakh seventy six thousand eight hundred and fifty four only).

11. It is material to note that there is no specific denial in the affidavit in reply, and therefore, there is no reason to take objection for such calculation. Even otherwise, competent authority can calculate the interest in case it is directed to pay the interest as per rules. Only question, therefore, remains as to whether the delay is on account of lapse on the part of the respondents or the applicant was responsible for such delay ?

12. From the reply affidavit it seems that when the applicant retired on 31-07-2011 an enquiry was pending against him. That enquiry seems to be from the year 2006. No steps were taken to initiate or complete the departmental enquiry. According to the learned Advocate for the applicant, though the memo of charge sheet was issued on 07-06-2006 neither the enquiry officer appointed nor the documents were supplied to the applicant. Learned Advocate for the applicant has also invited my attention to the fact that even the enquiry officer was appointed on 23-10-

2013 i.e. after lapse of about 7 years. From the reply affidavit itself it is clear that the enquiry officer also sought documents concerning departmental enquiry but the same were not supplied. It is the case of the respondents that relevant documents concerning enquiry of the applicant were destroyed in the fire at Mantralaya, and that seems to be the reason as to why the departmental enquiry was ultimately closed on 08-04-2015. It is mentioned in the said letter as under (page 47):

“kl u vnsk %&

mijDr oLrflFkrh vfk.k l kkl; izkl u
foHkxkps vfhkik; rlp foHkxh; pl'lh fu;e
iqlrdk idj.k 12 e/ky ifjPNa delad 12-3½
uq kj 'kl u funsk nbj v'k i/kdk&;kdMu o
v'k fBdk.kh vfk.k T;k foHkxh; dk; blgh;/s
'kl dh; depljh l or vlrkuk R; k; k cMrQhp
vnsk nsk vkyk vlrk v'k dk; i/nrhuq kj rh
pkyfo.; kr ;bj-

rFki] Jh vk'Vhdj gs fn-31-07-2011
jktth fu;r o;kekukq kj l otkuoRr >kys vlg-
iLr q foHkxh; pl'lh l eakph dxni=s l pkyd]
uxjij'n izkl u l pkyky; o ftYgk/kdjh] uk'kd
; kpdMsmi yC/k ul Y; keGs; k l oZ ckch fopkjr ?kAu
Jh-vk'Vhdj ; kfo:/n fn- 23-10-2012 P;k
vnsk kb; s l q dj.; kr vkyyh foHkxh; pl'lh ph
dk; blgh ca dj.; kr ;s vlg"

Thus, it is clear that the so-called enquiry against the applicant from 2006 could not be completed and ultimately it was closed. Admittedly, the applicant cannot be held responsible for the same.

13. So far as another enquiry is concerned, respondents have clearly stated in reply affidavit in paragraph 16 that it was regarding tenure of the applicant as Chief Officer, Municipal Council, Sillod and it was as regards incident dated 21-11-2002, which is more than 4 years prior to the date of retirement of the applicant. Therefore, the Government has decided not to go further with that departmental enquiry. Thus, admittedly, no departmental enquiry is pending against the applicant, and the applicant was not at all responsible for the so-called delay of the enquiry of 2006 which was ultimately closed on 08-4-2015.

14. Learned Advocate for the applicant has placed reliance on Rule 129-A of the M.C.S. (Pension) Rules, 1982. Said Rule reads as under:

“129-A. Interest on delayed payment of gratuity. – (1) *If the payment of gratuity has been authorized after three months from the date when its payment become due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the following rate on the amount of gratuity in respect of the period beyond three months shall be paid: -*

- (i) *beyond 3 months and up to one year. 7% per annum.*

- (ii) *beyond one year. 10%
per annum.*

[Provided that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter :

Provided further that no interest shall be payable in the case in which a provisional gratuity is sanctioned.”

15. Plain reading of the aforesaid rule clearly shows that the retirement gratuity or death gratuity, as the case may be, shall be considered suo-moto by the concerned administrative department. In the present case, gratuity seems to have not been paid since the applicant was facing some enquiry but the said enquiry was contemplated in 2006 and except appointing enquiry officer, that too in 2013, no effective steps were taken in the said enquiry. Documents were not supplied to the applicant and the enquiry was ultimately closed on 08-04-2015. The applicant, therefore, cannot be blamed for such blunder committed by the respondent authorities and on such ground he cannot be denied interest on the delayed payment of gratuity. The impugned communication whereby it has been stated that there was no administrative lapse on the part of the respondents in not paying interest is not legal and proper, and therefore, same is required to be quashed and set aside. Hence, following order:

ORDER

- (i) O.A. is allowed.
- (ii) Impugned communication dated 16-03-2016 issued by the respondent no.1 rejecting applicant's request for grant of interest on delayed payment of gratuity is quashed and set aside.
- (iii) Respondents are directed to pay the applicant interest on delayed payment of pensionary benefits from 01-11-2011 to 06-11-2015 as per the interest rate admissible under Rule 129-A of the MCS (Pension) Rules, 1982.
- (iv) Such interest shall be paid within 3 months from the date of this order.
- (v) In the peculiar circumstances, there shall be no order as to costs.

MEMBER (J)