

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 100 OF 2020

DISTRICT : AURANGABAD

Ashok S/o Ramrao Jagdhane,
Age. 59 yrs, Occu. Retd.,
R/o Navbharat Society, N-8,
Plot No. 5, Cidco, Aurangabad
Tq. & Dist. Aurangabad.

.... APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.

2. The Director General of Police,
Shahid Bhagatsingh Marg,
Colaba, Mumbai-400 001

3. The Commissioner of Police
The Commissioner of Police Office,
Mill Corner, Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri S.R. Sadaphule, learned counsel for the
applicant.

: Shri S.S. Dambe, learned Presenting Officer for the
respondent authorities.

**CORAM : HON'BLE JUSTICE V.K. JADHAV, VICE CHAIRMAN
AND
: HON'BLE VINAY KARGAONKAR, MEMBER (A)**

DATE : 16.04.2025

O R A L O R D E R

[Per : Justice V.K. Jadhav, Vice Chairman]

1. Heard Shri S.R. Sadaphule, learned counsel for the
applicant and Shri S.S. Dambe, learned Presenting Officer for
respondent authorities.

2. The present matter is heard finally by consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking quashing and setting aside the order dated 31.08.2019 issued by respondent No. 3, the Commissioner of Police, Aurangabad, directing to withdraw the entire pension of the applicant, for which the applicant is entitled for.

4. Brief facts giving rise to this Original Application are as follows: -

(a) The applicant was appointed in the year 1989 as Police Constable on the establishment of respondent No. 3 and he was promoted time to time and lastly he was promoted as Police Head Constable. In the year 2011, the applicant while serving at Police Station Waluj, on the basis of the complaint, ACP raid was conducted against him and accordingly the Crime No. II-3004/2011 dated 31.01.2011 for offence punishable under Section 7, 13(1)(d) r/w 13(2) under the Prevention of Corruption Act, 1988 came to be registered against the applicant. The applicant was tried by the Additional Sessions Judge, Vaijapur in Special ACB case No. 14/2012 and by judgment and order dated 30.05.2019 the applicant was convicted for the offences punishable under Section 7 as well as 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment (RI) for 02 (two) years and to pay fine amount of Rs. 2,000/- (Rs. Two thousand only), in default to suffer simple imprisonment for 03 (Three) months. The applicant was also convicted for the offence punishable U/s 7 of the Prevention of

Corruption Act, 1988 and sentenced to suffer RI for 02 (two) years and to pay fine amount of Rs. 2,000/- (Rs. Two thousand only), in default to suffer simple imprisonment for 03 (Three) months. It is directed that both substantive sentences shall run concurrently and accused is entitled for set-off in sentence.

(b) Meanwhile, on 30.09.2018, the applicant on attaining the age of superannuation came to be retired.

(c) Respondent No. 3 has issued Show-Cause Notice dated 20.07.2019 to the applicant. In view of this conviction in connection with the Special ACB case No. 14/2012 dated 30.05.2019 by the Additional Sessions Judge, Vaijapur his pension shall not be withheld permanently and the suspension period from 05.02.2011 to 11.02.2016 shall be treated as a period as it is.

(d) The applicant has submitted his explanation in writing on 26.07.2019 to respondent No. 3 and also pointed out that aggrieved by the said judgment the applicant has preferred an appeal before the Hon'ble High Court of Bombay, Bench at Aurangabad bearing Criminal Appeal No. 657/2019 with Criminal Application No. 2208/2019 and by order dated 19.07.2019 the Hon'ble Single Judge of Hon'ble High Court of Bombay, Bench at Aurangabad suspended the substantive sentence imposed upon the applicant and released the applicant on bail.

(e) By impugned order dated 31.08.2019 respondent No. 3 withdrew pension of the applicant permanently and treated the period from 05.02.2011 to 11.02.2016 as a suspension period of the applicant. Hence, this Original Application.

5. Learned counsel for the applicant submits that the applicant being aggrieved by the judgment and order of conviction passed by the learned Additional Sessions Judge, Vaijapur in the aforesaid ACB case No. 14/2012 dated 30.05.2019 has preferred Criminal Appeal No. 657/2019, which is still pending before the Hon'ble High Court of Bombay, Bench at Aurangabad and, as such, the impugned order dated 31.08.2019 is premature.

6. Learned counsel for the applicant submits that respondent No. 3 seems to have passed said order under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 since the applicant before the said impugned order came to be retired on attaining the age of superannuation. Learned counsel submits that rightly or wrongly respondent No. 3 has withheld the entire pension of the applicant, however, unfortunately other retiral benefits have not been paid to the applicant till date. Learned counsel submits that in terms of the provisions of rule 27 as aforesaid except withholding of the pension the other pensionary benefits for which the applicant is entitled cannot be retained on any count.

7. Learned Presenting Officer submits that respondent No. 3 has rightly passed the order in terms of the provisions of Rule 27 of the M.C.S. (Pension) Rules, 1982. In view of conviction of the applicant in connection with Special ACB Case No. 14/2012 dated 30.05.2019 by the Additional Sessions Judge, Vaijapur, respondent No. 3 by invoking the rule 27 of the MCS (Pension) Rule, 1982 has

rightly withheld the pension of the applicant permanently. Further, respondent No. 3 has also treated the period of suspension as the period as it is. There is no reason to interfere in the order passed by respondent No. 3. There is no substance in this Original Application and the same is liable to be dismissed.

8. In this context, we deem it necessary to reproduce herein below Rule 27 Sub-rule (1) with proviso thereof of the Pension Rules, 1982 only, which is relevant for the present discussion:-

“27. Right of Government to withhold or withdraw pension.-

(1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview :”

Provided further that -- -- -- -- --

(2)(a) -- -- -- --

(b) -- -- -- --

9. In view of the above provisions, the appointing authority is empowered to withhold or withdraw pension or any part of it, whether permanently or for specified period and also order the

recovery from such pension, the whole or part of any pecuniary loss caused to Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including the period of his service rendered upon re-employment after retirement.

10. In the instant case, learned Additional Sessions Judge by judgment and order dated 30.05.2019 in Special ACB case No. 14/2012 convicted the applicant for the offences punishable under Section 7 r/w 13(2) of the Prevention of Corruption Act, 1988 in connection with each of the section i.e. section 7 and section 13 (1) with direction that both substantive sentences shall run concurrently and in view of the same, appointing authority has rightly exercised the powers as provided under Rule 27 of the Pension Rules, 1982. However, in our considered opinion, respondent No. 3 should have been directed in the said order dated 31.08.2019 that withholding of the said pension permanently would be subject to the outcome of the pending appeal bearing Criminal Appeal No. 657/2019 before the Hon'ble High Court of Bombay, Bench at Aurangabad. Even if it is not so stated in the impugned order dated 31.08.2019, in the event if the appeal preferred by the applicant is allowed and the conviction or judgment and order passed against the applicant is quashed and set aside by the Hon'ble High Court of Bombay, Bench at Aurangabad in the pending appeal, it would be incumbent upon respondent No. 3 to reconsider the said order in the light of the judgment rendered by the

Hon'ble High Court of Bombay, Bench at Aurangabad in the pending criminal appeal preferred by the applicant.

11. So far as Rule 27 sub rule (1) of the Pension Rules, 1982 is concerned, the appointing authority is empowered to withhold or withdraw the pension and not the other pensionary benefits. However, in view of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. In the instant case as against the judgment and order in connection of passed by the Trial Court the appeal preferred by the applicant bearing Criminal Appeal No. 657/2019 is pending before the Hon'ble High Court of Bombay Bench at Aurangabad and, as such, the gratuity not payable to the applicant until conclusion of the judicial proceedings and issue of final orders thereon.

12. Learned Presenting Officer has placed before us certain communications received from the office of respondent No. 3. On perusal of the same, it appears that though the applicant came to be retired on 30.09.2018, he was not given other retiral benefits for which applicant is entitled. There is no justification for retaining the other retiral benefits.

13. The impugned order dated 31.08.2019 passed by respondent No. 3, the Commissioner of Police, Aurangabad would be

subject to the outcome of the appeal bearing No. 657/2019 pending before the Hon'ble High Court of Bombay, Bench at Aurangabad. The Original Application thus, deserves to be partly allowed. Hence, the following order: -

ORDER

- (i) The Original Application is hereby partly allowed.
- (ii) The impugned order dated 31.08.2019 passed by respondent No. 3, the Commissioner of Police, Aurangabad would be subject to outcome of appeal bearing criminal appeal No. 657/2019 pending before the Hon'ble High Court of Bombay, Bench at Aurangabad.
- (iii) So far as the gratuity payable to the applicant is concerned, the same shall be paid to him after conclusion of the judicial proceedings and the issue of final orders thereon.
- (iv) Respondent No. 3 is hereby directed to release all the other pensionary benefits to the applicant within 02 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.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 16.04.2025