

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 514 OF 2022
(Subject – Interest on Delayed Payment)**

DISTRICT : PARBHANI

Madhukar S/o Sitarampant Dudhgaonkar,)
Age : 71 years, Occu. : Retired as)
Awal Karkoon (Senior Clerk),)
R/o : Sharayu-A, Wing-1, Flat No. 203,)
Dishnagari, Beed Bye Pass Road,)
Aurangabad, Tq. & Dist. Aurangabad.)

.... **APPLICANT**

V E R S U S

- 1. State of Maharashtra,)**
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai-32.)
- 2. The Collector,)**
Collectorate Office, Parbhani,)
Tq. & Dist. Parbhani.)
- 3. The Tahsildar,)**
Tahsil Office, Jintoor, Tq. Jintoor,)
Dist. Parbhani.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Bhise, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 19.04.2024

PRONOUNCED ON : 10.06.2024

ORDER

1. Heard Shri K.B. Bhise, learned counsel appearing for the applicant and Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking declaration that he is entitled for interest on delayed payment of pension and gratuity for a period from 31.05.2010 to 13.12.2021 as per Rule 129(A) and 129(B) of the Maharashtra Civil Services (Pension) Rules, 1982. The applicant is also seeking direction to the respondent No. 1 to grant the interest on the delayed payment of gratuity and pension.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

- (i) The applicant was working as Awal Karkoon (Senior Clerk) in the office of respondent No. 3 i.e. the Tahsildar, Jintur, Dist. Parbhani. The applicant came to be retired on 31.05.2010 on attaining the age of superannuation. It is the further case of the applicant that on 31.12.2009, the

respondent No. 2 i.e. The Collector, Parbhani had issued show cause notice with memorandum of charge under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal), Rules, 1979 and directed the applicant to submit the reply in respect of the charges levelled against him in the charge sheet within a period of 10 days from the date of receipt of the notice. The applicant has submitted reply on 08.01.2010.

(ii) It is the further case of the applicant that respondent No. 2 i.e. the Collector, Parbhani had decided to hold the joint enquiry of the employees, who were involved in the said matter and accordingly, forwarded proposal for holding joint enquiry under Rule 12 of the Maharashtra Civil Services (Discipline and Appeal), Rules, 1979 to the Divisional Commissioner, Aurangabad Division, Aurangabad on 03.04.2010. This information was given to the applicant by communication dated 12.07.2011 (Annexure A-3) issued by respondent No. 2 i.e. the Collector, Parbhani. The Divisional Commissioner, Aurangabad Division, Aurangabad has forwarded the said proposal received from respondent No. 2 i.e. the Collector,

Parbhani to the respondent No. 1, which is the competent authority on 03.09.2010 (Annexure A-4).

(iii) It is the further case of the applicant that he has made a representation to respondent No. 1 on 26.02.2013 (Annexure A-5) stating therein that he came to be retired on 31.05.2010 and due to pendency of said Departmental Enquiry, the applicant is not getting the full pension and thus requested to finalize the enquiry pending against him.

(iv) The applicant further contends that though he was retired on 31.05.2010, there was no progress in the said enquiry. Consequently, on 01.01.2021 (Annexure A-6) the applicant had approached Lok Ayukta stating his grievance pointing out that there is no progress in the enquiry at the level of respondent No. 1 since 2009. The applicant has also pointed out that in last 12 years, no enquiry officer has been appointed nor the Presenting Officer to conduct the enquiry. However, under the pretext of pendency of enquiry, the applicant is deprived from getting full pension and gratuity.

(v) It is the further case of the applicant that after representation submitted to the Lok Ayukta, the

respondent No. 1 issued letter dated 18.05.2021 (Annexure A-7) to the Divisional Commissioner, Aurangabad Division, Aurangabad stating therein that as per Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, no enquiry can be continued against the applicant and therefore, name of the applicant has been deleted from the said enquiry.

(vi) The applicant further contends that pursuant to the letter dated 18.05.2021, the respondent No. 2 i.e. the Collector, Parbhani has issued letter dated 12.07.2021 (Annexure A-8) calling information from respondent No. 3 i.e. the Tahsildar, Jintur, Dist. Parbhani. Thereafter respondent No. 2 i.e. the Collector, Parbhani has issued no enquiry certificate on 29.07.2021 (Annexure A-9) stating therein that no enquiry is pending against the applicant. As the name of the applicant was deleted from the enquiry and no enquiry certificate has been issued, the proposal for pension of the applicant came to be submitted to the Accountant General, Nagpur by respondent No. 3 i.e. the Tahsildar, Jintoor, Dist. Parbhani on 21.10.2021 for grant of pension. Accordingly, the Accountant General, Nagpur has sanctioned pension on 13.12.2021. However, the

applicant has not been paid the pension amount for the month of November, 2021 to February 2022. The applicant has received this amount of pension in the month of March 2022 and since March, 2022 the applicant is receiving pension regularly.

(vii) It is the case of the applicant that he retired on 31.05.2010 and as the enquiry was pending against him, he was receiving 90% of pension till 13.12.2021. However no gratuity has been paid to the applicant in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. However, after deletion of the applicant's name from the enquiry and after sanctioning of final pension, the applicant has received gratuity, commutation of pension and remaining pension 10% as detailed in para No. 11 of the Original Application.

(viii) It is the case of the applicant that he has not received interest on the delayed pension, for which he was not responsible. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant was to receive entire pensionary benefits within a period of six months from the date of retirement i.e. 31.05.2010.

However, under the pretext of pendency of Departmental Enquiry, no final pension and gratuity has been paid to the applicant. Learned counsel submits that the applicant is entitled to receive the interest on the amount of Rs. 11,90,392/- as detailed in para No. 11 of the Original Application in terms of the provisions of Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982.

6. Learned counsel for the applicant submits that there is a failure on the part of the administrative department, so far as the payment of gratuity is concerned. The administrative department has to consider suo-motu grant of interest on delayed payment of gratuity. Further no provisional gratuity has been paid to the applicant due to pendency of the Departmental Enquiry. The gratuity amount has to be paid within a period of three months from the date of retirement. Learned counsel submits that in the instant case, the gratuity has been paid after the period of 12 years. Therefore, the respondent No. 1 is liable to pay the interest at the rate applicable to the General Provident Fund Deposit.

7. Learned counsel for the applicant submits that the applicant was unnecessarily dragged in the Departmental

Enquiry, though having knowledge that no enquiry has been conducted or initiated against the retired employees for the incident occurred four years prior to the date of retirement. Though respondent No. 1 has rightly deleted the name of the applicant from the enquiry in terms of the provisions of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, the applicant has not been granted the interest on the delayed payment of gratuity.

8. Learned counsel for the applicant submits that if the enquiry was not initiated against the applicant, the applicant would have got pension in the year 2010 itself. The respondent No. 1 has wrongly initiated the enquiry against the applicant and for 12 years, there was no progress in the enquiry. The applicant is also entitled for the interest on the delayed payment of pension, as there was no failure on the part of the applicant.

9. Learned counsel for the applicant submits that the respondent No. 2 i.e. the Collector, Parbhani has issued charge-sheet in the year 2009 with mala-fide intention. The respondent No. 2 i.e. the Collector, Parbhani forwarded the proposal for joint enquiry under Rule 12 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 after retirement of the

applicant. There is unnecessary delay in payment of pensionary benefits, which is attributable to the respondent No. 1 alone. The applicant, thus, entitled for the interest on the delayed payment of gratuity. Learned counsel submits that the present Original Application thus deserves to be allowed.

10. Learned counsel for the applicant placed his reliance on the following case laws to substantiate his contentions :-

(i) S.K. Dua Vs. State of Haryana & Anr., AIR 2008 Supreme Court 1077.

(ii) W.P. No. 4162/1999 (State of Maharashtra Vs. Satyadeo Nandakishore Awashti through his Lrs.), decided on 21.08.2013.

(iii) R.P. Kapur Vs. Union of India and another, AIR 1964 Supreme Court 787.

11. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 2 and 3 submits that the applicant came to be retired on 31.05.2010 on attaining the age of superannuation on the post of Awal Karkun. The applicant was issued show cause notice with memorandum of charge on 31.12.2009 under rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and calling upon the applicant to submit his explanation within 10 days. The

applicant has submitted explanation to the aforesaid charges on 08.01.2010. Thereafter, the respondent No. 2 i.e. the Collector, Parbhani found it necessary to initiate the joint enquiry of the employees, who were also involved jointly in the said enquiry. Therefore, the proposal for holding the joint enquiry under Rule 12 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was forwarded to the Divisional Commissioner, Aurangabad on 03.04.2010 and the aforesaid information was communicated to the applicant vide letter dated 12.07.2011. The Divisional Commissioner, Aurangabad Division, Aurangabad on 03.09.2010 forwarded the aforesaid proposal to respondent No. 1 State for seeking permission to hold the joint enquiry. Learned P.O. submits that so far as representation dated 26.02.2013 made by the applicant to respondent No. 1 State about not getting full pension and gratuity and requested about finalization of enquiry pending against him is concerned, the applicant has submitted the representation to the respondent No. 1 and also approached to the Lok Ayukta. Learned P.O. submits that the respondent No. 1 vide letter dated 18.05.2021 informed to the Divisional Commissioner, Aurangabad Division, Aurangabad that in terms of the provisions of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, no enquiry can be continued

against the applicant and therefore, name of the applicant has been deleted from the said enquiry. Learned P.O. submits that after deletion of name of the applicant from the Departmental Enquiry, the pensionary benefits have been given to the applicant.

12. Learned Presenting Officer submits that the Departmental Enquiry was initiated in the year 2009, which is well in time of retirement of the applicant i.e. 31.05.2010 and the charges were also communicated and served on the applicant. Learned P.O. submits that the applicant was also received the provisional pension including the period from 01.06.2010 to 30.11.2010 i.e. for six months. The applicant continuously received the pension till 31.10.2021 from the office of respondent No. 3 and rest of the pension was received from the office of Treasury, Parbhani for the period from November, 2021 to January, 2022.

13. Learned Presenting Officer submits that though the applicant was received the pensionary benefits within six months from the date of his retirement, but in view of the provisions of Rule 129 (A) and 129(B) of the Maharashtra Civil Services (Pension) Rules, 1982 due to pendency of Departmental Enquiry

no final pension and gratuity has been paid to the applicant. Learned P.O. submits that in view of the same, the applicant is not entitled for the interest on the pensionary benefits and gratuity due to the Departmental Enquiry pending against the applicant, though on 18.05.2021 the name of the applicant subsequently dropped / deleted from the Departmental Enquiry along with other 2 delinquents. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

14. In the instant case, the facts of the case are peculiar. Thus, date wise admitted facts need to be reproduced herein below to understand the gravity :-

- (i) The applicant came to be retired on **31.05.2010** on superannuation on the post of Awal Karkoon (Senior Clerk).
- (ii) The respondent No. 2 i.e. The Collector, Parbhani had issued show cause notice with memorandum of charge under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal), Rules, 1979 and the applicant served with the proposed charges on **31.12.2009**.

(iii) The respondent No. 2 i.e. the Collector, Parbhani found it necessary to initiate the joint enquiry of the employees, who were also involved jointly in the said enquiry. Therefore, the proposal for holding the joint enquiry under Rule 12 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was forwarded to the Divisional Commissioner, Aurangabad Division, Aurangabad on **03.04.2010**.

(iv) The aforesaid information about the joint trial was communicated to the applicant by respondent No. 2 vide letter dated **12.07.2011**.

(v) The Divisional Commissioner, Aurangabad Division, Aurangabad on **03.09.2010** forwarded the proposal of joint trial to respondent No. 1 i.e. the State of Maharashtra for seeking permission to hold the join enquiry.

(vi) The Accountant General, Nagpur has sanctioned proposal about the provisional pension to the applicant on **25.11.2010**. The provisional pension has been paid to the applicant to the extent of 90% of the pension.

(vi) The applicant has submitted representation to respondent No. 1 State for availing his retiral benefits with a request to complete the Departmental Enquiry at the earliest on **26.02.2013**.

(vii) The respondent No. 1 has informed to the Divisional Commissioner, Aurangabad Division, Aurangabad vide letter dated **18.05.2021** that as per the Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, no enquiry can be continued against the applicant and therefore, name of the applicant has been deleted from the said enquiry.

(viii) The respondent No. 2 i.e. the Collector, Parbhani has issued letter dated **12.07.2021** calling information from respondent No. 3 i.e. the Tahsildar, Jintur, Dist. Parbhani in respect of pensionary benefits sanctioned and pending.

(ix) The respondent No. 2 i.e. the Collector, Parbhani has issued no enquiry certificate on **29.07.2021** stating therein that no enquiry is pending or proposed against the applicant.

(x) The applicant has received final pension, gratuity, commutation of pension and remaining pension of 10% on **13.12.2021**. The applicant has not been paid the pension amount for the month of November, 2021 to February 2022. The applicant has received the said amount of pension in the month of March 2022 and since March, 2022 the applicant is receiving the pension regularly.

15. The admitted facts as reproduced hereinabove are disturbing and frustrating also. The applicant was retired on 31.05.2010 on attaining the age of superannuation. In terms of the provisions of Rule 27(6) of the Maharashtra Civil Services (Pension) Rules, 1982, the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. In the instant case, the applicant was served with the statement of charges on 31.12.2009 and the proposal for holding joint enquiry under Rule 12 of the Maharashtra Civil Services (Discipline and Appeal), Rules, 1979 was forwarded to the Divisional Commissioner, Aurangabad Division, Aurangabad on 03.04.2010 and after more than one year, the said information was communicated to the applicant

vide letter dated 12.07.2011. It is pertinent to note here that thereafter no communication has been made about the sanction of proposal about the joint trial, nor the enquiry officer was appointed. The respondent authorities have also not made it clear as to what happened to the said proposal about holding of joint trial and the details about the progress of said Departmental Enquiry. There is a only reference that on 18.05.2021 the respondent No. 1 informed to the Divisional Commissioner, Aurangabad Division, Aurangabad that in terms of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, no enquiry can be continued against the applicant and therefore, name of the applicant has been deleted from the said enquiry. There is nothing on record to indicate as to what happened after the statement of the charges served on the applicant on 31.12.2009 and the proposal for joint trial forwarded to respondent No. 1 on 03.04.2010.

16. Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 speaks about the interest on delayed payment of gratuity and pension respectively. They are reproduced herein below :-

“129A. Interest on delayed payment of gratuity. (1) Where the payment of retirement gratuity or death gratuity, as the case may be, has been delayed beyond the period of three months

from the date retirement or death, and it is clearly established that the delay in payment was attributable to administrative lapse, an interest at rate applicable to General Provident Fund deposits shall be paid on the amount of gratuity, in respect of period beyond three months:

Provided that, no interest shall be payable if the delay in payment of such 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 where a provisional gratuity is paid.

(2) Every case of delayed payment of retirement gratuity or death gratuity, as the case may be, shall suo motu, be considered by the concerned Administrative Department, and where the Department is satisfied that the delay in the payment of such gratuity was caused on account of administrative lapse, that Department shall sanction payment of interest after obtaining the admissibility report, in this behalf, from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for the payment of such interest shall not be necessary.

(3) In all cases, where interest has been paid on retirement gratuity or death gratuity, as the case may be, due to administrative lapse, the concerned Administrative Department shall fix the responsibility and take disciplinary action against the Government servant or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of such gratuity and recover the amount of interest required to be paid from the Government servant or servants concerned including the concerned officer who are found responsible for the delay in the payment of such gratuity.]

(4) If a result Government's decision taken subsequent to the retirement of a Government servant, the amount of gratuity already paid on his retirement is enhanced on account of-

(a) grant of pay higher than the pay on which gratuity, already paid was determined, or

(b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the Government servant concerned, no interest on the arrears of gratuity shall be paid.

129 B. Interest on delayed payment of Pension. *(1) Where the payment of pension or family pension authorised after six months*

from the date when its payment became due, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of pension, in respect of the period beyond six months:

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

Provided further that no interest shall be payable for the period for which a provisional pension is paid. In case of Government servant to whom provisional pension is sanctioned an interest as provided shall be paid after a period of six months from the cessation of provisional pension till the final pension is authorised.

(2) Every case of delayed pension or family pension, as the case may be, shall suo motu, be considered by the concerned Administrative Department, and where the Department is satisfied that the delay in the payment of such pension was caused on account of administrative lapse, that Department shall sanction payment of interest after obtaining the admissibility report in this behalf from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for the payment of such interest shall not be necessary.

(3) In all cases, where interest has been authorized on pension or family pension, as the case may be, due to administrative lapse, the concerned Administrative Department shall fix the responsibility and take disciplinary action against the Government servant or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of such pension and recover the amount of interest required to be paid from the Government servant or servants concerned including the concerned officer who are found responsible for the delay in the payment of such pension.]

(4) If as a result of Government's decision taken subsequent to the retirement of a Government servant, the amount of pension already paid on his retirement is enhanced on account of-

(a) grant of pay higher than the pay on which pension, already paid, was determined; or

(b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the Government servant concerned, no interest on the arrears of pension shall be paid.]”

17. In the instant case, it is difficult to believe that the respondent authorities were not knowing the importance about timely initiation and completion of Departmental Enquiry against the Government employee, who came to be retired on attaining the age of superannuation. After institution of the enquiry in the instant case, the respondent authorities have not only taken any steps to proceed with the Departmental Enquiry for a period of 11 years, but even not bothered to appoint the enquiry officer to conduct the enquiry or begun with the enquiry by the disciplinary authority itself. Thus, it is clearly established that the delay in payment of gratuity and the provisional pension to the extent of 10% (since 90% provisional pension has been paid to the applicant) was attributable to the administrative lapses. In terms of the provisions of Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982, the aspect of delayed payment is required to be considered by the concerned administrative department, however, there is nothing on record to indicate that the respondent authorities have taken any efforts to consider the said aspect.

18. In the backdrop of the aforesaid facts and the legal position, it has to be presumed that the gratuity is deemed to have been fallen due on the date immediately falling the date of

retirement for the purpose of interest. In terms of Rule 27 (2)(b) (ii) of the Maharashtra Civil Services (Pension) Rules, 1982, the departmental proceedings shall not be continued in respect of any event, which took place more than four years before such institution. It thus appears that the respondent authorities have not proceeded with the Departmental Enquiry against the applicant mainly for the reason that the event, which is the subject matter of the enquiry against the applicant, took place more than four years before such institution. In view of the same, the delay in payment of gratuity and pension beyond the period of three months from the date of retirement is clearly attributable to the administrative lapses. The applicant is entitled for the interest on the delayed payment of gratuity and pension to the extent of 10% at the rate applicable to the General Provident Fund Deposits. It is obligatory on the part of concerned Administrative Department to fix the responsibility and to take disciplinary action against the concerned officer, who is found responsible for the delay in payment of such gratuity and recover the amount of interest required to be paid to the Government servant.

19. Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 covers the delay in payment of

gratuity and pension respectively. Consequently, the applicant is entitled for the interest on the delayed payment of gratuity and pension to the extent of 10%.

20. In view of the discussion as above, I proceed to pass the following order :-

ORDER

- (i) The Original Application No. 514/2022 is hereby partly allowed.
- (ii) The applicant is entitled for the interest on the delayed payment of gratuity in terms of the provisions of Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982 and pension to the extent of 10% from the date of retirement i.e. from 31.05.2010 till 13.12.2021 at the rate applicable to the General Provident Fund deposits in terms of the provisions of Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982.
- (iii) The respondents shall pay the interest to the applicant as expeditiously as possible and preferably within a period of three months from the date of this order.

- (iv) The concerned Administrative Department of the respondent authorities is hereby directed to fix the responsibility and to take disciplinary action against the Government servant or servants concerned, including the concerned officer, who are found responsible for the delay in payment of such gratuity and recover the amount of interest required to be paid to the Government servant under intimation to this Tribunal as early as possible within a period of six months from the date of this order.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 10.06.2024

(Justice V.K. Jadhav)
Member (J)