

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.1312 OF 2023**

**DISTRICT : THANE  
SUB : Retiral Benefits**

Dr. Rajendra Sitaram Kelkar, )  
Age:- 60 years, Occ : Retired as Additional Civil )  
Surgeon cum Medical Superintendent, Wangaon )  
Dist. Palghar, R/o. 1006, 'Nakshatra', Vijay Park,) )  
Kasarwadawali, Dist. Thane. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, through )  
Additional Chief Secretary, Public Health )  
Department, O/at Dhobi Talao, C.S.T. )  
Hospital Campus, Fort, Mumbai 400 001. )
- 2) The District Civil Surgeon, Civil Hospital, )  
Dist. Palghar, having office at Kacheri Road)  
Palghar. )...**Respondents**

Shri G. A. Bandiwadekar, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Hon'ble Member (J)

Reserved on : 06.01.2025

Pronounced on : 09.01.2025

**JUDGEMENT**

Heard Shri G. A. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant retired on superannuation on 31.01.2023 as Medical Superintendent. His retiral benefits as well as arrears of Special Pay were not released. Hence, this O.A. seeking directions for release of these amounts with interest.

3. At 'Exhibit A', the Applicant has furnished a chart as follows :-

Sr. No.	Item	Date due	Date Payment of	Amount Received	Interest on delayed payment 8%
1	Government Insurance Scheme	February, 2023	12/04/2023	Rs.4,21,728/-	
2	Government Provident Fund GPF	February, 2023	25/07/2023	Rs.13,89,834/-	
3	Provisional / Regular Pension	February, 2023	01/09/2023	Rs.6,23,664/-	Rs.16,560/-
4	Gratuity	February, 2023		Rs.14,00,000/- (Not yet received)	Rs.74,666/-
5	Leave Encashment	February, 2023		Rs.20,83,140/- (Not yet received)	Rs.1,11,100/-
6	Commutation of Pension 40%	February, 2023		Rs.29,47,262/- (Not yet received)	Rs.1,57,187/-
7	Difference of 7 <sup>th</sup> Pay arrears 4 <sup>th</sup> installment	February, 2023		Rs.1,05,940/- (Not yet received)	Rs.2,542/-

4. It is a common ground that during pendency of this O.A., the amount of only items at Sr. Nos.1, 2, and 7 were paid and remaining amounts are still not paid to the Applicant.

5. 'Exhibit 2' is the communication dated 13.11.2023 which states that on allegation of misappropriation of Rs.48,02,646/- on complaint of the Applicant, offence was registered at Wangaon Police Station against Junior Clerk Shri Vinod Jadhav on 23.07.2022, subsequently, proposal was sent to initiate departmental enquiry for aforesaid misappropriation against the Applicant and Shri Vinod Jadhav, in the meantime, the Applicant retired on 31.01.2023, therefore, fresh proposal for initiation of departmental enquiry against the Applicant was called and it was forwarded to Respondent No.1 with 'Exhibit 2' dated 13.11.2023. The record shows that pursuant to revised proposal, by order dated 04.09.2023, D.E. is initiated against the Applicant and Shri Vinod Jadhav.

6. It was argued by Advocate Shri G. A. Bandiwadekar that on the date of retirement no enquiry was pending against the Applicant. This factual position is not disputed by the Respondents. It was further argued that retiral benefits could have been withheld only if D.E. was pending on the date of retirement of the Applicant. In support of this submission, reliance is placed on a judgment of this bench dated 24.04.2019 in **O.A.No.768/2018 (Shri Kondiba Ramling Nannaware V/s Commissioner, Dairy Development and 1 Anr.)**. In this case, after considering Rule 27 and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982, it was held :-

*“Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of ‘Rules of 1982’. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit.*

*14.Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of ‘Rules of 1982’ and where on conclusion, the Government servant (pensioner) is found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.*

*15.As regard gratuity, the Rule 130(c) says “no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.” Here, the legislature has not used the word “pensioner” and has specifically used the word “Government Servant”, which is significant in the present context. This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of ‘Rules of 1982’, in case pensioner is found guilty on conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired honorably, right to receive pension and gratuity accrues to*

*him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that is permissible is to withhold pension, if found guilty in D.E, if initiated fulfilling embargo mentioned in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.*

*19.It is no more res-integra that the pension is recognized as a right in property enshrined in Article 300-A of the Constitution of India, which reads as under :*

***"300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law."***

*As such, once the right to receive pension and gratuity is recognized as a statutory right, a person cannot be deprived of it without statutory provision to that effect."*

7. In support of withholding of amount of Leave Encashment, the Respondents have relied on Notification dated 29.06.2006 (Annexure SR-2) issued by Finance Department of Government of Maharashtra by which Rule 68(6)(a) was inserted in the Maharashtra Civil Services (Leave) Rules, 1981. This Rule reads as under :-

*"Rule 68(6)(a) : The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any."*

By relying on this Rule, the amount of Leave Encashment could not have been withheld as at the time of his retirement, the Applicant was not under suspension nor was there judicial or departmental proceeding pending against him.

8. Further case of the Applicant is that from November, 2012 till date of his retirement i.e. 31.01.2023 he was holding additional charge of five posts as detailed in chart on page 14 of the O.A. and hence he was entitled to get 'Special Pay' for holding such charge. On this point, the stand of the Respondents is that the Applicant did not submit application to higher authority for grant of 'Special Pay' for the period from April 2014 to 31.07.2022. As per G.R. dated 27.12.2011, the additional charge could not have been continued beyond 2 years without prior approval from GAD and Finance Department and the Applicant was entitled for holding one additional charge only.

Considering rival contentions on this point, it would be appropriate to give liberty to the Applicant to make an application for grant of 'Special Pay' which can be decided on its own merits. Since departmental enquiry is pending against the Applicant, it would be just to defer determination of question of grant of interest on delayed payment of regular Pension, Gratuity and Leave Encashment. In the result, the O.A. is allowed in the following terms :-

- (A) The Respondents are directed to release amount of regular Pension, Gratuity and Leave Encashment within one month from today.
- (B) The Applicant would be at liberty to apply for grant of 'Special Pay'. On such, application being made, it shall be decided on its own merits within three months therefrom.
- (C) Issue of interest is kept open.
- (D) No order as to costs.

Sd/-

**( M. A. Lovekar )**  
**Member (J)**

Place: Mumbai

Date: 09.01.2025.

Dictation taken by: V. S. Mane

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