

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.913/2017

DISTRICT: LATUR

Dilipkumar s/o. Rama Patil,

Age : 60 years, Occu. : Pensioner,

R/o. Vithal Nagar, Latur,

Tq. & Dist. Latur.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 400 032.

2. The Assistant Commissioner,
Social Welfare Department,
Latur, Dist. Latur.

3. The Regulation Duty Commissioner,
Social Welfare Department, Latur
Dist. Latur.

...RESPONDENTS

APPEARANCE :Shri S.V.Deshmukh, Advocate for the
Applicant.

:Smt. M.S.Patni, Presenting Officer for the
respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 29-11-2019

Pronounced on : 03-12-2019

J U D G M E N T

1. By filing the present O.A., the applicant has challenged the order dated 02-05-2017 issued by the respondent no.2 and prayed to quash and set aside the same and also prayed to direct the respondent no.2 to forward his pension case.

2. The applicant is permanent resident of Latur. He was working as Rector in Government Hostel Unit No.1, Latur. He retired on 31-03-2014 on attaining age of superannuation. On 14-07-2014 he submitted all documents to respondent no.2 for processing his pension case but the respondents had not finalized his pension case. Therefore, he filed complaint to the Lokayukt. In that proceedings, respondent no.2 replied that an amount of Rs.4,00,810/- has to be recovered from the applicant and as the applicant refused to pay the said amount his pension case has not been finalized. Respondent no.3 has directed the respondent no.2 to pay the pensionary benefits from time to time the applicant. Respondent no.2 by letter dated 18-01-2017 informed the applicant that he should deposit an amount of Rs.4,00,810/- and then only his pension

proposal will be sent for finalization. By letter dated 08-07-2017, the applicant informed the respondent no.2 that the recovery is illegal and no details, particulars and period of recovery are mentioned. It is his further contention that by order dated 02-05-2017 the respondent no.2 informed the applicant that if he fails to pay the amount of Rs.4,00,810/-his pension proposal will not be forwarded for finalization and he will be solely responsible for the same. It is his contention that his pension proposal was not forwarded for want of "No Dues Certificate" for the year 2016. It is his contention that there is inaction on the part of the respondent no.2 to forward his pension papers and respondents have illegally claimed the amount of Rs.4,00,810/- from him. Therefore, he has prayed to quash the impugned order and allow the present O.A.

3. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant was serving as Warden at Dr. Babasaheb Ambedkar Boy's Hostel, Osmanabad and he retired from service on 31-03-2014. After retirement, to get pensionary benefits, applicant has to submit No Dues Certificate of his service period but the applicant has not

submitted "No Dues Certificate" in the office of Assistant Commissioner, Social Welfare, Latur. Inspection committee of Regional Deputy Commissioner, Social Welfare, Latur has done accounts inspection for the period 05-03-2014 to 07-03-2014 and it has noted that an amount of Rs.5,40,870/- has to be recovered from the applicant in respect of various monetary frauds committed by him when he was serving at Dr. Babasaheb Ambedkar Boy's Hostel, Osmanabad from 07-07-2009 to 30-09-2013. In the said communication it has been specifically mentioned that the said recovery is towards fraud in respect of amount of Rs.9427/- towards illegal purchase of stationary, Rs.47325/- towards subsistence allowance, Rs.1750/- towards food expenses, amount of Rs.287308/- towards MTR-28, Rs.55000/- towards wages of workers.

4. It is his further contention that thereafter the Assistant Commissioner, Social Welfare, Osmanabad has presented compliance report to the Regional Deputy Commissioner, Social Welfare, Latur in respect of Dr. Babasaheb Ambedkar Backward Boy's Hostel, Osmanabad. In that compliance report, it has been stated that the recovery amount is reduced to the extent of Rs.1750/- in

respect of illegal expenses towards food supply. Therefore, Regional Deputy Commissioner, Social Welfare, Latur has informed about the reduced amount of recovery from the applicant to the Warden of Dr. Babasaheb Ambedkar Backward Boy's Hostel, Osmanabad. The applicant was asked to deposit the said amount from time to time but the applicant has not shown any interest in that regard. Thereafter, the applicant filed complaint before the Hon'ble Lokayukt, Maharashtra Mumbai to get pensionary benefits. The Assistant Commissioner, Social Welfare, Latur has forwarded proposal to the A.G. Nagpur. The applicant has to appear before the District Social Welfare Officer, Osmanabad but he never remained present before the said authority. It is their contention that as per the order issued by the Regional Deputy Commissioner, Social Welfare, Latur the amount to be recovered from the applicant has to be deducted from the gratuity amount of the applicant but due to the absence of the applicant, gratuity amount has not been paid to the applicant. It is their contention that due to delay on the part of the applicant, pension is not granted to him. There is no inaction on the part of the respondents. Therefore, they have prayed to reject the O.A.

5. The applicant has filed affidavit in rejoinder and resisted the contentions raised by the respondents in their affidavit in reply. It is his contention that he has forwarded his "No Dues Certificate" to the respondent no.2 prior to his retirement i.e. on 06-03-2014 and 12-03-2014 regarding all the places where he served i.e. Naldurga, Pathardi & Osmanabad. He had not accepted the recoveries directed against him. It is his contention that recovery of amount of Rs.4,00,810/- was shown initially. Thereafter, the said amount was shown as Rs.5,40,870/-. Thereafter, it has been shown as Rs.4,00,081/-. It is his contention that no opportunity of hearing was given to him before passing the order of recovery.

6. It is his contention that by letter dated 15-04-2019 A.G.Nagpur informed the Treasury, Latur to recover an amount of Rs.1750/- from the applicant. It is his contention that recovery has been shown by abusing process of law and misuse of power by the respondents. He is not liable to pay the amount and he informed the respondents accordingly by letter dated 23-04-2019. It is his contention that for releasing the gratuity amount presence of the applicant in the office is not required. It is

his contention that the respondents have raised false contentions in the reply. It is his contention that the retiral benefits cannot be withheld without giving any reason. Therefore, he has prayed to allow the O.A.

7. I have heard Shri S.V.Deshmukh Advocate for the Applicant and Smt. M.S.Patni Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

8. Admittedly, the applicant was serving as Rector in the Government Hostel, Unit-1, Latur. He retired on 31-03-2014 on superannuation. Admittedly, his pension papers had not been processed by the respondents since the recovery of amount has been shown in the inspection report of inspection of accounts conducted by the higher authorities. Learned Advocate for the applicant has submitted that the applicant retired on attaining age of superannuation w.e.f. 31-03-2014. He has submitted that before his retirement necessary "No Dues Certificate" was submitted to the concerned authorities but the respondents had not processed the pension papers.

9. He has further submitted that after retirement, respondent nos.2 and 3 on the basis of inspection report contended that the amount of Rs.540870/- has to be recovered from the applicant on account of irregularities and fraud committed by him. Therefore, his pension has been withheld. He has submitted that the respondents never issued any notice to him before fixing the liability to pay an amount of Rs.400810/-. Therefore, the pension of the applicant cannot be withheld. He has submitted that the respondents cannot ask the applicant to deposit the said amount and cannot say that after depositing the said amount only they will process the papers of the applicant. He has submitted that there is no just reason for withholding the pension of the applicant.

10. He has submitted that in fact the respondent authorities where the applicant served prior to his retirement issued No Dues Certificate and No Objection Certificate which are required for processing the pension papers of the applicant. At that time, nobody mentioned that the applicant owes amount to the department. Therefore, the impugned communication by which the respondents directed him to deposit the amount before

processing the pension papers is illegal. He has submitted that alleged recovery has been shown from the applicant after his retirement, and therefore, the said recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**].

11. He has further submitted that initially the respondents had shown the recovery of Rs.400810/- from the applicant. Thereafter, they claimed different amounts from him and lastly as per the reply submitted by the respondents, an amount of Rs.1750/- is shown to be due from the applicant. He has argued that the respondents are not sure about the exact amount to be recovered from the applicant. As on today, they are claiming an amount of Rs.1750/- from the applicant. He has submitted that for the said meagre amount respondents cannot withhold the pension and pensionary benefits of the applicant. Therefore, he has prayed to quash the impugned order and to direct the respondents to process the pension case of the applicant forthwith. He has argued that getting pension is right of the retired employee and the said is guaranteed under Article 300-A of the Constitution of India and the

said right cannot be taken away without following the due process of law. He has submitted that the respondents have deprived the applicant from getting his lawful rights. Therefore, he has prayed to allow the O.A.

12. Learned Advocate for the applicant has placed reliance on the judgment in the case of (1) **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**], (2) **State of Jharkhand & Ors. V/s. Jitendra Kumar Srivastava & Ors.** reported in [(2013) 12 SCC 210], and (3) **Dudh Nath Pandey V/s. State of Jharkhand** reported in [**LAWS (JHAR)-2007-8-107**] in support of his submissions.

13. Learned P.O. has submitted that the applicant had retired on 31-03-2014. After retirement, applicant has to submit No Dues Certificate issued by the concerned authorities where he served but the applicant has not submitted the No Dues and No Objection Certificate to the office of Assistant Commissioner, Social Welfare Department, Latur, and therefore, his pension papers are not processed. She has submitted that at the time of inspection of accounts in the office where he served lastly,

the inspection committee noted some irregularities and fraud. Therefore, initially, it was held that the applicant was liable to pay an amount of Rs.400810/-. Thereafter, in the inspection report said amount has been shown as Rs.540870/-. She has submitted that the said amount contains loss of Rs.9427/- because of fraud in purchase of stationary, Rs.47325/- regarding subsistence allowance, Rs.1750/- regarding food expenses, amount of Rs.287308/- for MTR-28, and an amount of Rs.55000/- towards wages of workers.

14. She has submitted that thereafter, the Assistant Commissioner, Social Welfare, Osmanabad has submitted compliance to the inspection report and notes to the Regional Deputy Commissioner, Social Welfare, Latur in respect of inspection of Dr. Babasaheb Ambedkar Backward Boy's Hostel, Osmanabad. In the said report it has been mentioned that the recovery amount is reduced to Rs.1750/- towards illegal expenses in food supply. She has submitted that the applicant is liable to pay the said amount but he has not deposited the said amount, and therefore, his pension papers are not processed. She has submitted that there is no illegality on the part of the

respondents and respondents will submit pension case to the A.G.Nagpur as soon as the applicant deposits the said amount. Therefore, she has prayed to reject the O.A.

15. On perusal of the documents on record it is evident that the applicant has retired on 31-03-2014. At the time of retirement i.e. by letter dated 13-03-2014 (paper book page 45), Assistant Commissioner, Social Welfare Department, Latur submitted "No Dues Certificate and No Objection Certificate" to the Commissioner, Social Welfare Department, Pune. In the said "No Dues Certificate and No Objection Certificate" it has been specifically mentioned that no Government dues were due from the applicant. On the basis of said No Dues Certificate, respondents ought to have processed the pension papers of the applicant. On the date of retirement, nothing was due to the Government from the applicant, and therefore, there was no legal impediment to the respondents to process the pension papers of the applicant but the respondents had not taken any action in that regard. After retirement, on the basis of inspection report, prepared by the Regional Deputy Commissioner, Social Welfare, Latur pension sanctioning

authority raised objection regarding dues recoverable from the applicant.

16. Initially, they claimed that an amount of Rs. Rs.400810/- was due from the applicant. Thereafter, they claimed different amounts from him and lastly, an amount of Rs.1750/- is shown to be due from the applicant. He has argued that the respondents are not sure about the exact amount to be recovered from the applicant. Respondents have noticed that some amount is due from the applicant after his retirement and that cannot be a ground to withhold the pension and pensionary benefits of the applicant as per the settled legal principle laid down in the above cited decisions. Had it been a fact that the applicant was held responsible to make good of loss caused to the Government while in service, concerned authority of the respondents ought to have taken proper and appropriate action against the applicant for recovery of the said amount as per service rules. But the respondents had not taken any action in that regard. On the contrary, they preferred to keep the pension case of the applicant pending without just cause. Said act on the part of the respondents is illegal and against the provisions of the Maharashtra

Civil Services (Pension) Rules, 1982. Impugned communication issued by the respondents asking the applicant to deposit the amount without fixing the responsibility of the applicant is illegal. The impugned communication issued by the respondents informing that the applicant's pension case will not be processed till he deposits the amount, is illegal. Therefore, it needs to be quashed and set aside by allowing the O.A.

17. I have gone through the abovesaid decisions/citations referred to by the learned Advocate for the applicant. I have no dispute regarding the settled legal principles in the said decisions. It is right of the Government employee to get pension. Said right is a fundamental right to property and this right cannot be taken away without following due process of law. In absence of specific rules, pension cannot be withheld. There is not justifiable ground to withhold the pension and pensionary benefits of the applicant. Impugned decision on the part of the respondents of recovering the amount from the applicant is illegal and therefore it requires to be quashed and set aside by allowing the O.A.

18. In view of the discussion in the foregoing paragraphs, O.A. is allowed. The impugned communication dated 02-05-2017 is quashed and set aside. Respondents are directed to process pension case of the applicant and disburse the pensionary benefits to the applicant within 3 months from the date of this order. Respondents are at liberty to recover amount due from the applicant on account of loss, if any, caused to the Government as per rules, by following due process of law. There shall be no order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 03-12-2019.